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

F I L E D

AUG 15 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

OIL AND GAS CONSULTANTS,
INTERNATIONAL, INC.,
A TEXAS CORPORATION,

PLAINTIFF,

v.

TECHNOMEDIA INTERNATIONAL, INC.,
A TEXAS CORPORATION,

DEFENDANT.

CC-
Case No.: CV 0217H (M)

ENTERED ON DOCKET
DATE AUG 30 2000

**JOINT STIPULATION TO VOLUNTARILY
DISMISS COMPLAINT AND COUNTERCLAIM**

The Plaintiff, Oil and Gas Consultants, International, Inc., and the Defendant/Counter-claimant Technomedia International, Inc., pursuant to Fed.R.Civ.P. Rule 41(a)(1), hereby stipulate to the dismissal of the Complaint and Counterclaim in the above-referenced case, with prejudice or without prejudice as stated below. The Parties hereby jointly stipulate as follows:

1. Plaintiff, Oil and Gas Consultants, International, Inc., agrees and hereby stipulates to dismiss its Complaint, in its entirety, against Defendant Technomedia International, Inc., with prejudice;
2. Defendant Technomedia International, Inc., agrees and hereby stipulates to dismiss with prejudice its counterclaims except for the counterclaim referenced in Paragraphs 19 through 22 of its Answer and Counterclaim. The claims related to the issue of a potential claim for copyright infringement outlined in Paragraphs 19 through 22 of the Answer and Counterclaim are dismissed without prejudice by Technomedia International, Inc.; and
3. Each party shall bear its own attorney fees and costs.

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CLJ

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

DOUG E. JONES,)
)
Petitioner,)
)
vs.)
)
STEVE KAISER, Warden,)
)
Respondent.)

F I L E D
AUG 30 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT
No. 99-CV-763-K (M)

ENTERED ON DOCKET
AUG 30 2000
DATE

JUDGMENT

This matter came before the Court upon Petitioner's petition for writ of habeas corpus. The Court duly considered the issues and rendered a decision herein.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Petitioner's action herein is dismissed with prejudice as barred by the statute of limitations.

SO ORDERED THIS 29 day of August, 2000.


TERRY C. KERN, Chief Judge
UNITED STATES DISTRICT COURT

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

DEBORAH ROBINSON, D.O.,

Plaintiff,

v.

ARMEN MAROUK, D.O.; STEPHEN
EICHERT, D.O.; GREGORY WILSON,
D.O.; DANIEL FIEKER, D.O.;
OSTEOPATHIC HOSPITAL FOUNDERS
ASSOCIATION d/b/a TULSA REGIONAL
MEDICAL CENTER; and NOTAMI
HOSPITAL OF OKLAHOMA, INC., d/b/a
COLUMBIA TULSA REGIONAL
MEDICAL CENTER,

Defendants.

ENTERED ON DOCKET

DATE AUG 30 2000

Case No. 96-CV-160-K (E) /

F I L E D

AUG 30 2000

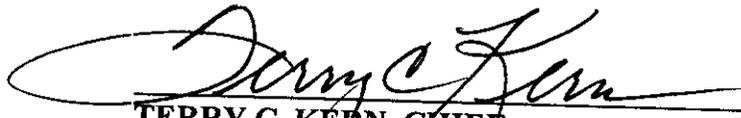
Phil Lombardi, Clerk
U.S. DISTRICT COURT

JUDGMENT

In accordance with the order filed July 25, 2000, awarding Plaintiff her attorney fees and litigation expenses,

IT IS THEREFORE ORDERED that the Plaintiff, Deborah Robinson, D.O., recover from the Osteopathic Hospital Founders Association d/b/a Tulsa Regional Medical Center and Notami Hospital of Oklahoma, Inc., d/b/a Columbia Tulsa Regional Medical Center the sum of \$446,090.22, with post-judgment interest thereon at a rate of 6.375 percent per annum as provided by law.

ORDERED this 29 day of AUGUST, 2000.


TERRY C. KERN, CHIEF
UNITED STATES DISTRICT JUDGE

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

DEBORAH ROBINSON, D.O.,

Plaintiff,

v.

ARMEN MAROUK, D.O.; STEPHEN
EICHERT, D.O.; GREGORY WILSON,
D.O.; DANIEL FIEKER, D.O.;
OSTEOPATHIC HOSPITAL FOUNDERS
ASSOCIATION d/b/a TULSA REGIONAL
MEDICAL CENTER; and NOTAMI
HOSPITAL OF OKLAHOMA, INC., d/b/a
COLUMBIA TULSA REGIONAL
MEDICAL CENTER,

Defendants.

ENTERED ON DOCKET

DATE AUG 30 2000

Case No. 96-CV-160-K (E) ✓

F I L E D

AUG 30 2000 ✓

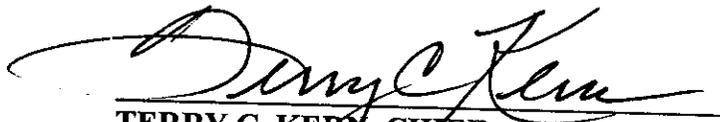
Phil Lombardi, Clerk
U.S. DISTRICT COURT

JUDGMENT

In accordance with the order filed contemporaneously herewith, awarding Plaintiff her attorney fees and costs associated with responding to objections to the Magistrate Judge's Report and Recommendation,

IT IS THEREFORE ORDERED that the Plaintiff, Deborah Robinson, D.O., recover from the Osteopathic Hospital Founders Association d/b/a Tulsa Regional Medical Center and Notami Hospital of Oklahoma, Inc., d/b/a Columbia Tulsa Regional Medical Center the sum of \$2,267.42, with post-judgment interest thereon at a rate of 6.375 percent per annum as provided by law.

ORDERED this 29 day of AUGUST, 2000.


TERRY C. KERN, CHIEF
UNITED STATES DISTRICT JUDGE

346

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

RUFORD HENDERSON, et al.,

Plaintiffs,

v.

AMR CORPORATION, AMERICAN
AIRLINES, INC. and THE SABRE
GROUP, INC.,

Defendants.

ENTERED ON DOCKET

DATE AUG 30 2000

Case No. 97-CV-457-K (E)

F I L E D

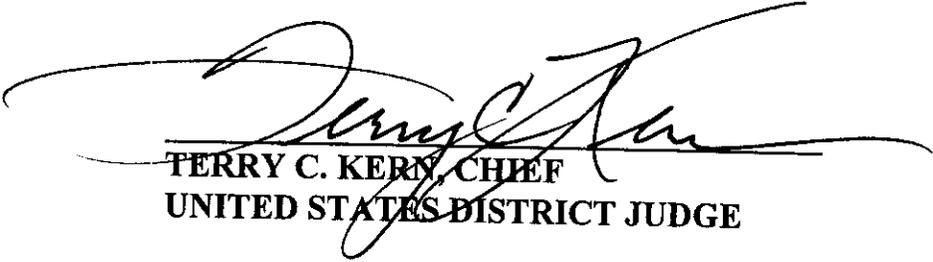
AUG 29 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

JUDGMENT

The numerous dispositive motions in this case having now been resolved,
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that judgment is
hereby entered for the defendants and against the plaintiffs with the exception of those
plaintiffs who resolved their claims through settlement.

ORDERED THIS 28 DAY OF AUGUST, 2000.


TERRY C. KERN, CHIEF
UNITED STATES DISTRICT JUDGE

246

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

ROBERT BARRON,
Petitioner,

vs.

TWYLA SNYDER, Warden;
THE OKLAHOMA DEPARTMENT
OF CORRECTIONS; and THE STATE
OF OKLAHOMA,

Respondents.

) ENTERED ON DOCKET
)
) DATE **AUG 29 2000**
)

) No. 99-CV-680-K (E)
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FILED
AUG 29 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

FILED
AUG 29 2000

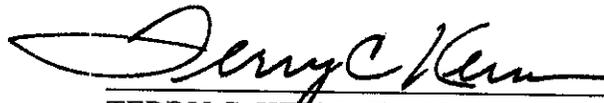
Phil Lombardi, Clerk
U.S. DISTRICT COURT

JUDGMENT

This matter came before the Court upon Petitioner's petition for writ of habeas corpus. The Court duly considered the issues and rendered a decision herein.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Petitioner's action herein is dismissed with prejudice as barred by the statute of limitations.

SO ORDERED THIS 29 day of August, 2000.


TERRY C. KERN, Chief Judge
UNITED STATES DISTRICT COURT

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

MALCOLM NIGEL SCOTT,)
)
Petitioner,)
)
vs.)
)
JAMES L. SAFFLE,)
)
Respondent.)

ENTERED ON DOCKET
DATE AUG 29 2000

Case No. 99-CV-471-K (J) ✓

FILED

AUG 29 2000

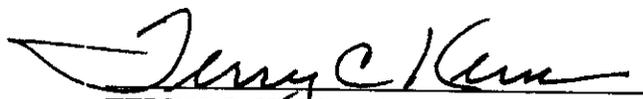
Phil Lombardi, Clerk
U.S. DISTRICT COURT

JUDGMENT

This matter came before the Court upon Petitioner's petition for writ of habeas corpus. The Court duly considered the issues and rendered a decision herein.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Petitioner's action herein is dismissed with prejudice as barred by the statute of limitations.

SO ORDERED THIS 29 day of August, 2000.


TERRY C. KERN, Chief Judge
UNITED STATES DISTRICT COURT

12

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

GARY ROACH,

Plaintiff,

v.

UNITED AUTO WORKERS,

Defendant.

)
)
)
)
)
)
)
)
)
)

ENTERED ON DOCKET

DATE AUG 29 2000

Case No. 99-CV-748-H ✓

FILED
AUG 29 2000
CLERK OF DISTRICT COURT

JUDGMENT

This matter came before the Court on Defendant's motion for summary judgment. The Court duly considered the issues and rendered a decision in accordance with the order filed on Aug. 18, 2000.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that judgment is hereby entered for Defendant and against Plaintiff.

IT IS SO ORDERED.

This 28TH day of August, 2000.



Sven Erik Holmes
United States District Judge

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

FILED

AUG 28 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ANDREW GRABOW,)
)
Plaintiff,)
)
vs.)
)
WILLIAMS NATURAL)
GAS COMPANY,)
)
Defendant.)

Case No.: 97-CV-498-K

ENTERED ON DOCKET

DATE AUG 28 2000

JOINT STIPULATION OF DISMISSAL WITH PREJUDICE

COME NOW the parties, Plaintiff Andrew Grabow and Defendant Williams Natural Gas Company, by and through their respective attorneys, and advise the Court that they have reached a mutually satisfactory settlement regarding Plaintiff's claims herein. Therefore, the parties stipulate that this action should be dismissed with prejudice with each of the parties to bear their own costs and attorneys' fees.

Dated this 22 day of August, 2000.

Respectfully submitted,

By: *Catherine Gatchell Cooper*
Catherine Gatchell Cooper, OBA #3288
Robert L. Briggs, OBA #10215
406 South Boulder, Suite 400
Tulsa, Oklahoma 74103
(918) 599-7737

ATTORNEYS FOR PLAINTIFF
ANDREW GRABOW

-and-

12

015

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

By:



J. Patrick Cremin, OBA #2013
320 South Boston Ave., Suite 400
Tulsa, Oklahoma 74103
(918) 594-0400

-and-

Connie Lee Kirkland, OBA #14262
One Williams Center, Suite 4100
Tulsa, Oklahoma 74172
(918) 573-3556

ATTORNEYS FOR DEFENDANT
WILLIAMS NATURAL GAS COMPANY

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

FILED

AUG 28 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT



JANET D. LOWE, an individual,

Plaintiff,

v.

CHILDTIME CHILDCARE, INC.
a foreign corporation,

Defendant.

Case No. 99 CV0532H (M)



ENTERED ON DOCKET

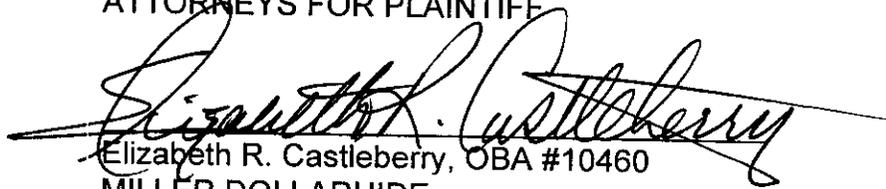
DATE AUG 28 2000

STIPULATION OF DISMISSAL

COME NOW the parties and pursuant to Rule 41(a), Fed.R.Civ.P., hereby stipulate that all of Plaintiff's claims against Defendant shall be dismissed with prejudice for the reason that the parties hereto have agreed to a settlement. Each party is to bear its own costs and attorney fees.



Timothy P. Clancy, OBA # 14199
2250 E. 73rd Street, Suite 400
Tulsa, Oklahoma 74136-6833
Telephone: (918) 494-0007
Facsimile: (918) 488-0488
ATTORNEYS FOR PLAINTIFF



Elizabeth R. Castleberry, OBA #10460
MILLER DOLLARHIDE
Second Floor, 100 Park Avenue
Oklahoma City, Oklahoma 73102-8099
Telephone: (405) 236-8541
Telecopy: (405) 235-8130
ATTORNEYS FOR DEFENDANT



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

F I L E D

AUG 28 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

SHIRLEY A. GRIFFITH,
SSN: 445-42-1728,

Plaintiff,

v.

KENNETH S. APFEL,
Commissioner of the Social Security
Administration,

Defendant.

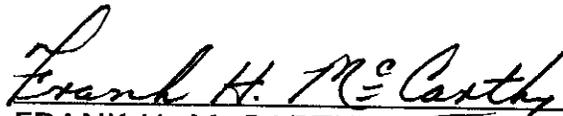
CASE NO. 99-CV-602-M ✓

ENTERED ON DOCKET

DATE **AUG 28 2000**

JUDGMENT

Judgment is hereby entered for Plaintiff and against Defendant. Dated
this 28th day of AUG., 2000.


FRANK H. McCARTHY
UNITED STATES MAGISTRATE JUDGE

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

FILED

AUG 28 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

GARRY COX,)
)
Plaintiff,)
)
vs.)
)
WAL-MART STORES, INC,)
)
Defendant.)

No. 99-CV-951-C ✓

ENTERED ON DOCKET
DATE AUG 28 2000

JUDGMENT

This matter came before the Court for consideration of defendant Wal Mart Stores, Inc.'s motion for summary judgment. The motion having been duly considered and a decision having been rendered in accordance with the Order filed,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment is entered for defendant, Wal-Mart Stores, Inc., and against plaintiff, Gary Cox, on defendant's motion for summary judgment.

IT IS SO ORDERED this 28th day of August 2000.


H. Dale Cook
United States District Judge

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

F I L E D

AUG 28 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

REVON PRATT,

Plaintiff,

vs.

HILLCREST HEALTHCARE, INC.,

Defendant.

CASE NO. 99-CV-319-C

ENTERED ON DOCKET

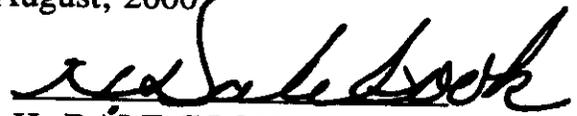
DATE AUG 28 2000

JUDGMENT

This matter came before the Court for consideration of the motion for summary judgment filed by the defendant, Hillcrest Healthcare, Inc., on plaintiff's claim for race discrimination under Title VII, 42 U.S.S. § 20000, as amended. The issues having been duly considered and a decision having been rendered in accordance with the Order filed contemporaneously herewith,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment is entered for the defendant Hillcrest Healthcare, Inc. and against the plaintiff, Revon Pratt.

IT IS SO ORDERED this 28th of August, 2000



H. DALE COOK

Senior, United States District Judge

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F I L E D

AUG 25 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

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

TOM'S FOODS INC.,)
a Delaware corporation,)
)
PLAINTIFF,)
)
v.)
)
SILVERADO FOODS, INC.,)
an Oklahoma corporation,)
and LAWRENCE D. FIELD,)
an Individual,)
)
DEFENDANTS.)

Case No. 99CV0706E (M)

JUDGMENT AS TO DEFENDANT SILVERADO FOODS, INC.

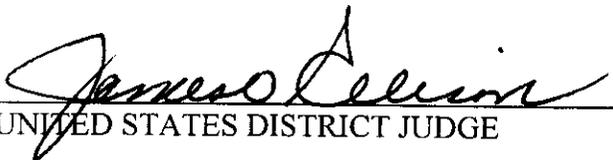
Upon the Plaintiff's motion for default judgment (Docket No. 58) and motion for summary judgment (Docket No. 46), and for good cause shown, the Court orders, adjudges and decrees that Defendant Silverado Foods, Inc. is in default, has as a consequence admitted the allegations in the Complaint and the facts supporting the motion for summary judgment, and is liable to Plaintiff Tom's Foods Inc. for: actual damages of \$136,043.82, including pre-judgment interest and fees from April 1, 1998, through June 30, 2000; post-judgment interest at the contract rate of thirteen and a quarter percent (13.25%) per annum from and after the date hereof; and attorneys' fees and costs in an amount to be determined upon application by Plaintiff.

It is further ordered, adjudged and decreed that Plaintiff Tom's Foods is entitled to foreclose upon, and obtain immediate possession of, the collateral described in the Security Agreement dated April 1, 1998, with the exception of the inventory, accounts, fixed assets and all other tangible and intangible assets included in the sale of the Ohio Honor Snack Market Center owned and operated

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by Silverado Foods, Inc. and/or Silverado Marketing Services, Inc.; and that Tom's Foods may hereafter apply to the Court for such additional orders and process as may be required to foreclose upon and obtain possession of such collateral.

Dated this 25TH day of August, 2000.


UNITED STATES DISTRICT JUDGE

Submitted by:

Steven K. Balman, OBA #492
SNEED LANG, P.C.
2300 Williams Center Tower II
Two West Second Street
Tulsa, Oklahoma 74103-3136
(918) 583-3145

ATTORNEYS FOR PLAINTIFF

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

F I L E D

AUG 24 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 00CV0374B(M)
)	
ANTHONY J. DAVIS,)	
)	
Defendant.)	

ENTERED ON DOCKET
DATE AUG 25 2000

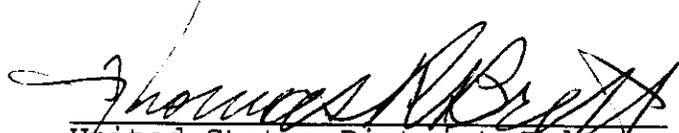
DEFAULT JUDGMENT

This matter comes on for consideration this 24th day of Aug, 2000, the Plaintiff appearing by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, and the Defendant, Anthony J. Davis, appearing not.

The Court being fully advised and having examined the court file finds that Defendant, Anthony J. Davis, was served with Summons and Complaint on May 2, 2000. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE ORDERED, ADJUDGED, and DECREED that the Plaintiff have and recover judgment against the Defendant, Anthony J. Davis, for the principal amount of \$15,464.79, plus accrued

interest of \$3,411.52, plus interest thereafter at the rate of 8.25 percent per annum until judgment, plus filing fees in the amount of \$150.00 as provided by 28 U.S.C. § 2412(a)(2), plus interest thereafter at the current legal rate of 6.375 percent per annum until paid, plus costs of this action.


United States District Judge

Submitted By:


PHIL PINNELL, OBA # 7169
Assistant United States Attorney
333 West 4th Street, Suite 3460
Tulsa, Oklahoma 74103-3809
(918) 581-7463

PEP/11f

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

FILED

AUG 24 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

WAYNE CLAYBOURNE,)
)
 PLAINTIFF,)
)
 V.)
)
 CRAFT ASSOCIATES, INC.,)
)
 DEFENDANT.)

CASE NO. 98-CV-511-B ✓

ENTERED ON DOCKET
DATE AUG 25 2000

JUDGMENT

This case was tried to a jury on August 23 and 24, 2000 with counsel of record and the parties present. After deliberation, the jury entered its verdict on August 24, 2000 in favor of Plaintiff Wayne Claybourne and against Defendant Craft Associates, Inc. on Plaintiff's claim for breach of contract.

Judgment therefore is hereby entered in favor of Plaintiff Wayne Claybourne and against Defendant Craft Associates, Inc. on Plaintiff's claim for breach of contract in the amount of \$1,858.54, plus prejudgment interest pursuant to Okla.Stat.tit.23 §6 and Okla.Stat.tit.6 §266 at a rate of 6% per annum for a total amount of \$532.15 calculated as follows: 6% interest on \$787.50 from April 15, 1995 until today's date (5 years and 131

days) in the amount of \$253.21; 6% interest on \$75.97 from January 15, 1996 until today's date (4 years and 222 days) in the amount of \$21.01; 6% interest on \$765.00 from April 15, 1996 (4 years and 131days) in the amount of \$200.08; and 6% interest on \$230.07 from June 15, 1996 until today's date (4 years and 70 days) in the amount of \$57.85, plus post-judgment interest pursuant to 28 U.S.C. §1961 from date of Judgment forward at the legal rate of 6.375% per annum.

Costs and attorney's fees, if applicable, are awarded to Plaintiff upon proper and timely application pursuant to N.D. LR 54.1 and 54.2.

IT IS SO ORDERED THIS 24TH DAY OF AUGUST, 2000.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

GAIL and NORMAN LATHAM,)
Husband and Wife,)

Plaintiffs,)

vs.)

FIRST MARINE INSURANCE)
COMPANY, a corporation; FIRST)
MARINE FINANCIAL SERVICES, INC.,)
a corporation,)

Defendants.)

ENTERED ON DOCKET

DATE AUG 25 2000

No. 99-CV-1029-H (E) ✓

FILED

AUG 24 2000 ✓

CLERK OF DISTRICT COURT

JUDGMENT

This matter came on before the undersigned Judge of the District Court for judgment according to Rule 68, Fed. R. Civ. P., and the issues having been heard, judgment is rendered in the above-styled and numbered cause in favor of the Plaintiffs, Norman and Gail Latham, against the Defendant, First Marine Insurance Company, as follows:

The Court, having reviewed the court file and being fully advised in the premises, finds that an offer of judgment was made by the Defendant, First Marine Insurance Company, on August 9, 2000, pursuant to Rule 68, Fed. R. Civ. P., in the principal amount of \$50,005.00, exclusive of interest, costs and attorney's fees and that the offer was timely accepted by the Plaintiffs, Norman and Gail Latham, as evidenced by the Affidavit of Anthony P. Sutton, counsel of record for the Plaintiffs, Norman and Gail Latham, filed of record herein. Based upon these findings and the court file, judgment should be entered in favor of the Plaintiffs, Norman and Gail Latham, in accordance with the offer of judgment and Plaintiffs' acceptance.

Further, the Plaintiffs are prevailing parties against the Defendant, First Marine Insurance Company, as that term is defined under Okla. Stat. tit. 36, § 3629 since the judgment amount exceeds the Defendant's previous written offer of settlement, such that the Plaintiffs, Norman

and Gail Latham, are entitled to pre-judgment interest and reasonable attorney's fees and costs of this action, the amount of which are to be determined upon application, with pre-judgment interest on the principal of this Judgment to accrue from February 20, 1999 through the date of the filing of this judgment.

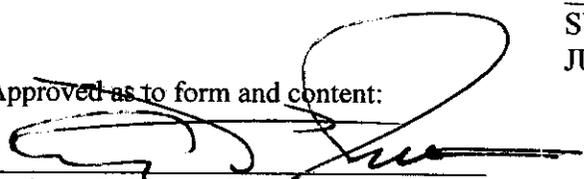
The Court also notes First Marine Insurance Company's withdrawal of its Counterclaim for Declaratory Judgment and dismisses the Counterclaim with prejudice.

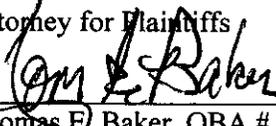
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiffs, Norman and Gail Latham, have and recover judgment of and from the Defendant, First Marine Insurance Company, for the principal sum of \$50,005.00 plus pre-judgment interest from February 20, 1999 through the date of the filing of this judgment, plus attorney's fees and costs in an amount to be determined upon application by the Plaintiffs; and post-judgment interest pursuant to Okla. Stat. tit. 12, § 727.

Dated this 24TH day of August, 2000.


SVEN ERIK HOLMES
JUDGE OF THE DISTRICT COURT

Approved as to form and content:


Anthony P. Sutton, OBA #8781
Herrold, Herrold & Sutton, P.A.
2250 East 73rd Street, Suite 600
Tulsa, OK 74136-6835
918/491-9559
Attorney for Plaintiffs


Thomas E. Baker, OBA #11054
Daniel, Baker & Howard
2431 East 51st Street, Suite 306
Tulsa, OK 74105-6036
918/749-5988
Attorney for Defendant,
First Marine Insurance Company

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

F I L E D

AUG 24 2000 *[Signature]*

Phil Lombardi, Clerk
U.S. DISTRICT COURT

PHILLIP L. DAVIS,
Plaintiff,

v.

KENNETH S. APFEL,
Commissioner,
Social Security Administration,
Defendant

§
§
§
§
§
§
§
§

Civil Action No. 00-CV-60-EA /

ENTERED ON DOCKET

DATE AUG 25 2000

RULE 58 FINAL JUDGMENT

This action has come before the Court for consideration upon an unopposed Motion to Reverse and Remand for Further Administrative Action. An Order reversing and remanding the case to the Commissioner has been entered.

The Court enters this Final Judgment under Fed. R. Civ. P. 58 reversing and remanding this case to the Commissioner for further administrative action.

THUS DONE AND SIGNED on this 24th day of August, 2000.

Claire V. Gog
United States Magistrate Judge

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

DONNA J. CONLEY,
SSN: 513-60-0024

Plaintiff,

v.

KENNETH S. APFEL, Commissioner
of Social Security Administration,

Defendant.

AUG 24 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

No. 99-CV-667-J

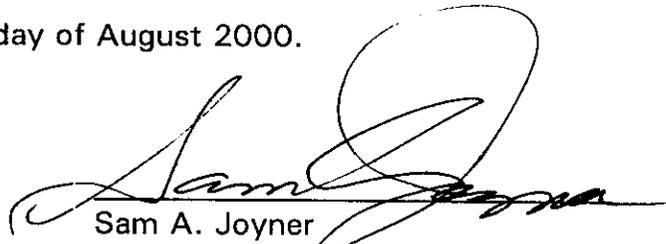
ENTERED ON DOCKET

DATE AUG 24 2000

JUDGMENT

This action has come before the Court for consideration and an Order reversing the Commissioner's decision and remanding the case to the Commissioner for further proceedings has been entered. Consequently, Judgment for the Plaintiff and against the Defendant is hereby entered pursuant to the Court's Order.

It is so ordered this 24th day of August 2000.


Sam A. Joyner
United States Magistrate Judge

FILED

AUG 24 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

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

FILED

AUG 24

Phil Lombardi, Clerk
U.S. DISTRICT COURT

HOMeward BOUND, INC., et al.,)
)
Plaintiffs,)
)
v.)
)
THE HISSOM MEMORIAL CENTER,)
et al.,)
)
Defendants.)

Case No. 85-C-437-E ✓

ENTERED ON DOCKET

DATE AUG 24 2000

ORDER & JUDGMENT

Plaintiffs' counsel, Bullock & Bullock, filed an Attorney Fee Application on August 4, 2000, for an award of attorney fees and expenses in accordance with the December 23, 1989 order and stipulation of the parties.

The Court has reviewed the application for fees, objection and the Stipulation of the parties.

The Court hereby awards the firm Bullock & Bullock the agreed to attorney fees and expenses in the amount of \$40,238.38.

IT IS THEREFORE ORDERED that the Department of Human Services, the Oklahoma Health Care Authority and the Department of Rehabilitation Services are each jointly and severally liable for the payment to plaintiffs' counsel, Bullock & Bullock, for attorney fees and expenses in the amount of \$40,238.38, and a judgment in the amount of \$40,238.38 is hereby granted on this day.

1007

ORDERED this 24th day of August, 2000.


HONORABLE JAMES O. ELLISON
United States District Court


Louis W. Bullock, OBA #1305
Patricia W. Bullock, OBA #9569
BULLOCK & BULLOCK
320 South Boston, Suite 718
Tulsa, Oklahoma 74103-3783
(918) 584-2001


Mark Lawton Jones, OBA #4788
Assistant Attorney General
OFFICE OF THE ATTORNEY
GENERAL
4545 North Lincoln, Suite 260
Oklahoma City, OK 73105
(405) 521-4274

- and -

Frank Laski
Judith Gran
PUBLIC INTEREST LAW CENTER
OF PHILADELPHIA
125 South Ninth Street, Suite 700
Philadelphia, PA 19107
(215) 627-7100


Lynn S. Rambo-Jones, OBA #4785
Deputy General Counsel
OKLAHOMA HEALTH CARE
AUTHORITY
4545 North Lincoln, Suite 124
Oklahoma City, OK 73105
(405) 530-3439

ATTORNEYS FOR PLAINTIFFS

ATTORNEYS FOR
DEFENDANTS

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

OSCAR STEPHEN JARRELL,)
)
Petitioner,)
)
vs.)
)
LENORA JORDAN, Warden,)
)
Respondent.)

ENTERED ON DOCKET

DATE AUG 24 2000

Case No. 99-CV-051-H (E) ✓

FILED

AUG 23 2000

U.S. DISTRICT COURT

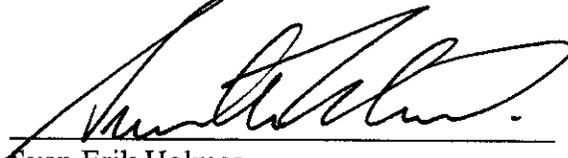
JUDGMENT

This matter came before the Court upon Petitioner's 28 U.S.C. § 2254 petition for writ of habeas corpus. The Court duly considered the issues and rendered a decision herein.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that judgment is hereby entered for Respondent and against Petitioner.

IT IS SO ORDERED.

This 23RD day of August, 2000.



Sven Erik Holmes
United States District Judge

LL
8-21-00

F I L E D

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

AUG 23 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ML

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 LISA A. COOK,)
)
 Defendant.)

CASE NO. 00CV0392E(E)

AGREED JUDGMENT AND ORDER OF PAYMENT

Plaintiff, the United States of America, having filed its Complaint herein, and the defendant, having consented to the making and entry of this Judgment without trial, hereby agree as follows:

1. This Court has jurisdiction over the subject matter of this litigation and over all parties thereto. The Complaint filed herein states a claim upon which relief can be granted.
2. The defendant hereby acknowledges and accepts service of the Complaint filed herein.
3. The defendant hereby agrees to the entry of Judgment in the principal sum of \$3,025.00, plus accrued interest of \$2,710.39, plus administrative costs in the amount of \$.00, plus interest thereafter at the rate of 8% per annum until judgment, plus filing fees in the amount of \$150.00, plus interest thereafter at the legal rate 6.375 until paid, plus costs of this action, until paid in full.
4. In addition to the regular monthly payment, the defendant hereby agrees to the submission of this debt to the Department of Treasury for inclusion in the Treasury Offset Program. Under this program, any federal payment the defendant would normally receive may be offset and applied to this debt.

7

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

(a) Beginning on or before the fifteenth day of October, 2000, the defendant shall tender to the United States a check or money order payable to the U.S. Department of Justice, in the amount of \$50.00, and a like sum on or before the fifteenth day of each following month until the entire amount of the Judgment, together with the costs and accrued postjudgment interest, is paid in full.

(b) The defendant shall mail each monthly installment payment to: United States Attorney, Financial Litigation Unit, 333 West 4th Street, Suite 3460, Tulsa, Oklahoma 74103-3809.

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

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

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

6. Default under the terms of this Agreed Judgment will entitle the United States to execute on this Judgment without notice to the defendant.

7. The parties further agree that any Order of Payment which may be entered by the Court pursuant hereto may thereafter be modified and amended upon stipulation of the parties; or, should the parties fail to agree upon the terms of a new stipulated Order of Payment, the Court may, after examination of the defendant, enter a supplemental Order of Payment.

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

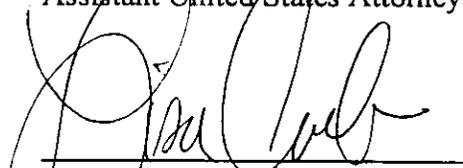
IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, Lisa A. Cook, in the principal amount of \$3,025.00, plus accrued interest in the amount of \$2,710.39, plus interest at the rate of 8 until judgment, plus filing fees in the amount of \$150.00, plus interest thereafter at the current legal rate of 6.375 percent per annum until paid, plus the costs of this action.


UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:

Stephen C. Lewis
United States Attorney


PHIL PINNELL, OBA #7169
Assistant United States Attorney


LISA A. COOK

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

CLARENCE E. BROTHERS,)
)
Plaintiff,)
)
v.) 98-CV-503-H(M) ✓
)
KENNETH S. APFEL,)
Commissioner, Social Security)
Administration,)
)
Defendant.)

ENTERED ON DOCKET
AUG 23 2000

DATE

FILED

AUG 23 2000

PHI L...
U.S. DISTRICT COURT

JUDGMENT

This matter came before the Court on the Report and Recommendation of the United States Magistrate Judge recommending that the decision of the Commissioner finding Plaintiff not disabled be affirmed. The Court duly considered the issues and entered an order adopting the recommendation of the Magistrate Judge.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that judgment is hereby entered for Defendant and against Plaintiff.

IT IS SO ORDERED.

This 23rd day of August, 2000.


Sven Erik Holmes
United States District Judge

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

ENTERED ON DOCKET
DATE AUG 23 2000

TOMMY GARRISON,)
)
Plaintiff,)
)
v.)
)
BAKER HUGHES OILFIELD)
OPERATIONS, INC., d/b/a)
CENTRILIFT,)
)
Defendant.)

Case No. 97-CV-82-H

FILED
AUG 23 2000
U.S. DISTRICT COURT

JUDGMENT

This matter came before the Court pursuant to a trial by jury on Aug. 21-22, 2000. On Aug. 22, the jury returned its verdict, finding Defendant Baker Hughes Oilfield Operations, Inc., d/b/a Centrilift, liable to Plaintiff Tommy Garrison for violating the Americans with Disabilities Act. The jury awarded Plaintiff Garrison \$3,580.36 in compensatory damages.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that judgment is hereby entered for Plaintiff and against Defendant in the amount of \$3,580.36.

IT IS SO ORDERED.

This 23RD day of August, 2000.


Sven Erik Holmes
United States District Judge

Sm

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 21 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
TOLLIE B. WELLS, A/K/A TOLLIE)
BILL WELLS,)
)
Defendant.)

Case No. 00CV412K(E)

ENTERED ON DOCKET

NOTICE OF DISMISSAL

DATE AUG 21 2000

COMES NOW the United States of America by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, Plaintiff herein, through Phil Pinnell, Assistant United States Attorney, and hereby gives notice of its dismissal, pursuant to Rule 41, Federal Rules of Civil Procedure, of this action without prejudice.

Dated this 21st day of August, 2000.

UNITED STATES OF AMERICA

Stephen C. Lewis
United States Attorney

Phil Pinnell
PHIL PINNELL, OBA #7169
Assistant United States Attorney
333 W. 4th Street, Suite 3460
Tulsa, Oklahoma 74103-3880
(918) 581-7463

CERTIFICATE OF SERVICE

This is to certify that on the 21st day of August, 2000, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to: Tollie B. Wells, a/k/a Tollie Bill Wells, 1343 N. Boston Ave. Tulsa, OK 74106.

Debra L. Overstreet
Debra L. Overstreet
Financial Litigation Agent

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 17 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

CAROLYN S. WILLIAMS,
SSN: 444-42-8663

Plaintiff,

v.

KENNETH S. APFEL, Commissioner
of the Social Security Administration,

Defendant.

Case No. 99-CV-666-J

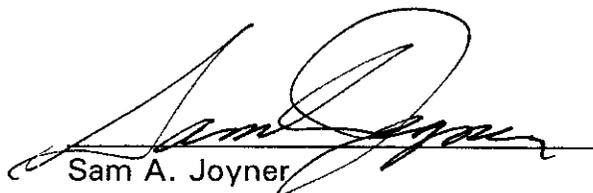
ENTERED ON DOCKET

DATE AUG 18 2000

JUDGMENT

This action has come before the Court for consideration and an Order reversing the Commissioner's decision. Consequently, Judgment for the Plaintiff and against the Defendant is hereby entered pursuant to the Court's Order.

It is so ordered this 17 day of August 2000.



Sam A. Joyner
United States Magistrate Judge

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED
AUG 17 2000
Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,)
on behalf of the Secretary of Veterans Affairs,)
)
Plaintiff,)
)
v.)
)
UNKNOWN HEIRS, EXECUTORS,)
ADMINISTRATORS, DEVISEES,)
TRUSTEES, SUCCESSORS AND ASSIGNS)
OF FRANK PETTIE, JR., DECEASED;)
DAVID PETTIE;)
CEBON WILSON PETTIE;)
EARNEST RAY PETTIE;)
STATE OF OKLAHOMA ex rel.)
Oklahoma Tax Commission,)
COUNTY TREASURER, Tulsa County,)
Oklahoma;)
BOARD OF COUNTY COMMISSIONERS,)
Tulsa County, Oklahoma,)
)
Defendants.)

ENTERED ON DOCKET
DATE AUG 18 2000

CIVIL ACTION NO. 00-CV-0240-E (J)

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 16th day of August,

2000. The Plaintiff appears by Stephen C. Lewis, 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 Dick A. Blakeley, Assistant District Attorney, Tulsa County, Oklahoma; that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, appears by Kim D. Ashley, Assistant General Counsel; that the Defendants, Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Frank Pettie, Jr., Deceased; David

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Pettie; Cebon Wilson Pettie (Cevon Wilson Pettie's name was inadvertently misspelled and should have been Cebon Wilson Pettie); and Earnest Ray Pettie, appear not, but make default.

The Court being fully advised and having examined the court file finds that the Defendant, David Pettie, was served with Summons and Complaint by certified mail, return receipt requested, delivery restricted to the addressee on March 28, 2000; that the Defendant, Cebon Wilson Pettie, was served with Summons and Complaint by certified mail, return receipt requested, delivery restricted to the addressee on March 24, 2000; that the Defendant, Earnest Ray Pettie, was served with Summons and Complaint by certified mail, return receipt requested, delivery restricted to the addressee on March 23, 2000.

The Court further finds that the Defendants, Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Frank Pettie, Jr., Deceased, were served by publishing notice of this action in the Tulsa Daily Commerce and Legal News, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning May 18, 2000, and continuing through June 22, 2000, 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, Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Frank Pettie, Jr., Deceased, and service cannot be made upon said Defendants 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, Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Frank Pettie, Jr., Deceased. 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, Stephen C. Lewis, 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 on April 13, 2000; that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, filed its Disclaimer on April 26, 2000; and that the Defendants, Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Frank Pettie, Jr., Deceased; David Pettie; Cebon Wilson Pettie; and Earnest Ray Pettie, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that the name Cevon Wilson Pettie should be Cebon Wilson Pettie in all instances in previous pleadings and all future pleadings.

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

Lot Eighteen (18), Block Thirty-eight (38), VALLEY VIEW ACRES SECOND ADDITION to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

The Court further finds that this a suit brought for the further purpose of judicially determining the deaths of Frank Pettie, Jr. and Lula Mae Pettie, judicially terminating the joint tenancy of Frank Pettie, Jr. and Lula Pettie, and judicially determining the heirs of Frank Pettie, Jr.

The Court further finds that Frank Pettie, Jr. and Lula Pettie aka Lula Mae Pettie (hereinafter referred to by either of these names) became the record owners of the real property involved in this action by virtue of that certain Warranty Deed dated February 9, 1981, from William D. Isom, a single person, to Frank Pettie, Jr. and Lula Pettie, husband and wife, not as tenants in common, but as joint tenants with a right of survivorship, and to the survivor of them, and to the heirs and assigns of each survivor, to take the entire fee simple title, which Warranty Deed was filed of record on February 20, 1981, in Book 4527, Page 1524, in the records of the County Clerk of Tulsa County, Oklahoma.

The Court further finds that on February 9, 1981, Frank Pettie, Jr. and Lula Pettie, now deceased, executed and delivered to Mercury Mortgage Co., Inc., their mortgage note in the amount of \$18,500.00, payable in monthly installments, with interest thereon at the rate of 13.5 percent per annum.

The Court further finds that as security for the payment of the above-described note, Frank Pettie, Jr. and Lula Pettie, now deceased, who were then husband and wife, executed and delivered to Mercury Mortgage Co., Inc., a real estate mortgage dated February 9, 1981, covering the above-described property, situated in the State of Oklahoma, Tulsa County. This mortgage was recorded on February 20, 1981, in Book 4527, Page 1607, in the records of Tulsa County, Oklahoma.

The Court further finds that the Secretary of Veterans Affairs is the current owner of the above-described note and mortgage via mesne conveyances. The Secretary of Veterans Affairs reamortized the loan and the interest rate became 4.0 percent per annum.

The Court further finds that Lula Mae Pettie aka Lula Pettie died on May 31, 1991, in the City of Tulsa, County of Tulsa, State of Oklahoma. Upon the death of Lula Mae Pettie, the subject property vested in her surviving joint tenant, Frank Pettie, Jr., by operation of law. Certificate of Death No. 16339 issued by the Oklahoma State Department of Health certifies Lula Mae Pettie's death.

The Court further finds that Frank Pettie, Jr. died on December 17, 1997, in the City of Tulsa, County of Tulsa, State of Oklahoma. Upon the death of Frank Pettie, Jr., the subject property vested in his surviving heirs by operation of law.

Certificate of Death No. 032171 issued by the Oklahoma State Department of Health certifies Frank Pettie, Jr.'s death.

The Court further finds that Frank Pettie, Jr. and Lula Pettie, 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 \$10,469.29, plus administrative charges in the amount of \$1,409.15, plus penalty charges in the amount of \$20.76, plus accrued interest in the amount of \$1,191.94 as of May 26, 1999, plus interest accruing thereafter at the rate of 4.0 percent per annum until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$359.77 (\$349.77 publication fees, \$10.00 fee for recording Notice of Lis Pendens).

The Court further finds that Plaintiff, United States of America, is entitled to a judicial determination of the deaths of Frank Pettie, Jr. and Lula Mae Pettie, to a judicial termination of the joint tenancy of Frank Pettie, Jr. and Lula Pettie, and to a judicial determination of the heirs of Frank Pettie, Jr.

The Court further finds that the Defendants, Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Frank Pettie, Jr., Deceased; David Pettie; Cebon Wilson Pettie; and Earnest Ray Pettie, are in default and therefore have no right, title or interest in the subject real property.

The Court further finds that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, disclaims having a lien for estate taxes upon the specific real estate involved in this action by virtue of the decedants named in this action.

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

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the death of Lula Mae Pettie be and the same hereby is judicially determined to have occurred on May 31, 1991 in the City of Tulsa, Tulsa County, State of Oklahoma.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the death of Frank Pettie, Jr. be and the same hereby is judicially determined to have occurred on December 17, 1997 in the City of Tulsa, Tulsa County, State of Oklahoma.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the joint tenancy of Frank Pettie, Jr. and Lula Pettie in the above-described real property be and the same is judicially terminated as of the date of the death of Lula Mae Pettie aka Lula Pettie on May 31, 1991.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the only known heirs of Frank Pettie, Jr., Deceased, are David Pettie, Cebon Wilson Pettie, and Earnest Ray Pettie, and that despite the exercise of due diligence by Plaintiff and its counsel, no other known heirs of Frank Pettie, Jr., Deceased, have been discovered and it is hereby judicially determined that David Pettie, Cebon Wilson Pettie, and Earnest Ray Pettie are the only known heirs of Frank Pettie, Jr., Deceased, and that

Frank Pettie, Jr., Deceased, has no other known heirs, executors, administrators, devisees, trustees, successors and assigns; and the Court approves the Certificate of Publication and Mailing filed on June 27, 2000 regarding said heirs.

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 in rem against all named and unnamed Defendants in the principal sum of \$10,469.29, plus administrative charges in the amount of \$1,409.15, plus penalty charges in the amount of \$20.76, plus accrued interest in the amount of \$1,191.94 as of May 26, 1999, plus interest accruing thereafter at the rate of 4.0 percent per annum until judgment, plus interest thereafter at the current legal rate of 6.375 percent per annum until fully paid, plus the costs of this action in the amount of \$359.77 (\$349.77 publication fees, \$10.00 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, plus any other advances.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Frank Pettie, Jr., Deceased; David Pettie; Cebon Wilson Pettie; Earnest Ray Pettie; County Treasurer, Tulsa County, Oklahoma; and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, has no right, title or interest in the subject real property as a result of any estate taxes upon the specific real estate involved in this action by virtue of the decedants named in this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the name Cevon Wilson Pettie is Cebon Wilson Pettie in all instances in previous pleadings and all future pleadings.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without 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.

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

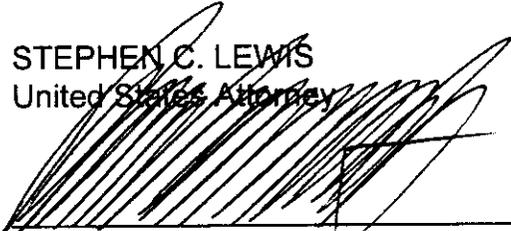
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of

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.


UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney


PETER BERNHARDT, OBA #741
Assistant United States Attorney
333 West 4th Street, Suite 3460
Tulsa, Oklahoma 74103
(918) 581-7463


DICK A. BLAKELEY, OBA #0852
Assistant District Attorney
406 Tulsa County Courthouse
Tulsa, Oklahoma 74103
(918) 596-4835
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

Judgment of Foreclosure
Case No. 00-CV-0240-E (J) (Pettie)

PB:css

Kim Ashley by Amy A. Moon
KIM D. ASHLEY, OBA #14115 OBA#6324

Assistant General Counsel

P.O. Box 53248

Oklahoma City, OK 73152-3248

(405) 521-3141

Attorney for Defendant,

State of Oklahoma ex rel. Oklahoma Tax Commission

OTC FILE NO. D00-195

Judgment of Foreclosure
Case No. 00-CV-0240-E (J) (Fettie)
Northern District
PB.css

sm

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

FILED

AUG 17 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

JASON PHILBEE and KAMDYN
PHILBEE, individually and on behalf
of the Plan,

Plaintiffs,

vs.

BETHPHAGE, INC., and
BETHPHAGE HEALTH CARE PLAN,

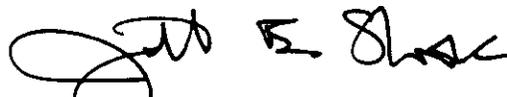
Defendants.

Case No. 99-CV-0983E (J) ✓

ENTERED ON DOCKET
DATE AUG 17 2000

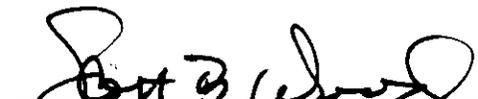
STIPULATION OF DISMISSAL WITH PREJUDICE

By virtue of a settlement reached in the case, the parties, through their attorneys,
hereby stipulate to a dismissal of the above-captioned case with prejudice.



Jonathan E. Shook, OBA #17343
SHOOK & DOWNES, P.L.L.C.
2727 E. 21st, Suite 310
Tulsa, OK 74114
(918) 744-0833 - Telephone
(918) 744-5643 - Facsimile

Attorneys for Plaintiffs



Scott B. Wood, OBA #12556
Whitten, McGuire, Wood, Terry,
Roselius & Dittrich
3600 First Place Tower
15 East Fifth Street
Tulsa, OK 74103

Attorneys for Defendants

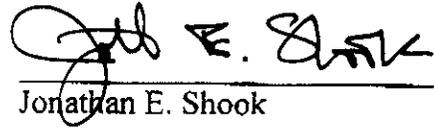
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CERTIFICATE OF SERVICE

I certify that on August 17, 2000, I served a true and correct copy of the above and foregoing document by United States mail, postage prepaid, to:

Scott B. Wood, Esq.
Whitten, McGuire, Wood, Terry,
Roselius & Dittrich
3600 First Place Tower
15 East Fifth Street
Tulsa, OK 74103



Jonathan E. Shook

8m

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

F I L E D

AUG 17 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

KIM JAMISON, an individual,)
)
Plaintiff,)

v.)

Case No. 99 CV1045BU(E) ✓
Judge Burrage

HILLCREST HEALTHCARE SYSTEM,)
INC., a corporation, and HILLCREST)
MEDICAL CENTER, d/b/a CHILDREN'S)
MEDICAL CENTER, a corporation, and)
SERVICEMASTERS LTD.)
PARTNERSHIP, a limited partnership,)
and JOHN DOE NO. 1 and JOHN DOE)
NO. 2)

ENTERED ON DOCKET
DATE AUG 17 2000

Defendant.

**JOINT STIPULATION OF DISMISSAL WITH PREJUDICE
OF PLAINTIFF'S COMPLAINT**

Plaintiff, Kim Jamison and Defendants, Hillcrest HealthCare System, Inc., Hillcrest Medical Center (d/b/a Children's Medical Center) and The ServiceMaster Company stipulate to the dismissal with prejudice of Plaintiff's Complaint and the claims alleged therein, with each party bearing their own respective costs and attorney's fees.

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015

Respectfully submitted,



R. TOM HILLIS, OBA#12338
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ATTORNEYS FOR DEFENDANTS,
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ATTORNEYS FOR THE SERVICEMASTER
COMPANY

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 17 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

JUSTIN HERWIG,
SSN: 515-64-8169

Plaintiff,

v.

KENNETH S. APFEL, Commissioner
of the Social Security Administration,

Defendant.

Case No. 99-CV-682-J ✓

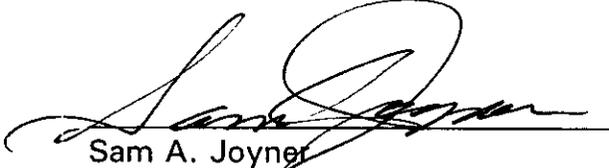
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DATE AUG 17 2000

JUDGMENT

This action has come before the Court for consideration, and an Order affirming the Commissioner's denial of benefits to Plaintiff has been entered. Judgment for the Defendant and against the Plaintiff is hereby entered pursuant to the Court's Order.

It is so ordered this 17 day of August 2000.


Sam A. Joyner
United States Magistrate Judge

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

LINDA J. WALKER,)
SSN: 447-46-8960,)
Plaintiff,)
v.)
KENNETH S. APFEL, Commissioner)
of Social Security Administration,)
Defendant.)

ENTERED ON DOCKET
DATE AUG 17 2000

Case No. 99-CV-404-K(M)

F I L E D

AUG 16 2000 SA

Phil Lombardi, Clerk
U.S. DISTRICT COURT

JUDGMENT

This action has come before the Court for consideration, and the Court has issued an Order remanding the case to the Commissioner for further proceedings. Consequently, Judgment for the Plaintiff and against the Defendant is hereby entered pursuant to the Court's Order.

ORDERED THIS 16 DAY OF AUGUST, 2000.


TERRY C. KERN, CHIEF
UNITED STATES DISTRICT JUDGE

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

F I L E D

AUG 17 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

DWIGHT W. BIRDWELL,)

Plaintiff,)

vs.)

CHARLIE ADDINGTON, et al.,)

Defendants.)

ENTERED ON DOCKET
AUG 17 2000

DATE _____

No. 99-C-156-B(EA)
(consolidated with 99-C-161-B(EA))

BARBARA STARR SCOTT et al.)

Plaintiffs,)

vs.)

CHARLIE ADDINGTON et al.,)

Defendants,)

- and -)

MELVINA SHOTPOUCH and NICK
LAY,)

Third-Party Plaintiffs,)

v.)

GARLAND EAGLE et al.,)

Third-Party Defendants.)

JUDGMENT

In accord with the Order filed this date sustaining the Defendants' Motions for Summary Judgment, the Court hereby enters judgment in favor of Defendant Housing Authority of the

329/12

Cherokee Nation and Defendant Joel Thompson, and against Defendant and Cross-claim Plaintiff
Nick Lay. Costs are assessed against Nick Lay, if timely applied for under N. D. Local Rule
54.1. The parties are to pay their respective attorney's fees.

Dated this 17th day of August, 2000.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

F I L E D

AUG 15 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
FRANCES M. WATASHE,)
)
Defendant.)

No. 00CV265C(E)

ENTERED ON DOCKET
DATE AUG 16 2000

DEFAULT JUDGMENT

This matter comes on for consideration this 15th day of August, 2000, the Plaintiff appearing by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, and the Defendant, Frances M. Watashe, appearing not.

The Court being fully advised and having examined the court file finds that Defendant, Frances M. Watashe, filed herein her Waiver of Service of Summons on April 20, 2000. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE ORDERED, ADJUDGED, and DECREED that the Plaintiff have and recover judgment against the Defendant, Frances M. Watashe, for the principal amount of \$2,834.86, plus accrued

interest of \$1,469.55, plus administrative charges in the amount of \$50.94, plus interest thereafter at the rate of 8 percent per annum until judgment, plus filing fees in the amount of \$150.00 as provided by 28 U.S.C. § 2412(a)(2), plus interest thereafter at the current legal rate of 6.375 percent per annum until paid, plus costs of this action.


United States District Judge

Submitted By:


PHIL PINNELL, OBA # 7169
Assistant United States Attorney
333 West 4th Street, Suite 3460
Tulsa, Oklahoma 74103-3809
(918) 581-7463

PEP/dlo

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

FOD

IN RE: ASBESTOS PRODUCTS)
LIABILITY LITIGATION (NO. VI))

MDL 875

FILED

AUG 15 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

This Document Relates to United States)
District Court for the Northern District of)
Oklahoma)

(See Attachment A))
_____)

AND NOW, this 11th day of August, 2000, FIBREBOARD
CORPORATION is hereby dismissed with prejudice in the cases on the attached list, which
cases have been resolved.

By the Court:

Dated: 8/11/00

Charles R. Weiner

Charles R. Weiner

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

F I L E D

AUG 14 2000

William Lombardi, Clerk
U.S. DISTRICT COURT

CHARLES R. NEELEY,

Plaintiff,

v.

KENNETH S. APFEL, Commissioner,
Social Security Administration,

Defendant.

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Case N° 00-CV-0016-EA

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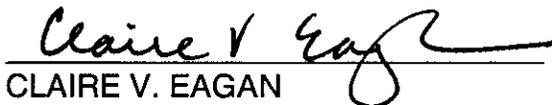
DATE AUG 15 2000

RULE 58 FINAL JUDGMENT

This action has come before the Court for consideration upon an unopposed Motion to Reverse and Remand for Further Administrative Action. An Order reversing and remanding the case to the Commissioner has been entered.

The Court enters this Final Judgment under Fed. R. Civ. P. 58 reversing and remanding this case to the Commissioner for further administrative action.

THUS DONE AND SIGNED on this 14th day of August, 2000.


CLAIRE V. EAGAN
United States Magistrate Judge

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

FOD

IN RE: ASBESTOS PRODUCTS)
LIABILITY LITIGATION (NO. VI))

MDL 875

_____)
This Document Relates to United States)
District Court for the the Northern District)
of Oklahoma)

(See Attachment A))
_____)

FILED
AUG 14 2000
Phil Lombardi, Clerk
U.S. DISTRICT COURT

AND NOW, this 31st day of July, 2000, FIBREBOARD
CORPORATION is hereby dismissed without prejudice in the cases on the attached list, which
cases have been resolved.

By the Court:

Dated: _____

7/31/00



Charles R. Weiner

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

FILED
AUG 14 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

DEBRA L. PERRY,)
SSN: 447-62-1828,)
)
Plaintiff,)
)
v.)
)
KENNETH S. APFEL,)
Commissioner of the Social Security)
Administration,)
)
Defendant.)

CASE NO. 99-CV-555-M ✓

ENTERED ON DOCKET
AUG 14 2000
DATE _____

JUDGMENT

Judgment is hereby entered for Defendant and against Plaintiff. Dated
this 14th day of AUG., 2000.

Frank H. McCarthy
FRANK H. McCARTHY
UNITED STATES MAGISTRATE JUDGE

127

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) No. 00CV0447E (M)
)
 DAVID L. GORDON,)
)
 Defendant.)

FILED
AUG 14 2000
Phil Lombardi, Clerk
U.S. DISTRICT COURT

ENTERED ON DOCKET
DATE AUG 14 2000

DEFAULT JUDGMENT

This matter comes on for consideration this 14TH day of AUGUST, 2000, the Plaintiff appearing by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, and the Defendant, David L. Gordon, appearing not.

The Court being fully advised and having examined the court file finds that Defendant, David L. Gordon, was served with Summons and Complaint on July 7, 2000. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE ORDERED, ADJUDGED, and DECREED that the Plaintiff have and recover judgment against the Defendant, David L. Gordon, for the principal amount of \$3,179.14 and \$2,796.91, plus accrued interest of \$3,158.04 and \$2,281.75, plus administrative

charges in the amount of \$ 40.00 and 10.00, plus interest thereafter at the rate of 9.13% and 8.00% per annum until judgment, plus filing fees in the amount of \$150.00 as provided by 28 U.S.C. § 2412(a)(2), plus interest thereafter at the current legal rate of 6.375 percent per annum until paid, plus costs of this action.


United States District Judge

Submitted By:


PHIL PINNELL, OBA # 7169
Assistant United States Attorney
333 West 4th Street, Suite 3460
Tulsa, Oklahoma 74103-3809
(918) 581-7463

PEP/alh

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

AUG 11 2000 *SA*

CHRISTOPHER J. FREEMAN,)
)
) Plaintiff,)
)
) v.)
)
) KENNETH S. APFEL,)
) Commissioner of the Social Security)
) Administration,)
)
) Defendant.)

Phil Lombardi, Clerk
U.S. DISTRICT COURT

CASE NO. 99-CV-543-M

ENTERED ON DOCKET

DATE AUG 11 2000

JUDGMENT

Judgment is hereby entered for Plaintiff and against Defendant. Dated
this 11th day of AUG, 2000.

Frank H. McCarthy
FRANK H. McCARTHY
UNITED STATES MAGISTRATE JUDGE

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

FILED

AUG 10 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

RICHARD D. THOMAS,
Plaintiff,

§
§
§
§
§
§
§
§
§
§

vs.

CIVIL 99-CV-881-J

KENNETH S. APFEL,
Commissioner,
Social Security Administration,
Defendant

ENTERED ON DOCKET

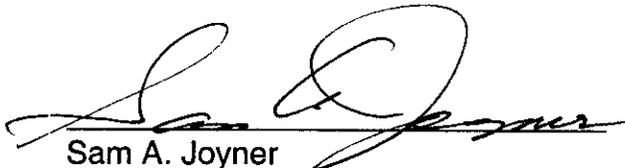
DATE AUG 11 2000

RULE 58 FINAL JUDGMENT

This action has come before the Court for consideration upon an unopposed Motion to Reverse and Remand for Further Administrative Action. An Order reversing and remanding the case to the Commissioner has been entered.

The Court enters this Final Judgment under Fed. R. Civ. P. 58 reversing and remanding this case to the Commissioner for further administrative action.

THUS DONE AND SIGNED on this 10 day of AUG., 2000.



Sam A. Joyner
United States Magistrate

FILED

AUG 10 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 JOHN W. MCBEE, JR.,)
)
 Defendant.)

No. 00CV0³294B(M)

ENTERED ON DOCKET
DATE AUG 10 2000

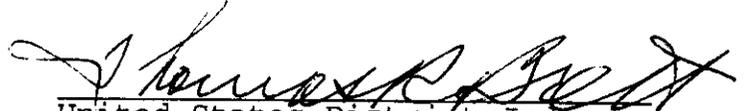
DEFAULT JUDGMENT

This matter comes on for consideration this 10th day of Aug., 2000, the Plaintiff appearing by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, and the Defendant, John W. McBee, Jr., appearing not.

The Court being fully advised and having examined the court file finds that Defendant, John W. McBee, Jr., was served with Summons and Complaint on June 28, 2000. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE ORDERED, ADJUDGED, and DECREED that the Plaintiff have and recover judgment against the Defendant, John W. McBee, Jr., for the principal amount of \$1,685.75 and \$1,248.83,

plus accrued interest of \$1,469.98 and \$1,462.20, plus interest thereafter at the rate of 8% and 9.13% per annum until judgment, plus filing fees in the amount of \$150.00 as provided by 28 U.S.C. § 2412(a)(2), plus interest thereafter at the current legal rate of 6.375 percent per annum until paid, plus costs of this action.


United States District Judge

Submitted By:



PHIL PINNELL, OBA # 7169
Assistant United States Attorney
333 West 4th Street, Suite 3460
Tulsa, Oklahoma 74103-3809
(918) 581-7463

PEP/llf

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

AUGUST JULY GARRETT,

Petitioner,

vs.

TOM MARTIN,

Respondent.

)
)
)
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)
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)
)

Case No. 97-CV-747-H (M)

ENTERED ON DOCKET

DATE AUG 10 2000

FILED
AUG 10 2000
PHIL LOMBARD, Clerk
U.S. DISTRICT COURT

JUDGMENT

This matter came before the Court upon Petitioner's 28 U.S.C. § 2254 petition for writ of habeas corpus. The Court duly considered the issues and rendered a decision herein.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that judgment is hereby entered for Respondent and against Petitioner.

IT IS SO ORDERED.

This 10th day of August, 2000.


Sven Erik Holmes
United States District Judge

15

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 9 2000

Phil Lufford, Clerk
U.S. DISTRICT COURT

DELIA ISABEL LOERTCHER,)
)
 Plaintiff,)
)
 v.)
)
 DOW CORNING CORPORATION; KOKEN CO.,)
 LTD.; POREX TECHNOLOGIES)
 CORPORATION and THE DOW CHEMICAL)
 COMPANY,)

Case No. 94-C-1172B

ENTERED ON DOCKET

DATE AUG 9 2000

JOINT STIPULATION OF DISMISSAL

COME NOW the plaintiff, Delia Isabel Loertcher, by and through her attorney of record, Mark B. Hutton, joining with the defendant, Porex Technologies Corporation, through its attorneys of record, Tom L. King and Leslie Meek Wileman of the King Law Firm, and submit the following stipulation of dismissal with prejudice to the court:

It is stipulated by and between the parties that the above-captioned cause is dismissed with prejudice as to the refiling of any future actions thereon, for the reason that the parties have entered into a compromise settlement of any and all claims of plaintiff against all defendants.



Mark B. Hutton, Esq.
HUTTON, & HUTTON
8100 E. 22nd St. North - Bldg. 1200
P. O. Box 638
Wichita, KS 67201-0638

ATTORNEY FOR PLAINTIFF



TOM L. KING OBA #5040
LESLIE MEEK WILEMAN OBA #17785

KING LAW FIRM
15 North Robinson, Suite 1100
Oklahoma City, OK 73102
(405)239-6143

ATTORNEYS FOR DEFENDANT

mail - CIR
C/S

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG - 9 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

v.

ANDREA I. SUMMERS,

Defendant.

)
)
)
)
) No. 00CV266B(J)
)
)
)
)

DEFAULT JUDGMENT

ENTERED ON DOCKET

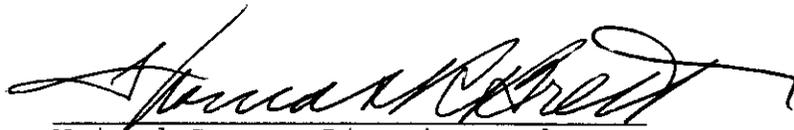
DATE AUG 09 2000

This matter comes on for consideration this 8th day of Aug, 2000, the Plaintiff appearing by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, and the Defendant, Andrea I. Summers, appearing not.

The Court being fully advised and having examined the court file finds that Defendant, Andrea I. Summers, was served with Summons and Complaint on May 15, 2000. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE ORDERED, ADJUDGED, and DECREED that the Plaintiff have and recover judgment against the Defendant, Andrea I. Summers, for the principal amount of \$2,848.66, plus accrued interest of \$2,012.29, plus interest thereafter at the rate of 8 percent per annum until judgment, plus filing fees in the amount of

\$150.00 as provided by 28 U.S.C. § 2412(a)(2), plus interest thereafter at the current legal rate of 6.375 percent per annum until paid, plus costs of this action.


United States District Judge

Submitted By:


PHIL PINNELL, OBA # 7169
Assistant United States Attorney
333 West 4th Street, Suite 3460
Tulsa, Oklahoma 74103-3809
(918)581-7463

PEP/dlo

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

FILED

AUG 8 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

TAMARA ZILAR,)

Plaintiff,)

vs.)

INDEPENDENT SCHOOL DISTRICT NO. 1;)

DR. RON CAIN, in his individual and)

professional capacity; MS. CARLA TANNER,)

in her individual and professional capacity;)

and MS. MARGRETTE DOOLITTLE, in her)

individual and professional capacity,)

Defendants.)

Case No. 99-C-787-E ✓

ENTERED ON DOCKET
DATE AUG 09 2000

JUDGMENT

In accord with the Order filed this date sustaining the Defendants' Motions for Summary Judgment, the Court hereby enters judgment in favor of the Defendants, Independent School district No. 1, Dr. Ron Cain, in his individual and professional capacity, and Ms. Margrette Doolittle, in her individual and professional capacity. Plaintiff shall take nothing of her claim.

IT IS SO ORDERED THIS 8th DAY OF AUGUST, 2000.


JAMES O. ELLISON, SENIOR JUDGE
UNITED STATES DISTRICT COURT

34

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

F I L E D

AUG 8 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

NIKITA McELWEE,)
)
Plaintiff,)
)
vs.)
)
REDLEE, INC.,)
)
Defendant.)

Case No. 98-C-951-B(E)

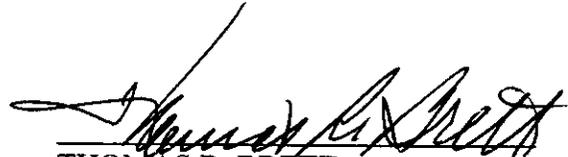
ENTERED ON DOCKET

DATE AUG 09 2000

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, Redlee, Inc., and against the Plaintiff, Nikita McElwee. Costs are assessed against the Plaintiff, if timely applied for under N. D. Local Rule 54.1. Each party is to pay its respective attorney's fees.

Dated this 8th day of August, 2000.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

AUGUST JULY GARRETT,)
)
Petitioner,)
)
vs.)
)
TOM MARTIN,)
)
Respondent.)

Case No. 97-CV-747-H (M)

ENTERED ON DOCKET

DATE AUG 9 2000

FILED

AUG 9 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ORDER

The Court has for consideration the Report and Recommendation (the "Report") of the U.S. Magistrate Judge entered on June 6, 2000 (Docket #13), in this habeas corpus action brought pursuant to 28 U.S.C. § 2254. The Magistrate Judge recommends that Petitioner's petition for a writ of habeas corpus be dismissed as procedurally barred. Neither party has filed an objection to the Report and the time for filing an objection has passed.

Having reviewed the Report and the facts of this case, pursuant to Rule 8(b) of the Rules Governing Section 2254 Cases and 28 U.S.C. § 636(b)(1)(C), the Court concludes that the Report should be adopted and affirmed.

ACCORDINGLY, IT IS HEREBY ORDERED that:

1. The Report and Recommendation of the Magistrate Judge (#13) is **adopted and affirmed**.
2. The petition for a writ of habeas corpus is **dismissed** as procedurally barred.

IT IS SO ORDERED.

This 9TH day of August, 2000.



Sven Erik Holmes
United States District Judge

14

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

SHARON R. ORR,

Defendant.

ENTERED ON DOCKET

AUG 9 2000

DATE

No. 00CV0372K(J) ✓

F I L E D

AUG 09 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

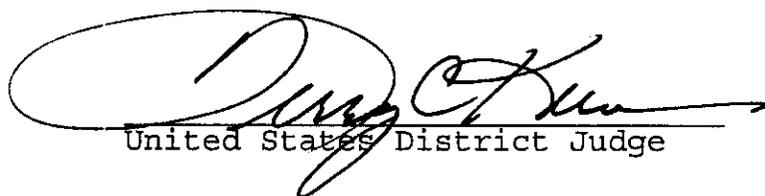
DEFAULT JUDGMENT

This matter comes on for consideration this 9 day of August, 2000, the Plaintiff appearing by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, and the Defendant, Sharon R. Orr, appearing not.

The Court being fully advised and having examined the court file finds that Defendant, Sharon R. Orr, was served with Summons and Complaint on May 2, 2000. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE ORDERED, ADJUDGED, and DECREED that the Plaintiff have and recover judgment against the Defendant, Sharon R. Orr, for the principal amount of \$6,293.94, plus accrued interest of \$3,978.15, plus interest thereafter at the rate of 8

percent per annum until judgment, plus filing fees in the amount of \$150.00 as provided by 28 U.S.C. § 2412(a)(2), plus interest thereafter at the current legal rate of 6.375 percent per annum until paid, plus costs of this action.


United States District Judge

Submitted By:


PHIL PINNELL, OBA # 7169
Assistant United States Attorney
333 West 4th Street, Suite 3460
Tulsa, Oklahoma 74103-3809
(918) 581-7463

PEP/11f

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

KARMA BURRUSS,

Plaintiff,

vs.

KENNETH S. APFEL,
COMMISSIONER, SOCIAL
SECURITY ADMINISTRATION,

Defendant.

ENTERED ON DOCKET

DATE AUG 08 2000

CASE NO. 00-CV-0123-EA

F I L E D

AUG 07 2000

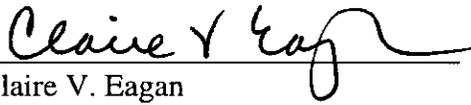
Phil Lombardi, Clerk
U.S. DISTRICT COURT

ORDER

IT IS ORDERED, ADJUDGED AND DECREED that this case be, and it is hereby reversed and remanded to the Defendant for further administrative action pursuant to sentence four of §205(g) of the Social Security Act, 42 U.S.C. §405(g). *Melkonyan v. Sullivan*, 501 U.S. 89 (1991).

On remand, the Commissioner will assign Plaintiff's case to an ALJ for a supplemental hearing. The ALJ will further consider the medical opinion from Plaintiff's treating physician. In addition, the ALJ will re-evaluate Plaintiff's pain and credibility, specifying what evidence led to his conclusions consistent with SSR 96-7p. Finally, the ALJ will re-evaluate Plaintiff's residual functional capacity, taking into special consideration the medial opinions of record and Plaintiff's allegations of significant limitations.

THUS DONE AND SIGNED on this 7th day of August, 2000.



Claire V. Eagan
United States Magistrate

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG - 7 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

**MICHAEL SIGLER and LISA
SIGLER,**

Plaintiffs,

v.

Case No. CIV-00-198B (E)

**STATE FARM FIRE and
CASUALTY COMPANY and
STATE FARM GENERAL
INSURANCE COMPANY,**

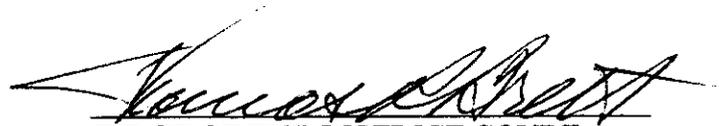
Defendants.

ENTERED ON DOCKET

DATE AUG 07 2000

ORDER OF DISMISSAL

COMES NOW Plaintiffs' and Defendants' Joint Motion to Dismiss; the Court, having reviewed said motion and the file, hereby orders the above captioned lawsuit DISMISSED.


JUDGE OF THE DISTRICT COURT

J/LS 7/00

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UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 7 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 00CV0375B(J)
)	
CARMEN M. DAKE,)	
)	
Defendant.)	

ENTERED ON DOCKET
AUG 07 2000
DATE _____

DEFAULT JUDGMENT

This matter comes on for consideration this 7th day of Aug, 2000, the Plaintiff appearing by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, and the Defendant, Carmen M. Dake, appearing not.

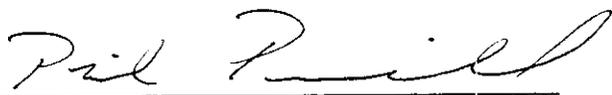
The Court being fully advised and having examined the court file finds that Defendant, Carmen M. Dake, was served with Summons and Complaint on July 7, 2000. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE ORDERED, ADJUDGED, and DECREED that the Plaintiff have and recover judgment against the Defendant, Carmen M. Dake, for the principal amount of \$4,263.18, plus accrued interest of \$3,364.84, plus interest thereafter at the rate of 8

percent per annum until judgment, plus filing fees in the amount of \$150.00 as provided by 28 U.S.C. § 2412(a)(2), plus interest thereafter at the current legal rate of 6.375 percent per annum until paid, plus costs of this action.


United States District Judge

Submitted By:


PHIL PINNELL, OBA # 7169
Assistant United States Attorney
333 West 4th Street, Suite 3460
Tulsa, Oklahoma 74103-3809
(918) 581-7463

PEP/11f

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG - 4 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

JOHN COLLINS, et al.)
)
Plaintiffs,)
)
v.)
)
DEPUY INC., et al.,)
)
Defendants.)

CASE NO. 4:00-CV-000124 (BLS) /

ENTERED ON DOCKET
DATE AUG 07 2000

**STIPULATION OF DISMISSAL WITH PREJUDICE
AS TO PLAINTIFF MASON**

Plaintiff Carl Mason, by counsel, and defendants DePuy Inc., DePuy Motech, Inc., and Johnson & Johnson, by counsel, stipulate as follows:

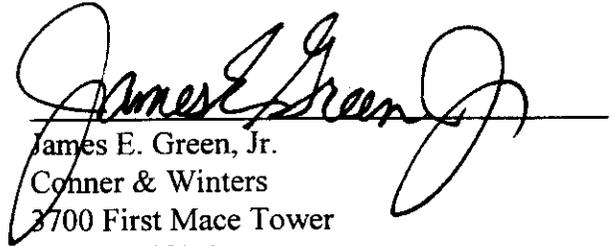
1. All claims and controversies between plaintiff Carl Mason and all defendants have been compromised and settled.
2. The claims of plaintiff Carl Mason are dismissed with prejudice as to all defendants.
3. The claims of other plaintiffs are not affected by this stipulation.

4. No costs are awarded.



Gary A. Eaton
Eaton & Sparks
1717 East 15th Street
Tulsa, OK 74104

Attorney for Plaintiff
Carl Mason



James E. Green, Jr.
Conner & Winters
3700 First Mace Tower
15 East Fifth Street
Tulsa, OK 46601

Michael R. Fruehwald
Barnes & Thornburg
11 South Meridian Street
Indianapolis, IN 46204

Attorneys for Defendants DePuy Inc.,
DePuy Motech, Inc., and Johnson & Johnson

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

KATY D. CHAMPAGNE and ANDRE
CHAMPAGNE,)

Plaintiffs,)

v.)

SECURITY LIFE INSURANCE)
COMPANY OF AMERICA, INC.,)
and WISCONSIN PHYSICIANS)
SERVICE INSURANCE)
CORPORATION,)

Defendants.)

ENTERED ON DOCKET

AUG 07 2000

DATE _____

Case No. 98-CV-170-K (J)

FILED

AUG 07 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

JUDGMENT

This action came on for consideration before the Court and jury, the Honorable Terry C. Kern, Chief District Judge, presiding, and the issues having been duly heard and a decision having been duly rendered,

IT IS THEREFORE ORDERED that judgment be entered in favor of the Defendants, Security Life Insurance Company of America, Inc., and Wisconsin Physicians Service Insurance Corporation, and against the Plaintiffs, Katy D. Champagne and Andre Champagne.

ORDERED this 4 day of AUGUST, 2000.



TERRY C. KERN, CHIEF
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 04 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

DALE SANDERS,
SSN: 440-62-6392

Plaintiff,

v.

KENNETH S. APFEL, Commissioner
of Social Security Administration,

Defendant.

Case No. 99-CV-504-J ✓

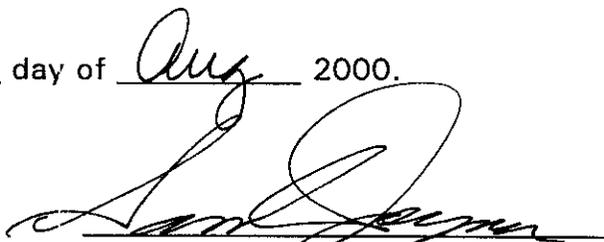
ENTERED ON DOCKET

DATE AUG 4 2000

JUDGMENT

This action has come before the Court for consideration, and an Order affirming the Commissioner's denial of benefits to Plaintiff has been entered. Judgment for the Defendant and against the Plaintiff is hereby entered pursuant to the Court's Order.

It is so ordered this 4 day of Aug 2000.



Sam A. Joyner
United States Magistrate Judge

19

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

AUG 04 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

JERRY J. HOWARD,
SSN: 445-42-1728

Plaintiff,

v.

KENNETH S. APFEL, Commissioner
of the Social Security Administration,

Defendant.

Case No. 99-CV-621-J ✓

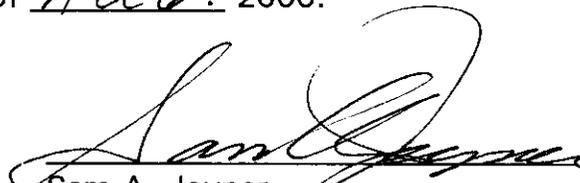
ENTERED ON DOCKET,

DATE AUG 4 2000

JUDGMENT

This action has come before the Court for consideration and an Order reversing the Commissioner's decision and remanding the case to the Commissioner for further proceedings has been entered. Consequently, Judgment for the Plaintiff and against the Defendant is hereby entered pursuant to the Court's Order.

It is so ordered this 4 day of AUG. 2000.


Sam A. Joyner
United States Magistrate Judge

15

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

FILED

AUG 03 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

IN RE:

CFS-RELATED SECURITIES
FRAUD LITIGATION

) ENTERED ON DOCKET

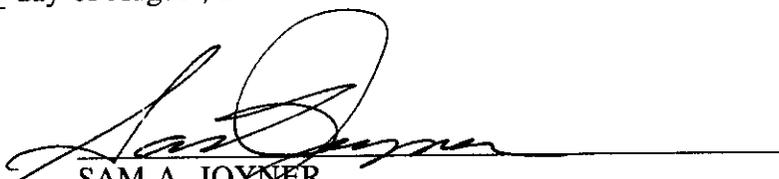
) DATE **AUG 4 2000**

-) Case Nos. 99-CV-0943-BU (M) ✓
-) 99-CV-0919-K (J) ✓
-) 99-CV-0864-C (J) ✓
-) 99-CV-0863-E (M) ✓
-) 99-CV-0862-B (M) ✓
-) 99-CV-0829-K (J) ✓
-) 99-CV-0828-K (J) ✓

**ORDER GRANTING DEFENDANT JAY JONES' MOTION FOR
DISMISSAL OF CROSS CLAIMS AS TO ARTHUR ANDERSEN, LLP**

Before the Court is Defendant's Motion for Dismissal of his Cross-Claims against Arthur Andersen, LLP without prejudice. The Court hereby grants the Motion, dismissing Defendant Jay Jones' Cross-Claims against Arthur Andersen, LLP without prejudice.

ORDERED this 3 day of August, 2000.


SAM A. JOYNER
MAGISTRATE JUDGE OF THE DISTRICT COURT

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

FILED

AUG 03 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

IN RE:

CFS-RELATED SECURITIES
FRAUD LITIGATION

) ENTERED ON DOCKET

) **AUG 4 2000**

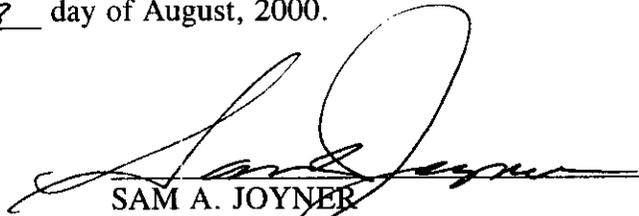
) DATE _____

)
) Case Nos. 99-CV-0919-K (M) ✓
) 99-CV-0864-BU (J) ✓
) 99-CV-0862-B (M) ✓
) 99-CV-0828-K (J) ✓
) 99-CV-0825-BU (J) ✓

**ORDER GRANTING DEFENDANT JAY JONES' MOTION FOR
DISMISSAL OF CROSS CLAIMS AS TO CHASE SECURITIES, INC.**

Before the Court is Defendant's Motion for Dismissal of his Cross-Claims against Chase Securities, Inc. without prejudice. The Court hereby grants the Motion, dismissing Defendant Jay Jones' Cross-Claims against Chase Securities, Inc. without prejudice.

ORDERED this 3 day of August, 2000.



SAM A. JOYNER
MAGISTRATE JUDGE OF THE DISTRICT COURT

AK
7-28-00

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

Received

JUL 27 2000

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DONALD L. GRIMES,

Defendant.

) ENTERED ON DOCKET US ATTORNEY
) N.D. OKLAHOMA

) DATE **AUG 3 2000**

) CASE NO. 00CV0443BU(E) ✓

FILED

AUG 3 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

AMENDED AGREED JUDGMENT AND ORDER OF PAYMENT

Plaintiff, the United States of America, having filed its Complaint herein, and the defendant, having consented to the making and entry of this Judgment without trial, hereby agree as follows:

1. This Court has jurisdiction over the subject matter of this litigation and over all parties thereto. The Complaint filed herein states a claim upon which relief can be granted.
2. The defendant hereby acknowledges and accepts service of the Complaint filed herein.
3. The defendant hereby agrees to the entry of Judgment in the principal amounts of \$2,006.51 and \$622.90, plus accrued interest of \$1,176.76 and \$383.63, plus interest thereafter at the rates of 8.41% and 9.13% per annum until judgment, plus filing fees in the amount of \$150.00, plus interest thereafter at the legal rate 6.375 until paid, plus costs of this action, until paid in full.
4. In addition to the regular monthly payment, the defendant hereby agrees to the submission of this debt to the Department of Treasury for inclusion in the Treasury Offset Program. Under this program, any federal payment the defendant would normally receive may be offset and applied to this debt.

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

(a) Beginning on or before the fifteenth day of August, 2000, the defendant shall tender to the United States a check or money order payable to the U.S. Department of Justice, in the amount of \$400.00, and a like sum on or before the fifteenth day of each following month until the entire amount of the Judgment, together with the costs and accrued postjudgment interest, is paid in full.

(b) The defendant shall mail each monthly installment payment to: United States Attorney, Financial Litigation Unit, 333 West 4th Street, Suite 3460, Tulsa, Oklahoma 74103-3809.

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

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

(e) The defendant shall provide the United States with current, accurate evidence of his/her assets, income and expenditures (including, but not limited to his/her Federal income tax

returns) within fifteen (15) days for the date of a request for such evidence by the United States Attorney.

5. Default under the terms of this Agreed Judgment will entitle the United States to execute on this Judgment without notice to the defendant.

6. The parties further agree that any Order of Payment which may be entered by the Court pursuant hereto may thereafter be modified and amended upon stipulation of the parties; or, should the parties fail to agree upon the terms of a new stipulated Order of Payment, the Court may, after examination of the defendant, enter a supplemental Order of Payment.

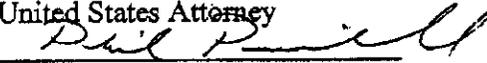
7. The defendant has the right of prepayment of this debt without penalty.

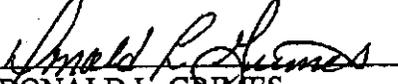
IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, Donald L. Grimes, in the principal amounts of \$2,006.51 \$622.90, plus accrued interest in the amounts of \$1,176.76 and \$383.63, plus interest at the rates of 8.41% and 9.13% until judgment, plus filing fees in the amount of \$150.00, plus interest thereafter at the current legal rate of 6.375 percent per annum until paid, plus the costs of this action.

 8-3-00
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:

Stephen C. Lewis
United States Attorney


PHIL PINNELL, OBA #7169
Assistant United States Attorney


DONALD L. GRIMES

PEP/llf

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

AIR LIQUIDE AMERICA CORPORATION,)
a Delaware Corporation,)

Plaintiff,)

v.)

CONTINENTAL CASUALTY COMPANY,)
an Illinois Corporation; STAFFING)
RESOURCES OF OKLAHOMA, INC.,)
an Oklahoma Corporation,)

Defendants/Third Party Plaintiffs,)

v.)

CIGNA PROPERTY AND CASUALTY)
INSURANCE COMPANY, a Connecticut)
Corporation, and SAMUEL CANADA,)

Third Party Defendants.)

ENTERED ON DOCKET
AUG 3 2000
DATE _____

Case No. 97-CV-315-H ✓

FILED
AUG 3 2000
Phil Lombardi, Clerk
U.S. DISTRICT COURT

ORDER OF DISMISSAL

Upon the Joint Motion to Dismiss filed by Air Liquide America Corporation, Continental Casualty Company, Staffing Resources of Oklahoma, Inc., and CIGNA Property and Casualty Co., now known as ACE Property and Casualty Co., by and through their counsel of record, the Court finds that the above-styled case is hereby dismissed with prejudice, with each party bearing their own costs.

SO ORDERED this 2ND day of AUGUST, 2000.


UNITED STATES DISTRICT JUDGE

107

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

BANKERS STANDARD INSURANCE)
COMPANY,)

Plaintiff,)

vs.)

NORTHLAND INSURANCE)
COMPANY, RONALD YOUNGER, an)
individual, d/b/a YOUNGER)
TRUCKING, RONALD WILSON,)
JACQUELINE WILSON, and THE)
PERSONAL REPRESENTATIVE OF)
THE ESTATE OF TIMOTHY WILSON,)

Defendants.)

ENTERED ON DOCKET

DATE AUG 3 2000

99-CV-969-H(J) ✓

F I L E D

AUG 3 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ORDER

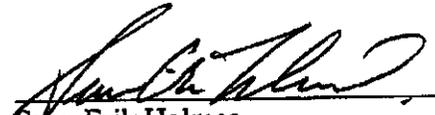
On July 17, 2000, the Court entered an order stating that this matter would be dismissed unless Plaintiff could show good cause by July 28, 2000 why such action should not be taken. Plaintiff has made no further filings in this case since the entry of the Court's prior order. Accordingly, the Court finds, based upon the facts of the case, as set out in the July 17 order, and considering the appropriate factors set forth in St. Paul Fire and Marine Ins. Co. v. Runyon, 53 F.3d 1167, 1169 (10th Cir. 1995), that the state court action will provide more complete relief to the parties, that the instant declaratory judgment action will increase friction between federal and state courts, and that the declaratory judgment action serves no other purpose than "procedural fencing."

327

Accordingly, the Court hereby grants Defendants' motions to dismiss (Docket #s 15, 19, and 23). The case is dismissed.

IT IS SO ORDERED.

This 2nd day of August, 2000.


Sven Erik Holmes
United States District Judge

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

BANKERS STANDARD INSURANCE)
COMPANY,)

Plaintiff,)

vs.)

99-CV-969-H(J)

NORTHLAND INSURANCE)
COMPANY, RONALD YOUNGER, an)
individual, d/b/a YOUNGER)
TRUCKING, RONALD WILSON,)
JACQUELINE WILSON, and THE)
PERSONAL REPRESENTATIVE OF)
THE ESTATE OF TIMOTHY WILSON,)

Defendants.)

FILED
JUL 17 2000
Phil Lombardi, Clerk
U.S. DISTRICT COURT

ORDER

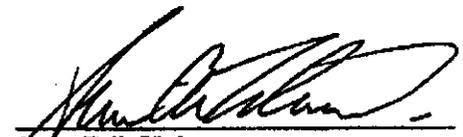
This matter comes before the Court on the Joint Status Report submitted by the parties on June 30, 2000. According to the Joint Status Report, the parties are proceeding with an action in state court filed by Ronald and Jacqueline Wilson and the Estate of Timothy Wilson, and the Wilsons and Bankers Standard are pursuing arbitration.

Plaintiff Bankers Standard filed the instant suit in this Court seeking declaratory judgment of its legal liability to Defendants. Plaintiff noted that one of its goals in filing the suit in federal court was to preserve its subrogation rights against Younger and Northland Insurance. It appears that the subrogation rights have been secured by the state court action initiated by the Wilsons. Moreover, the state court action should settle all issues presented by Bankers Standard's complaint for declaratory judgment in this Court, and the state action should also determine the amounts, if any, owed by the various parties. Based upon this information, and considering the appropriate factors

set forth in St. Paul Fire and Marine Ins. Co. v. Runyon, 53 F.3d 1167, 1169 (10th Cir. 1995), it appears that the state court action will provide more complete relief to the parties, that the instant declaratory judgment action will increase friction between federal and state courts, and that the declaratory judgment action serves no other purpose than "procedural fencing." Accordingly, the Court will dismiss this matter unless Plaintiff can show, by July 28, 2000, good cause why the Court should not take such action.

IT IS SO ORDERED.

This 13th day of July, 2000.



Sven Erik Holmes
United States District Judge

LR
2500

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

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
MALCOLM W. KINNEY,)
)
Defendant.)

ENTERED ON DOCKET ✓
DATE AUG 3 2000

CASE NO. 00CV0178H(E) ✓

FILED
AUG 3 2000
Phil Lombardi, Clerk
U.S. DISTRICT COURT

AGREED JUDGMENT AND ORDER OF PAYMENT

Plaintiff, the United States of America, having filed its Complaint herein, and the defendant, having consented to the making and entry of this Judgment without trial, hereby agree as follows:

1. This Court has jurisdiction over the subject matter of this litigation and over all parties thereto. The Complaint filed herein states a claim upon which relief can be granted.

2. The defendant hereby acknowledges and accepts service of the Complaint filed herein.

3. The defendant hereby agrees to the entry of Judgment in the principal sum of \$8,165.42, plus accrued interest of \$2,850.10 , plus interest thereafter at the rate of 11.4% per annum until judgment, plus filing fees in the amount of \$150.00, plus interest thereafter at the legal rate 6.375% until paid, plus costs of this action, until paid in full.

4. In addition to the regular monthly payment, the defendant hereby agrees to the submission of this debt to the Department of Treasury for inclusion in the Treasury Offset Program. Under this program, any federal payment the defendant would normally receive may be offset and applied to this debt.

10

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

(a) Beginning on or before the fifteenth day of July, 2000, the defendant shall tender to the United States a check or money order payable to the U.S. Department of Justice, in the amount of \$100.00, and a like sum on or before the fifteenth day of each following month until the entire amount of the Judgment, together with the costs and accrued postjudgment interest, is paid in full.

(b) The defendant shall mail each monthly installment payment to: United States Attorney, Financial Litigation Unit, 333 West 4th Street, Suite 3460, Tulsa, Oklahoma 74103-3809.

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

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

(e) The defendant shall provide the United States with current, accurate evidence of his/her assets, income and expenditures (including, but not limited to his/her Federal income tax

returns) within fifteen (15) days for the date of a request for such evidence by the United States Attorney.

6. Default under the terms of this Agreed Judgment will entitle the United States to execute on this Judgment without notice to the defendant.

7. The parties further agree that any Order of Payment which may be entered by the Court pursuant hereto may thereafter be modified and amended upon stipulation of the parties; or, should the parties fail to agree upon the terms of a new stipulated Order of Payment, the Court may, after examination of the defendant, enter a supplemental Order of Payment.

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

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, Malcolm W. Kinney, in the principal amount of \$8,165.42, plus accrued interest in the amount of \$2,850.10, plus interest at the rate of 11.4 until judgment, plus filing fees in the amount of \$150.00, plus interest thereafter at the current legal rate of 6.375 percent per annum until paid, plus the costs of this action.

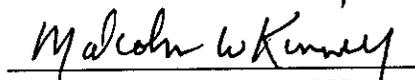

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:

Stephen C. Lewis
United States Attorney



PHIL PINNELL, OBA #7169
Assistant United States Attorney


MALCOLM W. KINNEY

PEP/llf

FILED

AUG 3 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

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

SANDRA J. MEANS, an individual,
and NEVIN MEANS, an individual, and as
husband and wife,

Plaintiffs,

v.

FRANK S. LETCHER, M.D., an individual,

Defendant.

Case No. 99-C-513-B ✓

ENTERED ON DOCKET
DATE AUG 03 2000

J U D G M E N T

This action came on for jury trial before the Court, the Honorable Thomas R. Brett, District Judge, presiding, and the issues having been duly tried from July 25, 2000 through August 2, 2000, and a verdict having been rendered by the jury,

IT IS ORDERED AND ADJUDGED that the Plaintiff, Sandra J. Means, recover of the Defendant, Frank S. Letcher, M.D., the sum of \$500,000.00 plus prejudgment interest from June 30, 1999 through December 31, 1999 at a rate of 8.87% and prejudgment interest at a rate of 8.73% from January 1, 2000 through August 2, 2000 pursuant to 12 O.S. §727E. Post judgment interest is awarded to the total amount of \$500,000.00 plus all prejudgment interest at a rate of 6.375% from August 2, 2000 until paid pursuant to 28

U.S.C. §1961.

IT IS FURTHER ORDERED that Plaintiff, Nevin Means, take nothing and that the claims of Plaintiff, Nevin Means, be dismissed on the merits.

IT IS FURTHER ORDERED that Plaintiff, Sandra J. Means, is awarded her costs of action against the Defendant, Frank S. Letcher, M.D., upon timely application pursuant to N. D. LR 54.1, and the parties shall each pay their respective attorneys' fees.

DATED THIS *3rd* DAY OF AUGUST, 2000.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
on behalf of the Secretary of Veterans Affairs,)
)
Plaintiff,)
v.)
)
DAVID B. FLOYD;)
ANITA M. FLOYD;)
TMS MORTGAGE INC.)
DBA THE MONEY STORE;)
ROGERS COUNTY LOAN CO.;)
COUNTY TREASURER, Rogers County,)
Oklahoma;)
BOARD OF COUNTY COMMISSIONERS,)
Rogers County, Oklahoma,)
)
Defendants.)

FILED

AUG 03 2000

**Phil Lombardi, Clerk
U.S. DISTRICT COURT**

ENTERED ON DOCKET

DATE AUG 03 2000

CIVIL ACTION NO. 99-CV-0689-K (J)

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 2 day of August,

2000. The Plaintiff appears by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Cathryn D. McClanahan, Assistant United States Attorney; the Defendants, County Treasurer, Rogers County, Oklahoma, and Board of County Commissioners, Rogers County, Oklahoma, appear by Michele L. Schultz, Assistant District Attorney, Rogers County, Oklahoma; the Defendant, Rogers County Loan Co., appears by its manager Gene C. Smith; the Defendants, David B. Floyd, Anita M. Floyd, and TMS Mortgage Inc. dba The Money Store, appear not, but make default.

The Court being fully advised and having examined the court file finds that the Defendant, TMS Mortgage Inc. dba The Money Store, was served with Summons

and Complaint by certified mail, return receipt requested, delivery restricted to the addressee on September 13, 1999; that the Defendant, Rogers County Loan Co., executed a Waiver of Service of Summons on October 6, 1999.

The Court further finds that the Defendants, David B. Floyd and Anita M. Floyd, were served by publishing notice of this action in the Claremore Daily Progress, a newspaper of general circulation in Rogers County, Oklahoma, once a week for six (6) consecutive weeks beginning May 9, 2000, and continuing through June 13, 2000, 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, David B. Floyd and Anita M. Floyd, and service cannot be made upon said Defendants 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, David B. Floyd and Anita M. Floyd. 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, Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Cathryn D. McClanahan, 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, Rogers County, Oklahoma, and Board of County Commissioners, Rogers County, Oklahoma, filed their Answer on September 17, 1999; that the Defendant, Rogers County Loan Co., filed a Release of Judgement on October 6, 1999 in the District Court of Rogers County, Oklahoma, Small Claims No. 98-243, and recorded on January 24, 2000, in Book 1211, Page 0322 in the records of Rogers County, Oklahoma; and that Defendants, David B. Floyd, Anita M. Floyd and TMS Mortgage Inc. dba The Money Store, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that on March 25, 1998, David Bradley Floyd and Anita Marie Floyd filed their voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 98-01142. On November 10, 1999, the United States Bankruptcy Court for the Northern District of Oklahoma entered its order modifying the automatic stay afforded the debtors by 11 U.S.C. § 362 and directing abandonment of the real property subject to this foreclosure action and which is described below.

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

Lots 17 and 18 in Block 34 of BAYLESS ADDITION to the City of Claremore, Oklahoma, according to the recorded plat thereof.

The Court further finds that on March 3, 1987, Annette Moore 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, her mortgage note in the amount of \$15,000.00, 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, Annette Moore, a single person, 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 March 3, 1987, covering the above-described property, situated in the State of Oklahoma, Rogers County. This mortgage was recorded on March 3, 1987, in Book 753, Page 615, in the records of Rogers County, Oklahoma.

The Court further finds that the Defendants, David B. Floyd and Anita M. Floyd, are the current owners of the subject real property through mesne conveyances.

The Court further finds that the Defendants, David B. Floyd and Anita M. Floyd, 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 \$12,345.04, plus administrative charges in the amount of \$235.00, plus penalty charges

in the amount of \$7.48, plus accrued interest in the amount of \$2,807.78 as of October 7, 1998, plus interest accruing thereafter at the rate of 9 percent per annum until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$236.14 (\$228.14 publication fees; \$8.00 fee for recording Notice of Lis Pendens).

The Court further finds that the Defendant, Rogers County Loan Co., claims no right, title or interest in the subject real property by virtue of Release of Judgement filed on October 6, 1999 in the District Court of Rogers County, Oklahoma, Small Claims No. 98-243, and recorded on January 24, 2000, in Book 1211, Page 0322 in the records of Rogers County, Oklahoma.

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

The Court further finds that the Defendants, David B. Floyd, Anita M. Floyd, and TMS Mortgage Inc. dba The Money Store, are in default and therefore 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 in rem against Defendants, David B. Floyd and Anita M. Floyd, in the principal sum of \$12,345.04, plus administrative charges in the amount of \$235.00, plus penalty charges in the amount of \$7.48, plus accrued interest in the amount of \$2,807.78 as of October 7, 1998, plus interest accruing thereafter at

the rate of 9 percent per annum until judgment, plus interest thereafter at the current legal rate of 6.375 percent per annum until fully paid, plus the costs of this action in the amount of \$236.14 (\$228.14 publication fees; \$8.00 fee for recording Notice of Lis Pendens), plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property, plus any other advances.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, David B. Floyd; Anita M. Floyd; TMS Mortgage Inc. dba The Money Store; Rogers County Loan Co.; County Treasurer, Rogers County, Oklahoma; and Board of County Commissioners, Rogers County, Oklahoma, have no right, title, or interest in the subject real property.

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

First:

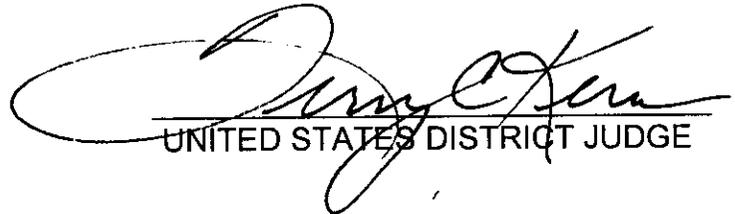
In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

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

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

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

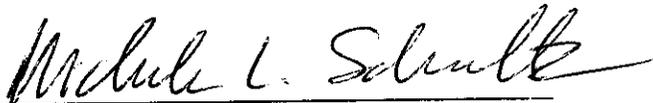

UNITED STATES DISTRICT JUDGE

APPROVED:

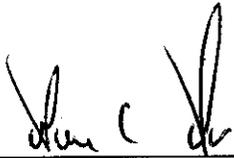
STEPHEN C. LEWIS
United States Attorney



GATHRYN D. MCCLANAHAN, OBA #014853
Assistant United States Attorney
333 West 4th Street, Suite 3460
Tulsa, Oklahoma 74103
(918) 581-7463



MICHELE L. SCHULTZ, OBA #13771
Assistant District Attorney
219 South Missouri, Room 1-111
Claremore, Oklahoma 74017
(918) 341-3164
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Rogers County, Oklahoma



GENE C. SMITH, Manager
Rogers County Loan Co.
921 North Lynn Riggs Boulevard
Claremore, Oklahoma 74017
(918) 342-5626

Judgment of Foreclosure
Case No. 99-CV-0689-K (J) (Floyd)

CDM:css

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
on behalf of the Secretary of Veterans Affairs,)
)
Plaintiff,)
)
v.)
)
BRADLEY S. RITTERHOUSE)
aka Bradley Ritterhouse, a single person;)
STATE OF OKLAHOMA ex rel.)
Oklahoma Tax Commission;)
COUNTY TREASURER, Tulsa County,)
Oklahoma;)
BOARD OF COUNTY COMMISSIONERS,)
Tulsa County, Oklahoma,)
)
Defendants.)

ENTERED ON DOCKET

DATE AUG 03 2000

F I L E D

AUG 03 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

) CIVIL ACTION NO. 00-CV-0388-K (E)

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 2 day of August,

2000. The Plaintiff appears by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Cathryn D. McClanahan, Assistant United States Attorney; the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, appear by Dick A. Blakeley, Assistant District Attorney, Tulsa County, Oklahoma; that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, appears by Kim D. Ashley, Assistant General Counsel; that the Defendant, Bradley S. Ritterhouse aka Bradley Ritterhouse, a single person, appears not, but makes default.

The Court being fully advised and having examined the court file finds that the Defendant, Bradley S. Ritterhouse aka Bradley Ritterhouse, a single person, was served with Summons and Complaint by a United States Deputy Marshal on June 13, 2000.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on May 31, 2000; that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, filed its Entry of Appearance and its Answer on May 25, 2000; that the Defendant, Bradley S. Ritterhouse aka Bradley Ritterhouse, a single person, has failed to answer and his default has therefore been entered by the Clerk of this Court.

The Court further finds that on April 22, 1998, Bradley S. Ritterhouse filed his voluntary petition in bankruptcy in Chapter 13 in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 98-01556-R. The subject real property was made a part of the bankruptcy estate as shown on Schedule A of the bankruptcy schedules. On June 9, 1998, an Order dismissing the subject bankruptcy case was entered; subsequently, on February 12, 1999, Case No. 98-01556-R, United States Bankruptcy Court, Northern District of Oklahoma, was closed.

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

LOT TWO (2), BLOCK SIX (6), STACEY LYNN FIFTH, AN ADDITION TO THE CITY OF BROKEN ARROW, TULSA COUNTY, STATE OF OKLAHOMA, ACCORDING TO THE RECORDED PLAT THEREOF.

The Court further finds that on September 15, 1992, Bradley S. Ritterhouse, a single person, executed and delivered to Mortgage Clearing Corporation, his mortgage note in the amount of \$44,448.00, payable in monthly installments, with interest thereon at the rate of 7.5 percent per annum.

The Court further finds that as security for the payment of the above-described note, Bradley S. Ritterhouse, a single person, executed and delivered to Mortgage Clearing Corporation a real estate mortgage dated September 15, 1992, covering the above-described property, situated in the State of Oklahoma, Tulsa County. This mortgage was recorded on September 21, 1992, in Book 5437, Page 1044, in the records of Tulsa County, Oklahoma.

The Court further finds that on June 25, 1998, Mortgage Clearing Corporation assigned the above-described mortgage note and mortgage to the Secretary of Veterans Affairs. This Assignment of Mortgage was recorded on July 20, 1998, in Book 6080, Page 2078, in the records of Tulsa County, Oklahoma. The Secretary of Veterans Affairs refunded the loan making the entire amount due principal and the interest rate changed to 7 percent per annum.

The Court further finds that the Defendant, Bradley S. Ritterhouse aka Bradley Ritterhouse, a single person, made default under the terms of the aforesaid note and mortgage by reason of his 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 \$47,577.48, plus administrative charges in the amount of \$510.00, plus penalty charges in the amount of \$140.80, plus accrued interest in the amount of \$5,492.08 as of April 3, 2000, plus interest accruing thereafter at the rate of 7 percent per annum until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$102.30 (\$94.30 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 \$2,417.82 together with interest and penalty according to law, by virtue of Tax Warrant No. IT198006644-00, dated October 13, 1998, and recorded on October 15, 1998, in Book 6119, Page 2638 in the records of Tulsa County, Oklahoma.

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

The Court further finds that the Defendant, Bradley S. Ritterhouse aka Bradley Ritterhouse, a single person, is in default and therefore has 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 in rem against Defendant, Bradley S. Ritterhouse

aka Bradley Ritterhouse, a single person, in the principal sum of \$47,577.48, plus administrative charges in the amount of \$510.00, plus penalty charges in the amount of \$140.80, plus accrued interest in the amount of \$5,492.08 as of April 3, 2000, plus interest accruing thereafter at the rate of 7 percent per annum until judgment, plus interest thereafter at the current legal rate of 6.375 percent per annum until fully paid, plus the costs of this action in the amount of \$102.30 (\$94.30 fees for service of Summons and 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, plus any other advances.

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 \$2,417.82 together with interest and penalty according to law, by virtue of Tax Warrant No. ITI98006644-00, dated October 13, 1998, and recorded on October 15, 1998, in Book 6119, Page 2638 in the records of Tulsa County, Oklahoma.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Bradley S. Ritterhouse aka Bradley Ritterhouse, a single person; County Treasurer, Tulsa County, Oklahoma; and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that 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.


UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney



CATHRYN D. MCCLANAHAN, OBA #014853
Assistant United States Attorney
333 West 4th Street, Suite 3460
Tulsa, Oklahoma 74103
(918) 581-7463



DICK A. BLAKELEY, OBA #0852
Assistant District Attorney
406 Tulsa County Courthouse
Tulsa, Oklahoma 74103
(918) 596-4835
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

Judgment of Foreclosure
Case No. 00-CV-0388-K (E) (Ritterhouse)

CDM:css

Kim Ashley By Amy S. Moore
KIM D. ASHLEY, OBA #14175) OBA # 6324

Assistant General Counsel

P.O. Box 53248

Oklahoma City, OK 73152-3248

(405) 521-3141

Attorney for Defendant,

State of Oklahoma ex rel. Oklahoma Tax Commission

OTC FILE NO. A00-615

Judgment of Foreclosure

Case No. 00-CV-0388-K (E) (Ritterhouse)

Northern District

CDM:css

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

F I L E D
AUG 2 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ROBERT L. McBEE, JR.,)
)
Plaintiff,)
)
v.)
)
STANDARD TESTING AND)
ENGINEERING COMPANY,)
an Oklahoma corporation,)
)
Defendant.)

Case No. 00CV0045B (J)

ENTERED ON DOCKET
DATE AUG 03 2000

ORDER

COMES ON NOW for consideration the parties' joint stipulation of dismissal with prejudice. The Court, having reviewed the parties' stipulation and the Court file, and being fully advised in the premises, finds that the case should be dismissed with prejudice.

IT IS THEREFORE ORDERED that this case is dismissed with prejudice. Each party shall bear its own costs and attorneys' fees.

Dated this 2nd day of Aug., 2000.



Thomas R. Brett
UNITED STATES DISTRICT JUDGE

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

(a) Beginning on or before the 15th day of September, 2000, the defendant shall tender to the United States a check or money order payable to the U.S. Department of Justice, in the amount of \$ 60.00, and a like sum on or before the 15th day of each following month until the entire amount of the Judgment, together with the costs and accrued postjudgment interest, is paid in full.

(b) The defendant shall mail each monthly installment payment to: United States Attorney, Financial Litigation Unit, 333 West 4th Street, Suite 3460, Tulsa, Oklahoma 74103-3809.

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

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

(e) The defendant shall provide the United States with current, accurate evidence of his/her assets, income and expenditures (including, but not limited to his/her Federal income tax

returns) within fifteen (15) days for the date of a request for such evidence by the United States Attorney.

6. Default under the terms of this Agreed Judgment will entitle the United States to execute on this Judgment without notice to the defendant.

7. The parties further agree that any Order of Payment which may be entered by the Court pursuant hereto may thereafter be modified and amended upon stipulation of the parties; or, should the parties fail to agree upon the terms of a new stipulated Order of Payment, the Court may, after examination of the defendant, enter a supplemental Order of Payment.

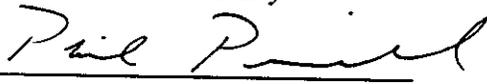
8. The defendant has the right of prepayment of this debt without penalty.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, Cruz V. Ramirez, in the principal amount of \$2,625.00, plus accrued interest in the amount of \$1,148.42, plus interest at the rate of 8% until judgment, plus filing fees in the amount of \$150.00, plus interest thereafter at the current legal rate of 6.375 percent per annum until paid, plus the costs of this action.


UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:

Stephen C. Lewis
United States Attorney


PHIL PINNELL, OBA #7169
Assistant United States Attorney


CRUZ V. RAMIREZ

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 1 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
) No. 00CV0345C(E) ✓
)
 OTIS MARKS II,)
)
 Defendant.)

ENTERED ON DOCKET
DATE AUG 02 2000

DEFAULT JUDGMENT

This matter comes on for consideration this 1st day of August, 2000, the Plaintiff appearing by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, and the Defendant, Otis Marks II, appearing not.

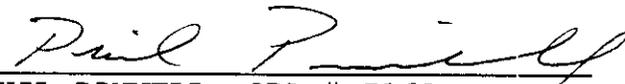
The Court being fully advised and having examined the court file finds that Defendant, Otis Marks II, was served with Summons and Complaint on April 27, 2000. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE ORDERED, ADJUDGED, and DECREED that the Plaintiff have and recover judgment against the Defendant, Otis Marks II, for the principal amounts of \$5,084.82 and \$2,655.48,

plus accrued interest of \$3,012.55 and \$1,882.21, plus administrative charges in the amount of \$19.44, plus interest thereafter at the rates of 8% and 8.41% per annum until judgment, plus filing fees in the amount of \$150.00 as provided by 28 U.S.C. § 2412(a)(2), plus interest thereafter at the current legal rate of 6.375 percent per annum until paid, plus costs of this action.


United States District Judge

Submitted By:


PHIL PINNELL, OBA # 7169
Assistant United States Attorney
333 West 4th Street, Suite 3460
Tulsa, Oklahoma 74103-3809
(918) 581-7463

PEP/11f

F I L E D

AUG 1 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 00CV0135B(J)
)	
MICHAEL R. REYNOLDS,)	
)	
Defendant.)	

ENTERED ON DOCKET

DATE AUG 02 2000

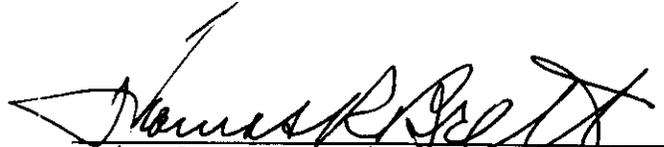
DEFAULT JUDGMENT

This matter comes on for consideration this 1st day of Aug, 2000, the Plaintiff appearing by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, and the Defendant, Michael R. Reynolds, appearing not.

The Court being fully advised and having examined the court file finds that Defendant, Michael R. Reynolds, was served with Summons and Complaint on May 12, 2000. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE ORDERED, ADJUDGED, and DECREED that the Plaintiff have and recover judgment against the Defendant, Michael R. Reynolds, for the principal amounts of \$1,164.82, \$1,163.96, and

\$2,930.25, plus accrued interest of \$460.42, \$460.08 and \$1,226.05, plus interest thereafter at the rates of 8% and 8.5% per annum until judgment, plus filing fees in the amount of \$150.00 as provided by 28 U.S.C. § 2412(a)(2), plus interest thereafter at the current legal rate of 6.375 percent per annum until paid, plus costs of this action.


United States District Judge

Submitted By:


PHIL PINNELL, OBA # 7169
Assistant United States Attorney
333 West 4th Street, Suite 3460
Tulsa, Oklahoma 74103-3809
(918) 581-7463

PEP/11f

sentence. On September 11, 1995, he filed his first application for post-conviction relief in the state trial court. He alleged that the sentence imposed was in excess of the maximum penalty set forth in Okla. Stat. tit. 21, § 1731. He also alleged that his counsel was ineffective because counsel failed to research the applicable law regarding the maximum statutory penalty and failed to advise him that the maximum penalty was one year for each of his convictions, or a total of three, pursuant to the applicable statute. (Resp. Br., Dkt. # 12, Ex. A.)

The trial court denied the relief requested by its “Order Denying Motion for Production of State Court Records and Application for Post-Conviction Relief” on October 13, 1995. The trial court found that: (1) petitioner’s plea was voluntarily and knowingly entered; (2) the penalty imposed was permitted by application of the recidivist statute, Okla. Stat. tit. 21, § 51; (3) petitioner was not denied effective assistance of counsel; (4) petitioner failed to file a timely appeal, thus waiving any remaining issues; and (5) petitioner was not entitled to appointment of counsel or an evidentiary hearing. (Resp. Br., Dkt # 12, Ex. B.) Petitioner subsequently filed a petition in error in the Oklahoma Court of Criminal Appeals (“OCCA”), setting forth the same claims as his application for post-conviction relief and a claim that the district court erred when it failed to grant his motion for production of state court records. (Id., Ex. C.) The OCCA denied relief because petitioner failed to perfect a timely post-conviction appeal. (Id., Ex. D.)

Petitioner filed a “Second Application for Post-Conviction Relief and Request for Appeal Out-Of-Time and Request for Nunc Pro Tunc Order Modifying Sentences” in the state trial court on February 4, 1997. (Id., Ex. E.) He claimed that: (1) the trial court did not have subject-matter jurisdiction to impose a ten-year term constituting cruel and unusual punishment; (2) trial counsel was ineffective because he did not know that the Oklahoma legislature had amended Okla. Stat. tit.

21. § 1731 when he advised petitioner as to the sentence, and trial counsel did not visit petitioner in the county jail during the ten days in which petitioner was to give notice of his intent to appeal; and (3) the OCCA's conclusion that his post-conviction appeal was untimely violated due process because the OCCA failed to give effect to the "prison mailbox rule" whereby a prisoner's notice of appeal is deemed "filed" at the moment of delivery to prison authorities for forwarding to the court. (Id.)

On March 11, 1997, the trial court found that the issues raised in petitioner second application were barred by *res judicata*. Nonetheless, the trial court discussed petitioner's claim of ineffective assistance of counsel and denied it on the merits. The trial court found that petitioner had waived his claim of sentencing error because he failed to file a timely direct appeal or offer a sufficient reason for such failure. As to petitioner's claim relating to his failure to file a timely appeal of the trial court's determination on his first post-conviction application, the trial court stated that it was "not the trial court's to consider." (Id., Ex. F.) Petitioner filed his petition in error in the OCCA on April 4, 1997, alleging the same three claims, although he split his sentencing error claim into two parts (addressing both its substantive aspects and the procedural bar imposed by the trial court). (Id., Ex. G.)

The OCCA granted petitioner's Motion to Supplement Brief and Plea of Guilty Sentencing Transcripts, which requested leave to supplement petitioner's brief with an additional proposition of error: that the trial court's "instructions" on the applicable sentencing laws were clearly erroneous. In addition, the motion requested that the record on appeal be amended to include an attached copy of the transcript from petitioner's plea and sentencing hearing in the three cases involved in the appeal. On the same date, July 2, 1997, and in the same order, the OCCA affirmed

the trial court's denial of post-conviction relief. (Id., Ex. H.) The OCCA found that all of petitioner's claims were barred by the doctrine of *res judicata* except for the issue regarding petitioner's excuse for failing to file a timely appeal of his first post-conviction application. As to that issue, the OCCA found that petitioner had not demonstrated he was denied an appeal through no fault of his own, given petitioner's negligence in mailing his appellate pleadings on the last day of the thirty-day appeal period. (Id.)

Petitioner filed his petition for writ of habeas corpus on September 18, 1997 (Dkt. #1). As grounds for his petition, petitioner claims that: (1) his due process and equal protection rights were violated when the OCCA erroneously determined that the claims made in his 1995 post-conviction appeal were barred because they were not timely filed; (2) his Eighth Amendment rights were violated by the imposition of a sentence in excess of the statutory maximum; and (3) his Sixth Amendment rights were violated because he was denied the effective assistance of counsel.² Respondent argues that petitioner's first and second grounds are state law claims that are not cognizable on federal habeas review and petitioner's third ground is procedurally barred.

DISCUSSION AND LEGAL ANALYSIS

Standard of Review

Habeas corpus actions requiring the review of state court judgments and sentences are governed by 28 U.S.C. § 2254. Section 2254 was amended by the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), Pub. L. No. 104-132, tit. I, § 101 (1996). The AEDPA established

² Petitioner's "Proposition IV" does not set forth another claim but merely reiterates and further elaborates on petitioner's second ground for relief. Even if it could be considered a separate claim, it is subject to the same analysis as petitioner's second claim. The undersigned addresses both claims as one.

a more deferential standard of review of state court decisions in habeas corpus cases. Under the AEDPA, a federal court may entertain an application for writ of habeas corpus from a prisoner held in state custody only on the ground that the prisoner is in custody in violation of the Constitution or laws or treaties of the United States. 28 U.S.C. §§ 2241, 2254(a). In cases governed by the AEDPA,

[t]he appropriate standard of review depends on whether a claim was decided on the merits in state court. “If the claim was not heard on the merits by the state courts, and the federal district court made its own determination in the first instance, we review the court’s conclusions of law de novo and its findings of fact if any, for clear error.” LaFevers v. Gibson, 182 F.3d 705, 711 (10th Cir. 1999). If a claim was adjudicated on its merits by the state courts, a petitioner will be entitled to federal habeas relief only if he can establish that the state court decision “was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States,” 28 U.S.C. § 2254(d)(1), or “was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceedings,” id., § 2254(d)(2). Thus, we may grant the writ if we find the state court arrived at a conclusion opposite to that reached by the Supreme Court on a question of law; decided the case differently than the Supreme Court has on a set of materially indistinguishable facts; or unreasonably applied the governing legal principle to the facts of the prisoner’s case. Williams v. Taylor, ___ U.S. ___, 120 S. Ct. 1495, 1523, 146 L.Ed.2d 389 (2000).

Van Woudenberg ex rel. Foor v. Gibson, 211 F.3d 560, 566 (10th Cir. 2000); see also Paxton v. Ward, 199 F.3d 1197, 1204 (10th Cir. 2000); Aycox v. Lytle, 196 F.3d 1174, 1178 (10th Cir. 1999).

To grant the writ, the Court must be convinced that the application of the law was objectively unreasonable. Van Woudenberg, 211 F.3d at 567 n. 4. Otherwise, a federal habeas court owes “deference to the state court’s result, even if its reasoning is not expressly stated.” Id. at 569 (quoting Aycox, 196 F.3d at 1177) (summary decision can constitute adjudication on the merits if decision was reached on substantive rather than procedural grounds).

Procedural Default

The doctrine of procedural default 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 independent and adequate state procedural grounds. Coleman v. Thompson, 501 U.S. 722, 729 (1991); see also Maes v. Thomas, 46 F.3d 979, 985 (10th Cir. 1995). "A state court finding of procedural default is independent if it is separate and distinct from federal law." Maes, 46 F.3d at 985. A finding of procedural default is an "adequate" state ground if it has been applied evenhandedly "in the vast majority of cases." Id. (quoting Andrews v. Deland, 943 F.2d 1162, 1190 (10th Cir. 1991)).

The OCCA denied petitioner's claims on two procedural grounds: *res judicata* and petitioner's failure to file a timely appeal of the trial court's decision denying his post-conviction application. These grounds have been recognized as independent and adequate for procedural default purposes. See, e.g. Smallwood v. Gibson, 191 F.3d 1257, 1267 and 1269 n. 8 (10th Cir. 1999), cert. filed, No. 99-9445 (March 9, 2000); Hooks v. Ward, 184 F.3d 1206, 1215-16 (10th Cir. 1999); Moore v. Reynolds, 153 F.3d 1086, 1096-97 (10th Cir. 1998), cert. denied, 526 U.S. 1025 (1999). Where the OCCA bases its decision on independent and adequate state procedural grounds, the Court need not find that petitioner's claims are procedurally defaulted if petitioner can demonstrate cause for the procedural default and actual prejudice, or that the Court's refusal to consider the merits of his claims will result in a fundamental miscarriage of justice. See, e.g., Coleman, 510 U.S. at 750.

Cause and Prejudice

The cause standard requires a petitioner to show "something external to [himself], something that cannot fairly be attributed to him . . ." that prevented him from complying with the state

procedural rules. See Coleman, 510 U.S. at 753; Demarest v. Price, 130 F.3d 922, 941 (10th Cir. 1997) (both cases citing Murray v. Carrier, 477 U.S. 478, 488 (1986)). “Adequate cause includes interference by officials which makes compliance with a state’s procedural rule impracticable, demonstration of unavailability of a factual or legal basis, or constitutionally ineffective assistance of counsel in not bringing a claim.” Worthen v. Kaiser, 952 F.2d 1266, 1268 (10th Cir. 1992). Once cause is established, the petitioner must then show that he suffered “actual prejudice” as a result of the alleged violations of federal law. E.g., Demarest, 130 F.3d at 941. To show “prejudice,” petitioner must demonstrate “not merely that errors at . . . trial created a possibility of prejudice, but that they worked to his actual and substantial disadvantage, infecting his entire trial with error of constitutional dimensions.” Murray, 477 U.S. at 494; see also United States v. Frady, 456 U.S. 152, 170 (1982).

Constitutionally ineffective assistance of counsel may constitute cause for procedural default. See, e.g., Coleman, 501 U.S. at 753-55. Here, however, petitioner does not assert that ineffective assistance of trial counsel caused him to miss the deadline for filing an appeal from the trial court’s determination on his post-conviction application. He asserts that ineffective assistance of counsel caused him not to file a timely motion to withdraw his guilty plea and a timely direct appeal. The OCCA found that his claims were procedurally defaulted due to his failure to file a timely appeal of the determination on his post-conviction application -- not due to his failure to file a timely motion to withdraw his guilty plea or a direct appeal. Therefore, ineffective assistance of counsel cannot serve as “cause” for petitioner’s procedural default.

Similarly, petitioner claims that the trial court did not tell him he had a right to an appeal at state expense or that he had a right to counsel on appeal. Regardless of the merits of this claim, or

lack thereof, petitioner did not (and could not) assert this alleged failure as a cause for his failure to timely appeal the district court's determination of his application for post-conviction relief. He asserted it as a cause for his failure to file a timely direct appeal. As discussed above, the OCCA did not base its decision to deny his first or second application for post-conviction relief on that ground.³ Thus, any alleged failure by the trial court to advise him of his right to a "free" appeal or to counsel on appeal cannot constitute cause for his failure to timely appeal the trial court's decision on his application for post-conviction relief.

Prison Mailbox Rule

Petitioner attempts to rely on the prison mailbox rule as the cause for the specific procedural default found by the OCCA. This rule allows a court to deem a pleading filed on the date that a *pro se* prisoner delivers it to prison authorities for forwarding to a court clerk. Houston v. Lack, 487 U.S. 266, 270-72 (1988); United States v. Gray, 182 F.3d 762, 766 (10th Cir. 1999); Woody v. State, 833 P.2d 257, 259-60 (Okla. 1992). The prison mailbox rule recognizes the restraints imposed on prisoners which prevents them from delivering documents directly to the court or the post office, thus forcing them to rely on prison officials to ensure timely mailing of their pleadings. The Oklahoma Supreme Court has reasoned that "Okla. Const. art. 2, § 6 mandates such a result."⁴ Id. at 259.

³ The undersigned further recognizes that petitioner did not present this issue to the state courts, but respondent did not argue that petitioner failed to exhaust this claim. In any event, his claim is procedurally barred.

⁴ Okla. Const. art. 2, § 6 provides: "The courts of justice of the State shall be open to every person, and speedy and certain remedy afforded for every wrong and for every injury to person, property, or reputation; and right and justice shall be administered without sale, denial, delay, or prejudice."

Petitioner claims that the OCCA should have deemed it timely because he placed it into the hands of prison officials on November 10, 1995 -- before the November 12, 1995 due date -- but prison officials did not promptly mail it to the OCCA court clerk. In this manner, “interference by officials [made] compliance with a state’s procedural rule impracticable. . . .” (Pet. Br., Dkt. # 1, at 4-5, 11.) He acknowledges that he argued in his second application for post--conviction relief that he placed his appeal in the hands of prison officials on November 13, 1995 (and he represented that this was the “last day” before his appeal was due) because his papers were logged by prison authorities on that date. (*Id.*; see also Resp. Br., Dkt. # 12, Ex. E, at 8 and Ex. G, at 2.) Regardless of whether he gave it to prison officials on November 10 or 13, 1995, the OCCA did not deem it filed until November 14, 1995 -- after the due date. (See Resp. Br., Dkt. # 12, Ex. D.)

Relying on Rules 5.2 and 10.1 of the Rules of the Oklahoma Court of Criminal Appeals, Okla. Stat. tit. 22, ch. 18, app. (1998),⁵ the OCCA specifically refused to reach the merits of petitioner’s claims when he filed his first petition in error because he failed to file his petition in error within the time provided by law. The Tenth Circuit has consistently held that claims raised for the first time in state post-conviction proceedings are procedurally defaulted if the petitioner fails to obtain timely appellate review of the state trial court’s decision. *E.g.*, West v. Gibson, No. 98-7151, 1999 WL 339702, at *2 (10th Cir. May 28, 1999) (Oklahoma); Bivens v. Hargett, No. 9706333, 1999 WL 7729, at **4 (10th Cir. Jan. 11, 1999) (Oklahoma); Watson v. State of New Mexico, 45 F.3d 385, 387 (10th Cir. 1995); Gee v. Shillinger, No. 94-8050, 1994 WL 697306 (10th

⁵ Rule 5.2(C) provides that the petition in error must be filed with thirty (30) days from the date the final order of the district court is filed with the clerk of the district court, and failure to file a petition in error, with a brief, within the time provided, constitutes a procedural bar for the OCCA to consider the appeal. Rule 10.1(C) also requires a petitioner to file his petition in error within thirty (30) days from the date the trial court denied relief.

Cir. Dec. 13, 1994) (Wyoming); see also Dulin v. Cook, 957 F.2d 758 (10th Cir. 1992) (Utah). When petitioner attempted to show that he was denied an appeal through no fault of his own, in reliance on the prison mailbox rule, the OCCA held that the Supreme Court's interpretation of a specific federal rule of appellate procedure in Houston was not controlling as to the construction of any Oklahoma rule of appellate procedure. (Resp. Br., Dkt. 12, Ex. H, at 4-5.)

Indeed, the OCCA has consistently ruled that the prison mailbox rule does not apply to criminal matters filed in the OCCA. Banks v. State, 953 P.2d 344, 345-47 (Okla. Crim. App. 1998); Behrens v. Patterson, 952 P.2d 990, 991-92 (Okla. Crim. App. 1997); Hunnicuttt v. State, 952 P.2d 988, 989 (Okla. Crim. App. 1997). The OCCA prefers, instead, to require a prisoner to file a motion for appeal out of time, pursuant to Rule 2.1(E) of the Rules of the Court of Criminal Appeals, Okla. Stat. tit. 22, ch. 18, app. (1997), proving that he was denied an appeal through no fault of his own. Banks, 953 P.2d at 346. The Tenth Circuit has approved this procedure. See Bivens v. Hargett, No. 9706333, 1999 WL 7729, at **4 (10th Cir. Jan. 11, 1999). In Bivens, the Tenth Circuit explicitly recognized that the petitioner had not made a substantial showing that the OCCA "deprived him of a constitutional right in dismissing his post-conviction appeal as untimely," especially where the petitioner had "not shown cause for his failure to apply for an appeal out-of-time, which is a remedy available to a state post-conviction petitioner who has been denied an appeal through no fault of his own." Id. (citing Banks, 953 P.2d at 346; Hunnicuttt, 952 P.2d at 990).

In any event, the OCCA's refusal to apply the prison mailbox rule does not constitute cause for petitioner's procedural default because it does not present a constitutional issue. The Houston decision was based on the interpretation of the word "filed" in Fed. R. App. P. 4(a)(1), the federal procedural rule governing the timeliness of notices of appeal. See Jenkins v. Burtzloff, 69 F.3d 460,

461 (10th Cir. 1995). The decision in this matter was premised on the OCCA's interpretation of a state procedural rule, and a federal court may not conduct habeas review of alleged errors of state law. Petitioner has failed to show cause for his failure to timely appeal the trial court's determination of his post-conviction application.

Res Judicata

Petitioner has also failed to overcome the *res judicata* procedural bar. The doctrine of *res judicata* prohibits litigation of certain claims based on the resolution of an earlier action between the same parties. "Under *res judicata*, a final judgment on the merits of an action precludes the parties . . . from relitigating issues that were or could have been raised in that action." Allen v. McCurry, 449 U.S. 90 (1980); Klein v. Zavaras, 80 F.3d 432, 434 (10th Cir. 1996).

The OCCA and the trial court recognized that the issues raised by petitioner in his second application for post-conviction relief, except for his argument as to why he failed to file a timely appeal of his first application, were the same issues he raised in his first application. Each issue challenged the propriety of his sentence based on alleged error by the trial judge, who applied Oklahoma's recidivist statute to petitioner's larceny conviction after the state agreed to dismiss all but one prior felony conviction.⁶ Petitioner's reliance on Woods v. Spears, Case No. 95-C-308-H, (N.D. Okla. filed April 3, 1995), which he claims is "identical" to his case, is misplaced.

⁶ Under the recidivist statute, the minimum punishment for more than one felony punishable by imprisonment *in the penitentiary* is five or ten years, depending on the offense. Okla. Stat. tit. 21, § 51(A) (1991). The minimum punishment for *any* felony committed after more than two prior felonies is twenty years. *Id.* § 51(B). Larceny of merchandise valued between \$50 and \$500 is classified as a felony punishable by imprisonment *in the county jail*, and carries a maximum punishment of one year for each offense. Okla. Stat. tit. 21, § 1731 (Supp. 1993). Since petitioner had only one prior felony after the state agreed to strike six others, section 51(B) was not applicable. Since larceny was classified as a felony punishable by time in the county jail, as opposed to time in the penitentiary, section 51(A) was not applicable. See Shavers v. Kaiser, No. 99-6018, 1999 WL 734495 (10th Cir. Sept. 21, 1999); Williams v. Klinger, No. 98-CV-63-M, 1998 WL 537506 (10th Cir. Aug. 20, 1998); Walker v. State, 953 P.2d 354, 356 (Okla. Crim. App. 1998).

In Woods, the Court agreed with the magistrate judge's recommendation that trial counsel rendered ineffective assistance of counsel for failing to perfect an appeal upon a timely request by the petitioner. However, the Court refused to adopt the conclusion of the magistrate judge that the appeal would have been meritorious by virtue of the amendment of Okla. Stat. tit. 21, § 1731(4). The Court left that decision to the state court since it was solely a question of state law. (See Order, filed May 8, 1996, Dkt. # 28 in the Woods court file.) Most important, the Woods petitioner did not fail to file a timely appeal from the trial court's determination on his post-conviction application. Here, petitioner's failure to timely appeal the trial court's decision on his first application made the trial court's decision a final judgment on the merits with preclusive effect regardless of any error by the trial judge.

Fundamental Miscarriage of Justice

Finally, petitioner cannot show that the second prong of procedural default analysis applies, *i.e.*, that the Court's refusal to consider the merits of the claim will result in a fundamental miscarriage of justice. To come within this "very narrow" exception, petitioner must make a "colorable showing" that he is factually innocent of the crime of which he was convicted. Schlup v. Delo, 513 U.S. 298, 311 (1995) (citing Kuhlman v. Wilson, 477 U.S. 436, 454 (1986)). Factual innocence requires a stronger showing than that necessary to establish prejudice. Schlup, 513 U.S. at 326. Such a showing does not in itself entitle the petitioner to relief but instead serves as a "gateway" which then entitles petitioner to consideration of the merits of his claims. Id. at 327.

Petitioner does not claim that he is innocent of the larceny crimes to which he pleaded guilty. Rather, he claims that his sentence should be modified in accordance with his understanding of the applicable statutes. These arguments go to legal innocence, not factual innocence. *Cf.* Beavers v. Saffle, No. 99-6154, 2000 WL 775582, *3 (10th Cir. June 16, 2000); Klein v. Neal, 45 F.3d 1395,

1400 (10th Cir. 1995); Brecheen v. Reynolds, 41 F.3d 1343, 1357 (10th Cir. 1994). The fundamental miscarriage of justice exception is limited to “those rare situations ‘where the State has convicted the wrong person of the crime. . . . [or where] it is evident that the law has made a mistake.’” Klein, 45 F.3d at 1400 (citation and quotation omitted). The exception does not apply to petitioner’s claims. His claims are procedurally barred and, at any rate, he has not made a substantial showing of the denial of a constitutional right.

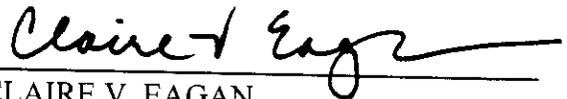
CONCLUSION

For the reasons cited herein, the undersigned recommends that the Petition for Writ of Habeas Corpus (Dkt. # 1) be **DENIED**.

OBJECTIONS

Within ten days after being served with a copy of this Report and Recommendation, a party may serve and file specific, written objections with the Clerk of the District Court. 28 U.S.C. § 636(b)(1); Rules Governing § 2254 Cases in the United States District Courts; Rule 8(b). If such objections are timely filed, the District Judge assigned to this case will conduct a *de novo* review of the record and determine whether to adopt or revise this Report and Recommendation or whether to recommit the matter to the undersigned. Id. As part of the *de novo* review, the District Judge will consider the parties’ written objections to the Report and Recommendation. If no objections are timely filed, the District Court may adopt the Report and Recommendation without any review. **The failure to file written objections may bar the party failing to object from appealing any of the factual or legal findings in this Report and Recommendation that are accepted or adopted by the District Court.** See Thomas v. Arn, 474 U.S. 140 (1985); Haney v. Addison, 175 F.3d 1217 (10th Cir. 1999); United States v. One Parcel of Real Property, 73 F.3d 1057 (10th Cir. 1996).

Dated this 2nd day of August, 2000.



CLAIRE V. EAGAN
UNITED STATES MAGISTRATE JUDGE

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing pleading was served on each of the parties hereto by mailing the same to them or to their attorneys of record on the

2nd Day of August, 2000.
C. Pettibone, Deputy Clerk

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

UNION OIL COMPANY OF
CALIFORNIA,

Plaintiff,

v.

BRUCE BABBITT, et al.,

Defendants.

ENTERED ON DOCKET

DATE AUG 2 2000

Case No. 99-CV-57-K

F I L E D

AUG 02 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

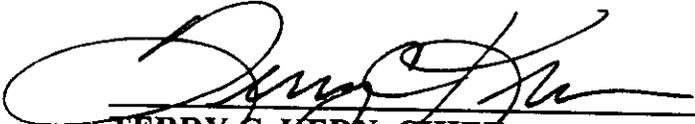
JUDGMENT

This matter came before the Court for consideration of the parties' Cross-Motions for Summary Judgment. Having considered the issues and rendered a decision in accordance with the Order filed contemporaneously herewith,

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that judgment is entered in favor of Plaintiff and against Defendants as to Count 1.

IT IS ORDERED, ADJUDGED, AND DECREED that judgment is entered for Defendants and against Plaintiff as to Count 2 of the complaint..

ORDERED THIS 2 DAY OF AUGUST, 2000.


TERRY C. KERN, CHIEF
UNITED STATES DISTRICT JUDGE

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

UNION OIL COMPANY OF
CALIFORNIA,

Plaintiff,

vs.

BRUCE BABBITT, SECRETARY,
DEPARTMENT OF THE INTERIOR,
et al,

Defendants.

ENTERED ON DOCKET
AUG 2 2000
DATE _____

No. 99-CV-57-K ✓

FILED

AUG 02 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

O R D E R

Before the Court are the cross-motions of the parties for partial summary judgment with respect to Count 2. Plaintiff brings this action seeking a declaratory judgment that three "Orders to Pay" issued to plaintiff by the Minerals Management Service (MMS) on October 18, 1996, December 20, 1996 and July 22, 1997, respectively are invalid or otherwise barred in part, and seeking injunctive relief against enforcement of those orders. The first two Orders to Pay require plaintiff to pay additional royalties, plus late charges regarding California leases. The third Order to Pay requires plaintiff to pay additional royalties, and to recalculate and pay other royalties, on crude oil produced from onshore and offshore federal leases in California during the period March 1, 1988 through the time of issuance, excluding 1993.

Plaintiff Union Oil Company of California ("Unocal") is a purchaser of crude oil from federal oil and gas leases onshore and offshore California on leases issued under the Mineral Leasing Act,

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30 U.S.C. §§ 181-287 and the Outer Continental Shelf Lands Act, 43 U.S.C. §§ 1331-1356.

The Secretary of the Interior administers these leases and has authority to determine royalty value under these acts and the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. §§ 1701-1757. The MMS is the agency of the Department of the Interior (DOI) responsible for determining royalty value and collecting royalties due on federal and Indian oil and gas leases.

The present motions address only Count 2 of the complaint, which challenges the portion of the Order to Pay issued July 22, 1997 which assessed additional royalties or required recalculation of royalties for production from federal leases in and off the shore of California from March 1, 1988 to July 21, 1991. In its motion, plaintiff limits its claim for relief to those royalty payments which are allegedly due and payable under the Order for the period March 1, 1988 through June 30, 1990. (Plaintiff's Brief at 1 n.1).

Plaintiff argues that the Orders to Pay are barred by operation of the six-year statute of limitations in 28 U.S.C. §2415(a). Section 2415 states in pertinent part as follows:

Subject to the provisions of section 2416 of this title. . . every action for money damages brought by the United States . . . or [an] agency thereof which is founded upon any contract . . . shall be barred unless the complaint is filed within six years after the right of action accrues or within one year after final decisions have been rendered in applicable administrative proceedings required by contract or by law, whichever is later.

The government denies that this provision is applicable to MMS royalty orders. This Court has already rejected the government's

position in Shell Oil Co. v. Babbitt, No. 96-C-1078-K (N.D.Okla.Oct.5, 1998). That decision is presently before the United States Court of Appeals for the Tenth Circuit. This Court therefore sees no reason to reiterate its analysis, which found that the result was dictated by Tenth Circuit precedent.

Defendants also argue that even if the statute of limitation applies to MMS orders, the statute was tolled here for such time that the July 22, 1997 Order to Pay is timely. A cause of action to recover unpaid royalties accrues under 28 U.S.C. §2415(a) "on the date the contract was breached, which was the date the royalties were due and payable." Phillips Petroleum Co. v. Lujan, 4 F.3d 858, 861 (10th Cir.1993). Thus, under plaintiff's argument, all claims for royalties which were due and payable on or before June 30, 1990 (i.e., six years prior to the July, 1996 audit engagement letter) are time-barred.

Excluded from the six-year limitation period is the time during which "facts material to the right of action are not known and reasonably could not be known by an official of the United States charged with the responsibility to act in the circumstances." 28 U.S.C. §2416(c). Thus, the limitation period "is tolled until such time as the government could reasonably have known about a fact material to its right of action." Phillips, 4 F.3d 858, 862 (10th Cir.1993). The "'reasonableness' requirement expressly set forth under §2416(c) is a complex factual determination to be made by the district court." Id. at 863.

Summary judgment is appropriate if, after reviewing all the

evidence submitted in the light most favorable to the non-movant, no genuine issue of material fact survives to merit a trial. Chambers v. Colorado Dept. of Corrections, 205 F.3d 1237, 1241 (10th Cir.2000) (citations omitted); Rule 56(c) F.R.Cv.P. When the parties file cross-motions for summary judgment, the Court is entitled to assume that no evidence needs to be considered other than that filed by the parties, but summary judgment is nevertheless inappropriate if disputes remain as to material facts. James Barlow Family Ltd. Partnership v. David M. Munson, Inc., 132 F.3d 1316, 1319 (10th Cir.1997), cert. denied, 523 U.S. 1048 (1998). Where different ultimate inferences may properly be drawn, the case is not one for summary judgment. Seamons v. Snow, 206 F.3d 1021, 1026 (10th Cir.2000). In the case at bar, the parties have waived jury trial. (See Proposed Pretrial Order). Thus, the resolution of differing inferences is for the Court.

Resolution of the case at bar involves interpretation of two Tenth Circuit opinions. In Phillips Petroleum Co. v. Lujan, 4 F.3d 858 (10th Cir.1993), the government sought to recover unpaid royalties and the oil company argued the action was time-barred. As already noted, the court ruled that the government's right of action accrued on the date the royalties were due and payable. The court went on to hold that the six-year statute of limitation is tolled until such time as the government could reasonably have known about a fact material to its right of action. Id. at 862.

In response to the contention that such tolling granted the government unbridled discretion as to when to commence audits, the

Tenth Circuit stated "[t]he time consumed before initiating and completing the audit is not within the government's discretion. . . ." Id. at 863. Rather, "the 'reasonableness' requirement expressly set forth under §2416(c) is a complex factual determination to be made by the district court." Id.

The Tenth Circuit went to provide district courts with "some guidance" in making the reasonableness determination. It stated that district courts "should be wary of rubber stamping the timing of government audits." Id. Further, the Tenth Circuit stated "if the government fails to initiate an audit within six years after the records were generated, the delay is per se unreasonable." Id. at 864.

The second pertinent decision is Mobil Exploration & Producing U.S. Inc. v. Department of Interior, 180 F.3d 1192 (10th Cir.1999). In that case, the Tenth Circuit was reviewing a record request more than six years after the records were generated. Plaintiffs contended that the "per se unreasonable" language of Phillips rendered such a request invalid. As the government notes, the Mobil court described this language as "dictum". 180 F.3d at 1202. However, the Mobil court went on to discuss how the factual context of Phillips differed, and stated "[i]n this limited scope, the [Phillips] court warned that 'if the government fails to initiate an audit within six years after the records were generated,' . . . then the government's delay will not invoke the tolling of the six-year statute of limitations to pursue an action to collect unpaid royalties under 28 U.S.C. §2415." 180 F.3d at 1202.

Thus, it seems the Mobil court meant that the "per se unreasonable" language of Phillips is "dictum" as to the facts in Mobil. That is, a delay of over six years to commence an audit is per se unreasonable as to an action for collection of royalties, not as to a request for documents. Contrary to the government's argument herein, the Mobil court essentially reaffirmed the Phillips court in its "guidance" to district courts regarding the reasonableness determination. The Mobil court did say, rather inexplicably, that the "per se unreasonable" language in Phillips was "not directly related to the facts or the holding of the case". Yet the court completed this same sentence by stating the language "was simply intended to guide the district court's determination on remand." 180 F.3d at 1202. This Court finds it anomalous that the language can be both dictum and guidance simultaneously. If the Tenth Circuit intended the "per se unreasonable" statement as guidance, then it is binding to some extent.

The government's response on this point is intriguing. It argues that, because Mobil did not deal with an Order to Pay, the discussion of Phillips in the Mobil opinion is itself dictum. (Defendants' Opposition Brief at 5). Yet the government relies on that portion of Mobil which describes the "per se unreasonable" language in Phillips as dictum. Perhaps like a "double negative" in English grammar, the government's notion of "double dictum" means that the Mobil decision has no effect on the "per se unreasonable" language in Phillips. The government does not elaborate on the consequences of its argument.

The dispositive question is, even accepting the "per se unreasonable" language as guidance, what is the effect under the facts of this case? Plaintiff asserts: "While the July 18, 1996 audit engagement letter tolls the statute as of that date, the MMS' delay in commencing its purported audit until July 1996, was per se unreasonable and foreclosed any claims arising more than six years prior to that date." (Plaintiff's Memorandum at 5). This would be correct if the statute of limitation commenced at the same time that the claim accrued. The Tenth Circuit in Phillips made clear that it does not. Rather, "if a breach is very egregious or the government is somehow informed that the breach occurred, then the statute of limitations may commence to run at the time of the breach." 4 F.3d at 863 n.7 (emphasis added). "In the majority of royalty disputes, however, the government will need to conduct an audit to discover that a breach occurred." Id. at 863.

The government seeks to use this last statement as a foundation for, effectively, a twelve-year statute of limitation. "Because under FOGRMA, six years is a reasonable time to begin an audit, the limitations period cannot begin to run until at least six years after the lessee breaches its royalty obligations. . . . Thus, as a matter of law, the MMS has at least twelve years from the date the MMS's right of action accrues to issue and order to pay - six years to initiate and conduct an audit before the six year limitations period begins to run." (Defendants' Memorandum at 9). The Court is not prepared to adopt this contention. It is unclear how such a holding would be reconciled with the Tenth

Circuit's admonition against "rubber stamping" the timing of government audits. 4 F.3d at 863.

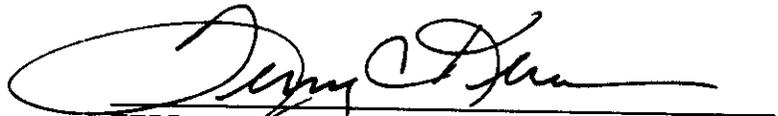
Thus, under existing precedent, the district court may find itself in a quandary. An audit has been commenced over six years after the pertinent records were generated, which is per se unreasonable. However, this does not of itself render the Order to Pay untimely because the statute of limitation only commences "at the time the audit should have been completed." Id. (emphasis added). Absent its own "audit" of the MMS decision-making process, a district court could be left to mere guesswork in making such a determination.

Such is not the situation in the case at bar, however. Defendants have pointed to plaintiff's responses to requests for admission submitted pursuant to Rule 36 F.R.Cv.P.¹ In those responses, attached as Exhibit 3 to Defendants' Memorandum, plaintiff admits that the MMS could not reasonably have completed an audit before July 21, 1991 of the records in question, and that the MMS could not reasonably have known of the facts material to the challenged portion of the July 22, 1997 Order to Pay until the audit was completed. Accordingly, under Tenth Circuit precedent, the six-year statute of limitation had not begun to run before July 22, 1991 and the portion of the July 22, 1997 Order to Pay challenged in this action is timely in its entirety.

¹Admissions made under Rule 36 can serve as the factual predicate for summary judgment. United States v. Kasuboski, 834 F.2d 1345, 1350 (7th Cir.1987).

It is the Order of the Court that the motion of the plaintiff for partial summary judgment (#37) is hereby DENIED and the motion of the defendants for partial summary judgment (#35) is hereby GRANTED. Coupled with previous rulings, this Order constitutes a final Order in this litigation.

ORDERED this 2 day of August, 2000.

A handwritten signature in black ink, appearing to read "Terry C. Kern", written over a horizontal line.

TERRY C. KERN, Chief
UNITED STATES DISTRICT JUDGE

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

FILED
RECEIVED

AUG 1 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

JAMES HERBERT MANN, JR.,)
)
 Petitioner,)
)
 vs.)
)
 STATE OF OKLAHOMA,)
)
 Respondent.)

Case No. 00-CV-343-B

00CV512K

ENTERED ON DOCKET

AUG 01 2000

DATE _____

ORDER

On April 26, 2000, Petitioner, a state inmate appearing *pro se*, submitted for filing a document entitled "Affidavit" (Docket #1) and a motion for leave to proceed *in forma pauperis* (Docket #2). In his affidavit, Petitioner requested an enlargement of time within which to file his petition for writ of habeas corpus. Petitioner explained that he was waiting on a ruling by the Oklahoma Supreme Court concerning his challenge to his criminal conviction entered in Tulsa County District Court, Case No. CF-97-4255. The Clerk of Court opened a file for Petitioner's pleadings and assigned Case No. 00-CV-343-B to the file.

Thereafter, on June 16, 2000, Petitioner submitted his petition for writ of habeas corpus, challenging his conviction entered in Tulsa County District Court, Case No. CF-97-4255. Although the petition for writ of habeas corpus clearly related to the action assigned Case No. 00-CV-343-B, the Clerk of Court inadvertently accepted the petition as a new filing and opened a new file, assigning Case No. 00-CV-512-K (M). After being denied leave to proceed *in forma pauperis*, Petitioner has now paid the \$5.00 filing fee for Case No. 00-CV-512-K (M).

The Court finds that two separate case files should not have been opened in this matter. Therefore, the Clerk of Court is directed to transfer all documents filed in Case No. 00-CV-512-K

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(M) to Case No. 00-CV-343-B and to docket the petition for writ of habeas corpus filed on June 16, 2000 as the petition for writ of habeas corpus in Case No. 00-CV-343-B. Likewise, the fee paid in Case No. 00-CV-512-K (M) shall be transferred to Case No. 00-CV-343-B. All future pleadings submitted in this matter shall be filed in Case No. 00-CV-343-B. Because the filing fee required to commence this habeas corpus action has been paid in full, the Court finds the motion for leave to proceed *in forma pauperis* (Docket #2), filed April 26, 2000 in Case No. 00-CV-343-B, has been rendered moot. The Clerk is directed to close administratively Case No. 00-CV-512-K. The Clerk is also directed to file a copy of this Order in Case No. 00-CV-512-K.

SO ORDERED THIS 15th day of Aug, 2000.


THOMAS R. BRETT, Senior Judge
UNITED STATES DISTRICT COURT

SM

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

F I L E D

AUG - 1 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

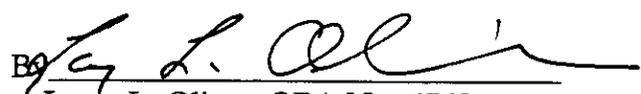
ROBERT L. MCBEE, JR.,)
)
Plaintiff,)
)
vs.)
)
STANDARD TESTING AND)
ENGINEERING COMPANY,)
an Oklahoma corporation,)
)
Defendant.)

Case No. 00CV0045B (J)

ENTERED ON DOCKET
DATE AUG 01 2000

JOINT STIPULATION OF DISMISSAL WITH PREJUDICE

COME NOW the parties, pursuant to Rule 41(a)(1), Fed.R.Civ.P., and jointly stipulate that the captioned matter be dismissed with prejudice. Each party shall bear its own costs and attorneys' fees.

By 

Larry L. Oliver, OBA No. 6769
Larry L. Oliver & Associates, P.C.
2211 East Skelly Drive
Tulsa, OK 74105
Telephone: (918) 745-6084
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ATTORNEYS FOR PLAINTIFF

By 

Michael F. Lauderdale, OBA No. 14265
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McAFEE & TAFT
A PROFESSIONAL CORPORATION
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211 North Robinson Avenue
Oklahoma City, OK 73102
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Telecopy: (405) 235-9621
ATTORNEYS FOR DEFENDANT

B

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

FILED

TERI L. EMBERY,)
)
Plaintiff,)
)
vs.)
)
REPUBLIC FIRE AND CASUALTY,)
)
Defendant.)

AUG - 1 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ENTERED ON DOCKET
AUG 1 2000

DATE _____

Case No. 00CV0583K_ (J) ✓

DISMISSAL WITHOUT PREJUDICE

COMES NOW the Plaintiff, Teri Embery, and dismisses the above action
without prejudice to refileing the same.

Johnny P Akers

Johnny P. Akers, OBA#10711
Law Center
401 South Dewey, Suite 214
Bartlesville, Oklahoma 74003
(918) 336-1818
(918) 338-0888

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mail copy / C-J

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUL 28 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 DEBRA K. FANCHER,)
)
 Defendant.)

Case No. 00CV0212H(M) ✓

ENTERED ON DOCKET

DATE AUG 1 2000 ✓

NOTICE OF DISMISSAL

COMES NOW the United States of America by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, Plaintiff herein, through Phil Pinnell, Assistant United States Attorney, and hereby gives notice of its dismissal, pursuant to Rule 41, Federal Rules of Civil Procedure, of this action without prejudice.

Dated this 28th day of July, 2000.

UNITED STATES OF AMERICA

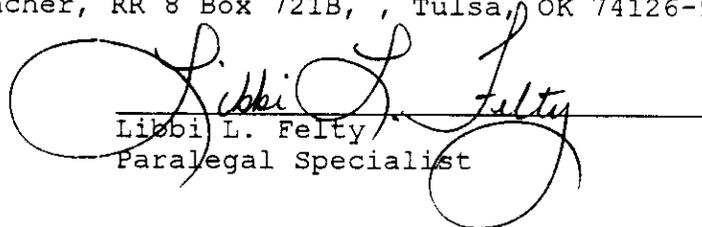
Stephen C. Lewis
United States Attorney



PHIL PINNELL, OBA #7169
Assistant United States Attorney
333 W. 4th Street, Suite 3460
Tulsa, Oklahoma 74103-3809
(918) 581-7463

CERTIFICATE OF SERVICE

This is to certify that on the 28th day of July, 2000, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to: Debra K. Fancher, RR 8 Box 721B, , Tulsa, OK 74126-9509.



Libbi L. Felty
Paralegal Specialist

C/S

FILED

JUL 28 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 WILLIAM ALEXANDER,)
)
 Defendant.)

Case No. 00CV0309H(M) ✓

ENTERED ON DOCKET

DATE AUG 1 2000 ✓

NOTICE OF DISMISSAL

COMES NOW the United States of America by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, Plaintiff herein, through Phil Pinnell, Assistant United States Attorney, and hereby gives notice of its dismissal, pursuant to Rule 41, Federal Rules of Civil Procedure, of this action without prejudice.

Dated this 28th day of July, 2000.

UNITED STATES OF AMERICA

Stephen C. Lewis
United States Attorney

Phil Pinnell

PHIL PINNELL, OBA #7169
Assistant United States Attorney
333 W. 4th Street, Suite 3460
Tulsa, Oklahoma 74103-3809
(918) 581-7463

CERTIFICATE OF SERVICE

This is to certify that on the 28th day of July, 2000, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to: William Alexander, 4918 E. 27th St., Tulsa, OK 74114.

Libbi L. Felty

Libbi L. Felty
Paralegal Specialist

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

F I L E D

JUL 31 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

TAX AND ACCOUNTING SOFTWARE)
CORPORATION, TIM E. KLOEHR)
AND SHERYL KLOEHR,)
)
Plaintiffs,)
)
v.)
)
UNITED STATES OF AMERICA)
)
)
Defendant.)

No. 98-CV-363E

ENTERED ON DOCKET
DATE AUG 01 2000

ORDER

Now before the Court are the cross motions for summary judgment of the Plaintiffs, Tax and Accounting Software Corporation, Tim Kloehr and Sheryl Kloehr (collectively referred to as "TAASC") and the Defendant, United States of America (referred to herein as the "IRS").

TAASC creates and sells software programs designed to be used by tax and accounting professionals. This dispute involves tax credits that were claimed by TAASC for tax years 1993 and 1994 under the "research credit" provisions of §41 of the Internal Revenue Code for expenses incurred in the creation of such software.

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); *Windon Third Oil & Gas v. FDIC*, 805 F.2d 342 (10th Cir. 1986). In *Celotex*, the court stated:

The plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon

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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.

477 U.S. at 317 (1986). 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). The evidence and inferences therefrom must be viewed in a light most favorable to the nonmoving party. *Conaway v. Smith*, 853 F.2d 789, 792 n. 4 (10th Cir. 1988). Unless the Defendants can demonstrate their entitlement beyond a reasonable doubt, summary judgment must be denied. *Norton v. Liddel*, 620 F.2d 1375, 1381 (10th Cir. 1980).

The Tenth Circuit Court of Appeals decision in *Committee for the First Amendment v. Campbell*, 962 F.2d 1517 (10th Cir. 1992), concerning summary judgment states:

Summary judgment is appropriate if "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." . . . Factual disputes about immaterial matters are irrelevant to a summary judgment determination . . . We view the evidence in a light most favorable to the nonmovant; however, it is not enough that the nonmovant's evidence be "merely colorable" or anything short of "significantly probative."

* * *

A movant is not required to provide evidence negating an opponent's claim . . . [r]ather, the burden is on the nonmovant, who "must present affirmative evidence in order to defeat a properly supported motion for summary judgment." . . . After the nonmovant has had a full opportunity to conduct discovery, this burden falls on the nonmovant even though the evidence probably is in possession of the movant. (Citations omitted.)

Id. at 1521.

Facts

The undisputed facts are as follows¹: TAASC is an Oklahoma corporation and is taxed as a Subchapter S corporation. TAASC develops and markets computer software programs. Tim E. Kloehr is the sole shareholder of TAASC. In 1993, all income of TAASC was reported on Tim Kloehr's individual tax return and in 1994, all income of TAASC was reported on the joint return filed by Tim Kloehr and his wife, Sheryl Kloehr.

During tax years 1993 and 1994, TAASC was in the process of developing four software products, i.e., 1.) EasyACCT an accounting program for use by accounting and business professionals; 2.) EasyMICR, a method of printing bank codes and other information on checks; 3.) the Professional Tax System, a comprehensive system for preparing federal and state returns for a variety of reporting entities for use by accounting professionals; and 4.) EasyTEL, a call processing system for use in small to mid-size professional offices.

In the development of EasyACCT, TAASC's design goal was to create a software program which could satisfy the varying needs of a business as well as a professional accounting firm. The EasyACCT software fully integrated a variety of accounting functions and features for both recording transactions and accumulating historic data into one system and allowed data to be transferred between accounting function modules and a tax

¹ The IRS does not dispute the chronology of facts set out in TAASC's affidavits. The IRS criticizes certain characterizations and conclusions drawn by TAASC as to whether a program was "large and complex" or whether certain actions amount to "research" or "experiments" or "discoveries". As pointed out by the IRS, terms such as "large and complex" are relative terms and it is the opinion of the IRS' expert that the programs in question are not "large and complex". This Court does not believe that the determination of "large and complex" is determinative of the outcome of this case. As to a description of the relevant activities of TAASC, the Court prefers to use the terms "develop" or "create" (in the vernacular). Whether such activities rise to the level of the terms of art used in §41 are ultimately conclusions of law to be determined by the Court.

preparation system. When EasyACCT was introduced, there was no other software system on the market which integrated these abilities. Business and professional accounting firms, therefore, typically were required to use a number of separate programs to perform the variety of tasks required. Critical to TAASC's goal was the ability to design the system within the memory constraints of computer hardware available at the time and maintain the compatibility functions and clean movement between screens and options provided by its separate, less complex programs. TAASC developed a single Invoices/Receivables module to be integrated with the existing system. TAASC intended to design a single transaction feature from which all activities could be recorded, edited and posted. Invoices/Receivables programs on the market at that time featured separate modules for order taking and accounts receivables. The single transaction module would also allow the user to record items in inventory to set up inventory items, another feature unique at that time. These features were included in the release of EasyACCT in 1995.

During 1993, TAASC conducted research for the design of EasyMICR, a program designed to print magnetic ink character banking transit codes on blank check stock. The program was intended for users of Quicken and Quickbooks and would allow them to print checks on blank stock relieving them of the necessity of buying preprinted check stocks from a supplier. TAASC was required to design two programs, one in the DOS format, and one in the Windows format. The research conducted by TAASC led to significant developments. The DOS program used very little memory, and the Windows' program would run in standard, protected or enhanced modes. Although a technological success, the EasyMICR system was a commercial failure as a stand alone product. It has since been integrated into EasyACCT.

The Professional Tax System is a comprehensive tax preparation software program which prepares returns for a variety of entities such as individuals, corporations, partnerships, trusts and others. Prior to TAASC's development of this system, accountants had to use separate programs to prepare returns for each type of entity. The Professional Tax System combined several programs into a single system. Through that combination, TAASC was able to create many new features to this product that were unavailable in competitive products. As with the EasyACCT accounting system, the integration of these previously independent programs into a single system and the addition of new features resulted in a relatively large and complex program. A critical element of TAASC's design goal, therefore, was to produce a system that minimized the memory space required on a user's computer, and operated at speeds higher than its competitors.

During 1993 and 1994, TAASC also worked on the development of EasyTEL, an automated multi-tasking call processing system. This product, which combines computer hardware and software, is used in connection with a PBX system or directly with the telephone company's public switched network to answer and transfer telephone calls, take voice mail messages, supply Audiotex information services, receive and convert fax messages to email, and act as a fax distribution system. TAASC's goal in the development of EasyTEL was to produce a product which could perform a large number of tasks simultaneously but have a lower cost per unit than other automated call processing systems. TAASC hoped to achieve this goal by using lower cost hardware and requiring a minimum of administrative maintenance. The use of lower cost hardware, however, required that TAASC overcome certain software design problems. Prior to this design, there were no known products on the market which integrated all of the functions to be placed within the EasyTEL system. The systems then available provided only some of the EasyTEL functions

and used very expensive computer hardware and multitasking operating systems. These other systems were very difficult to set up and maintain. They required the use of programming commands and languages to successfully install such a system and additional commands to change or maintain the system. TAASC's goal was to design a system that used readily available low cost parts (such as those used in existing PC computers) and could be installed or maintained by non-technical individuals.²

The EasyACCT system and Professional Tax System designed by TAASC enjoyed commercial success, having 6959 customers in 1994, 9887 customers in 1995 and 12,146 customers in 1996. In 1993, TAASC incurred a total of \$1,838,756 in research development expenses for the above described software products. Likewise, the research and development expenses were \$2,444,938 in 1994. The IRS allowed these expenses to be used as deductions under §174, but disallowed the same expenses as a credit under §41. TAASC has paid all taxes owed for 1993 and 1994 and has submitted refund claims in the amount of \$123,764 for 1993 and \$192,510 for 1994.

ANALYSIS

The Court's task herein is to determine whether any or all of the pertinent software development activities of TAASC constitute "qualified research" for purposes of the tax credit provided by §41 of the Internal Revenue Code (26 U.S.C. §41 (d)(1)). The tax code sets out several tests that must be met for "qualified research". First, the research must have qualified as a business deduction under §174. See *id.* § 41(d)(1)(A). Second, the research must be undertaken to "discover information which is technological in nature." *Id.* §

²The affidavits submitted to the Court under an Agreed Confidentiality Order contain descriptions of numerous experiments and tests that were conducted in an effort to achieve the goals set by TAASC on each of the software systems. Because of the agreed proprietary and confidential nature of the descriptions in the affidavits, the Court will not attempt to describe those acts in this Order.

41(d)(1)(B)(i). Third, the taxpayer must intend to use the information to develop a new or improved business component. *Id.* § 41(d)(1)(B)(ii). Finally, the taxpayer must pursue a "process of experimentation" during substantially all of the research. *Id.* § 41(d)(1)(C).³

There have been very few reported cases construing the §41 credit as it applies to the creation of computer software programs. Two cases have analyzed the tests of §41 as they pertain to software that has been created for the "internal use" of the taxpayer. *Norwest Corporation and Subsidiaries v. Commissioner of Internal Revenue*, 110 T. C. 454, (1998); *United Stationers, Inc. v. United States*, 982 F. Supp. 1279 (N.D. Ill. 1997), *affirmed* 163 F.3d 440 (7th Cir. 1998). There have been no reported cases applying §41 to software which has been created to be licensed commercially.

Section 41 is construed much more strictly for "internal use" software than it is for "commercial" software and requires that seven tests must be met for "internal use" software rather than the four stated above. *Norwest*, *supra*, at 456. While the courts' analyses contained in *Norwest* and *United Stationers* were very helpful to this Court on the requirements of §41, the Court does not believe that those cases fully comply with the Congressional intent of §41 and are not applicable to cases involving software developed for the commercial market.

In the case of *Chevron, U.S.A. v. Natural Resources Defense Council*, 467 U.S. 837, 104 S.Ct. 2778 (1984), the United States Supreme Court established a two-step method for

³The term "qualified research" means research--
(A) with respect to which expenditures may be treated as expenses under section 174,
(B) which is undertaken for the purpose of discovering information--
(i) which is technological in nature, and
(ii) the application of which is intended to be useful in the development of a new or improved business component of the taxpayer, and
(C) substantially all of the activities of which constitute elements of a process of experimentation for a purpose described in paragraph (3).

judicial review of an agency's interpretation of a statute that it administers. The *Chevron* Court relied on the principle that policy choices are for the political branches of government, and Congress is the supreme branch for making such choices. Under *Chevron*, however, courts retain their traditional role to interpret statutes.

Reviewing courts must first use "traditional tools of statutory construction" to determine whether "Congress has directly spoken to the precise question at issue." 467 U.S. at 843, 104 S. Ct. at 2782. If Congress has clearly expressed its intent in the plain language of the statute, the Court, as well as the agency, must give effect to the unambiguously expressed intent of Congress. If the language of the statute is determined to be either ambiguous or silent on the particular issue, the reviewing court is free to proceed to the second inquiry of *Chevron*, *i.e.*, whether the agency's interpretation is based on a permissible construction of the statute.⁴

A. The "Section 174" and the "Business Component" Tests

The §174 test requires that the research expenditures qualify as expenses under §174 of the Internal Revenue Code. Section 174 generally allows as a current deduction, research and experimental expenditures which are paid or incurred by the taxpayer in connection with the operation of a trade or business. In the present case, the parties agree that TAASC has met this test.

⁴See, e.g., *City of Chicago v. Environmental Defense Fund*, 511 U.S. 328, 114 S.Ct. 1588, 128 L.Ed.2d 302 (1994). The Supreme Court stated the threshold inquiry in *Chevron* in terms of whether Congress has unambiguously foreclosed the interpretation offered by an agency. See *MCI Tel. Corp. v. American Tel. & Tel. Co.*, 512 U.S. 218, 114 S.Ct. 2223 (1994) (concluding that the agency interpretation went "beyond the meaning that the statute can bear"); *Environmental Defense Fund*, 511 U.S. at 334, 114 S.Ct. at 1594, 128 L.Ed.2d at 312 (same for interpretation that went "beyond the scope of whatever ambiguity" existed); and *John Hancock Mutual Life Ins. Co. v. Harris Trust and Savings Bank*, 510 U.S. 86, 114 S.Ct. 517, 126 L.Ed.2d 524 (1994) (same for interpretation that "exceeded the scope of available ambiguity").

In addition, the “business component test” requires that the research be undertaken for the purpose of discovering information the application of which is intended to be useful in the development of a new or improved business component of the taxpayer. TAASC has submitted evidence that the activities in question “relate to a new or improved function, performance, reliability or quality of a product”. H. Conf. Rept. 99-841 (Vol. II), 1986-3. The IRS does not challenge TAASC’s assertion or evidence that it has met this test.

B. The “Technology” or “Discovery” Test

Section 41 requires that the research activity in question be for the purpose of “discovering information that is technological in nature”. The IRS and the Courts in *Norwest* and *United Stationers* have erroneously tried to divide this requirement into two tests with the first being whether the taxpayer’s actions can be considered a “discovery” in the scientific sense (the “Discovery Test”). However, that construction of the statutory language would be a strained and improper reading without any support in the legislative history to back it up. The emphasis should be on whether the information qualifies as being “technological in nature” (the Technology Test), not whether the work could be considered a revolutionary discovery in the scientific sense. The statutory language was intended to differentiate between information that is technologically based from that which is non-technologically based. As stated by Congress in 1986:

The determination of whether research is undertaken for the purpose of discovering information that is technological in nature depends on whether the process of experimentation utilized in the research *fundamentally relies on principles of the physical or biological sciences, engineering, or computer science* - in which the information is deemed technological in nature - or on other principles, such as economics - in which case the information is not to be treated as technological in nature. (Emphasis added)

H. R. Conf. Rep. No. 99-841, Vol II at 71 (1986).

Although the word "discovery" is susceptible of conveying several meanings, "discover", "determine", "ascertain", "detect", "unearth" and "learn" are synonyms and are treated as such in common usage.⁵ Common usage provides acceptable grounds on which to divide statutory terms into primary, secondary, and other meanings.⁶ The Court does not agree with the IRS's contention that this Court should ignore the common usage of certain words in favor of a "scientific" meaning.⁷

The IRS argues that in order for research to pass the "Discovery" test, it requires "newness and expansion of existing knowledge". Furthermore, the regulations created by the IRS require "obtaining knowledge that exceeds, expands, or refines the common knowledge of skilled professionals in the particular field of technology or science". Proposed Reg. Sec. 1.41-4(a)(3). However, there is no support for this position in the statute or the legislative history. The purpose of the "technology" requirement of §41 is to eliminate the "soft sciences" from contention for the credit, not to focus on the word "discovery".

The Court is further persuaded by the fact that subsequent to the decision in *Norwest* and *United Stationers*, Congress stated:

...However, eligibility for the credit *does not require that the research be successful* – i.e., the research need not achieve its desired result. Moreover, evolutionary research activities intended to improve functionality,

⁵See Webster's Third New International Dictionary, p.647

⁶

See, e.g., *Mallard v. United States Dist. Court*, 490 U.S. 296, 301, 109 S.Ct. 1814, 1818, 104 L.Ed.2d 318 (1989) *Ardestani v. I.N.S.*, 502 U.S. 129, 112 S.Ct. 515, 519, 116 L.Ed.2d 496, 504 (1991), *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 153, 110 S.Ct. 471, 476, 107 L.Ed.2d 462 (1989) .

⁷

The IRS also contends that some of the terms used by the Plaintiff's in their briefs are used in their vernacular sense when, in fact, the court should follow the "scientific" definition to determine whether the Plaintiffs' actions meet the required burden.

performance, reliability, or quality are eligible for the credit, as are research activities intended to achieve a result that has already been achieved by other persons but is not yet within the common knowledge (e.g., freely available to the general public) of the field ...(Emphasis Added)

H.R. Conf. Rep. 105-825, at 2 (1998)

While Congressional comments which are post-enactment do not have the weight of contemporary legislative history, the Court would be remiss in its duties if it were to ignore evidence of Congressional intent.⁸ In the statement above, Congress states that the research does not have to be successful and it need not achieve its “desired result”. While it is possible to “expand the existing knowledge” with unsuccessful research, this Court believes that the criteria championed by the IRS and the regulations cited above are somewhat inconsistent with Congress’s statement that the research does not need to achieve its intended result.⁹

Similarly, Congress has voiced disagreement with the IRS’s assertion that the research must “obtain knowledge that exceeds, expands or refines the common knowledge of skilled professionals in the particular field of technology or science”. When recently extending the life of §41, Congress made it clear that the IRS’s regulations do not follow the intent of Congress.

In H.R. Conf. Rep. No. 478, 106th Cong., 1st Sess. 1999, the Senate and House Conferees state:

The conferees wish to reaffirm that qualified research is research undertaken for the purpose of discovering new information which is technological in nature. For purposes of applying this definition, *new information is information that is new to the taxpayer*, is not freely

⁸*Michigan United Conservation Clubs v. Lujan et. al.* 949 F.2d 202 (6th Cir. 1991)

⁹

The phrase used is “evolutionary research”, not “revolutionary research”. This suggests to the Court a pattern of research that is unfolding in a series of events rather than something that is a radical change from the norm.

available to the general public, and otherwise satisfies the requirements of section 41. Employing existing technologies in a particular field or relying on existing principles of engineering or science is qualified research, if such activities are otherwise taken for purposes of discovering information to satisfy the other requirements of section 41. (Emphasis added)

Some of the documentation submitted to the Court by the IRS shows that TAASC and the software vendors who are their competition, were all trying to develop “suites” of software applications or applications that were integrated with each other¹⁰. The IRS’s documentation also shows that this was something that had previously not been available to the public. It is not required that TAASC be the first to learn how to integrate the respective accounting functions, nor is it required that the technologies used be non-existent at the time. TAASC was using existing technologies to develop integrated accounting and tax software that operated within certain RAM requirements. The evidence shows that this final product was a new and more efficient combination of software that was not available to the public and that the competition was stiff to develop and bring such a product to the market. The Court finds that TAASC has performed activities which have ascertained or determined information that was new to TAASC, and was not generally available to the public, where the process of experimentation utilized in the research fundamentally relies on principles of computer science, and is, therefore, technological in nature.

¹⁰ See Appendix C to the United State’s Opposition to Plaintiff’s Motion for Summary Judgment.

C. The Process of Experimentation Test

The process of experimentation test requires that substantially all of the activities which constitute elements of a process of experimentation relate to a new or improved function, performance, reliability, or quality. The process of experimentation test is explained by Congress as follows:

The term process of experimentation means a process involving the *evaluation of more than one alternative* designed to achieve a result where the means of achieving that result is uncertain at the outset. This may involve developing one or more hypotheses, testing and analyzing those hypotheses (through, *for example*, modeling or simulation), and refining or discarding the hypotheses as part of a sequential design process to develop the overall component. Thus, for example, costs of developing a new or improved business component are not eligible for the credit if the method of reaching the desired objective (the new or improved product characteristics) is readily discernible and applicable as of the beginning of the research activities, so that true experimentation in the scientific or laboratory sense would not have to be undertaken to develop, test, and choose among the viable alternatives. On the other hand, costs of experiments undertaken by chemists or physicians in developing and testing a new drug are eligible for the credit because the researchers are engaged in scientific experimentation. Similarly, engineers who design a new computer system, or who design improved or new integrated circuits for use in computer or other electronic products, are engaged in qualified research *because the design of those items is uncertain at the outset and can only be determined through a process of experimentation relating to specific design hypotheses and decisions as described above.* (Emphasis Added)

H.R. Conf. Rep. 99-841 at Section C, Page 4

Again in 1998, Congress attempted to give additional guidance on its intent as to the requirement of a "process of experimentation", when it stated:

Activities constitute a process of experimentation...if they involve evaluation of more that one alternative to achieve a result where the means of achieving the result are uncertain at the outset, *even if the taxpayer knows at the outset that it may be technically possible to achieve the result.* Thus, even though a researcher may know of a particular method of achieving an outcome, the use of the process of experimentation to effect a new or better method of achieving that outcome may be eligible for the credit...

outcome, the use of the process of experimentation to effect a new or better method of achieving that outcome may be eligible for the credit...
(Emphasis Added)

H.R. Conf. Rep. 105-825, at 3 (1998)

The credit was established as an incentive to encourage taxpayers to incur the cost of research in developing new products and stimulating the economy. The IRS is proposing standards that would be suitable for academic research where the research is going to be published and replicated under the peer review process. However, the IRS is completely missing the fact that Congress intended to encourage commercial research, not academic research. In the commercial environment, time and secrecy are of the essence if the product is going to succeed. The highly structured definition of research which is proffered by the IRS in its regulations makes it virtually impossible for commercial research to qualify for the §41 credit, which was clearly not the intention of Congress. TAASC has proven that it followed a “process of experimentation” where it evaluated more than one alternative to achieve its intended result, where the process of achieving that result was uncertain at the outset.¹¹ TAASC had a goal of developing certain integrated suites of software applications that were not available to the public in that form, and which operated within certain limitations of available memory and processing power. TAASC knew at the outset that there were many alternative methods of designing the programming of each component and such would need to be tested, redesigned, refined and maybe eliminated in order to reach the final satisfactory product. TAASC followed a “process of experimentation” in order to reach their final product.

IT IS THEREFORE ORDERED ADJUDGED AND DECREED that the Plaintiff’s Motion for Summary Judgment is hereby granted and the Defendant’s Motion for

¹¹The IRS and its expert argue that “a process of experimentation” cannot include “trial and error”. However, this position is inconsistent with Preamble to the IRS’s proposed regulations where testing and analysis can be conducted through “modeling, simulation, or a systematic trial and error methodology”. 63 FR 66505

Summary Judgment is denied.

Dated this 31st day of July, 2000.



JAMES O. ELLISON, SENIOR JUDGE
UNITED STATES DISTRICT COURT

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

FILED

JUL 8

Phil L... Clerk
U.S. DISTRICT COURT

MERVENITA ROSS,)

Plaintiff,)

vs.)

Case No. 99CV0378E (J)

SEARS ROEBUCK & COMPANY, a)

New York Corporation, DIAMOND)

EXTERIORS, INC., a Delaware)

Corporation and DIAMOND HOME)

SERVICE OF DELAWARE, INC., a)

Delaware Corporation,)

Defendants/)

Third-Party Plaintiffs,)

vs.)

CHARLES FELLANTO and WARREN)

VAILES, d/b/a C & W CONSTRUCTION,)

Third-Party Defendants.)

ENTERED ON DOCKET
AUG 01 2000
DATE _____

ORDER GRANTING STIPULATION OF DISMISSAL WITH PREJUDICE

Upon stipulation of the parties, this matter is hereby dismissed with prejudice to refileing.

Plaintiff and Defendants each shall bear their own costs and attorneys' fees.

SIGNED this 31st day of July, 2000.



JUDGE JAMES O. ELLISON

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

F I L E D

JUL 31 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

TAX AND ACCOUNTING SOFTWARE)
CORPORATION, TIM E. KLOEHR)
AND SHERYL KLOEHR,)

Plaintiffs,)

v.)

UNITED STATES OF AMERICA)

Defendant.)

No. 98-CV-363E /

ENTERED ON DOCKET
AUG 01 2000
DATE _____

J U D G M E N T

In accord with the Order filed this date sustaining the Plaintiffs' Motion for Summary Judgment, and denying the Defendant's Motion for Summary Judgment, the Court hereby enters judgment in favor of the Plaintiffs, Tax and Accounting Software Corporation, Tim E. Kloehr and Sheryl Kloehr and against the Defendant, United States of America.

IT IS SO ORDERED THIS 31st DAY OF July, 2000.

James O. Ellison
JAMES O. ELLISON, SENIOR JUDGE
UNITED STATES DISTRICT COURT