

No. 115025

JAN 30 2017

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

MICHAEL S. RICHIE
CLERK

Oklahoma Department of Securities *ex rel.* Irving L. Faught, Administrator,
Plaintiff/Appellee,

v.

Seabrooke Investments LLC, an Oklahoma limited liability company; Seabrooke Realty LLC, an Oklahoma limited liability company; Oakbrooke Homes LLC, an Oklahoma limited liability company; Bricktown Capital LLC, an Oklahoma limited liability company; KAT Properties LLC, an Oklahoma limited liability company; Cherry Hill LLC, an Oklahoma limited liability company; Cherry Hill Apartments; Tom W. Seabrooke, individually and as trustee of the Tom Seabrooke 2007 Revocable Trust and J. Karyn Seabrooke 2007 Revocable Trust; and Judith Karyn Seabrooke, individually and as trustee of the Tom Seabrooke 2007 Revocable Trust and J. Karyn Seabrooke 2007 Revocable Trust,
Defendants,

and

Ryan Leonard,
Court Appointed Receiver/Appellee,

and

Wayne Doyle,
Intervenor/Appellant.

Appeal from the District Court of Oklahoma County
Case No. CJ-2014-4515
Before the Honorable Patricia Parrish

BRIEF OF RECEIVER, RYAN LEONARD

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INTRODUCTION

Appellant Wayne Doyle (“Doyle”) characterizes himself as just another investor who was unwittingly “fleeced” by Tom Seabrooke. *He was not.* He joined with Tom Seabrooke as a co-partner of Defendant Bricktown Capital LLC (the “Company”), owner of the Bricktown Hotel (the “Hotel”), with full knowledge of the Hotel’s dire financial condition and the severe storm damage it had suffered. With that knowledge, he willingly became personal guarantor of the Company’s bank debt, participated in re-financing that debt, and obtained another Company loan from the federal government. *Doyle then used his position in the Company for his own benefit, often to the detriment of the Company and other investors who, unlike him, were actually fleeced.* Because he was an “insider,” he was not intended to be protected in this securities law Receivership. His claim was properly denied on this basis alone. In addition, his claim was properly subordinated to the other non-insider investors who were harmed by his inequitable conduct.

Doyle’s early monetary investments in the Company were mostly *illusive* and provided virtually no real benefit to the Company, leaving the Company undercapitalized. In Feb. 2011 he paid \$299,500 directly to the Bank to reduce the debt for which he was personally liable. Less than a year later, in Jan. 2012, he paid himself \$228,894 from insurance money the Company had received – money needed to repair Hotel rooms so the Hotel could generate revenue. In Dec. 2012, he pretended to “invest” \$1.2 million with the Company – not with payments to the Company, but instead by re-allocating payments he had made years before to Tom Seabrooke and other Seabrooke entities *as if they were loans to the Company.* In return for this “loan” that still left the Company undercapitalized, Doyle obtained enormous benefits. He gained a combined 80% financial control over the

Company's ownership (35% outright ownership and 45% collateral). At the same time, Doyle received periodic cash payments from the Company for years, even though most outside Company investor/owners – who had contributed *real* money – received nothing. Meanwhile, his partner, Tom Seabrooke, sold additional equity interests in the Company and/or Hotel to outside investors in 2013 – activities later challenged in the Receivership as violations of Oklahoma securities laws against fraud and the sale of unregistered securities.

In short, Doyle was the consummate “insider.” He leveraged the illusory \$1.2 million to obtain financial control over the Company for his own benefit with significant harm to the Company which needed “real” (not illusory) money to repair the Hotel and generate revenues. His conduct also harmed the Company's outside owner/investors, whose ownership was ignored and diluted by Doyle's single-minded focus on eliminating his personal liability to the Bank rather than on the long-term sustainability of the Company.

As the Hotel lost money and the Bank threatened foreclosure, Doyle used his insider status to protect himself. In April 2014, approximately 120 days before the Company was put into receivership, he attempted to document his investments as if they were a perfected *mortgage lien* on the Hotel. Using his personal attorney and without any independent review by the Company's attorney, Doyle included the illusory \$1.2 million invested with other Seabrooke entities and \$300,000 not contributed by Doyle, *as if these funds were a secured loan* to the Company (when they were not), then recorded the mortgage.

After the Receivership was imposed on the Company in Aug. 2014, Doyle's principal concern was to reduce or eliminate his personal liability for the Bank debt. He paid bills in order to keep the Hotel open so that it could be sold for a higher price. When the Hotel was finally sold, the Bank debt (and Doyle's guaranty) were extinguished. Considering his net

contributions to the Company (*i.e.*, excluding his self-interested payments to extinguish his personal Bank liability) and deducting for payments he received from the Company, Doyle actually came out *ahead by \$52,397*. Conversely, the outside owners – who had no inside knowledge of the Hotel’s finances or ability to control them – were left with a *net loss of \$641,598* and severely diluted *ownership* interests. Other investors in the Company suffered a collective net loss of *\$237,458* – two of them having been sold unregistered securities while Doyle was in financial control of the Company. In its Aug. 21, 2015 Order, the Court exercised its equitable power to recharacterize all contributions included in Doyle’s mortgage as “capital contributions.” Although it considered the Receiver’s facts and arguments that Doyle’s contributions should also be equitably subordinated to other investors, the Court expressly chose not to decide that issue. This made sense given that the limited issue before the court was whether Doyle’s mortgage was a *valid lien* on the Hotel. The Aug. 21, 2015 Order was not appealed by Doyle and is now the “law of the case.”

In Dec. 2015, the Company and Seabrooke stipulated that the limited general assets of the Receivership would be distributed to those investors “to be identified by the Court.” The Receiver recommended a plan for distributing those assets to creditors whose claims were allowed, but also recommended disallowance of the claims by the two (2) insiders – Doyle and Ron Hope – both of whom had participated with Seabrooke as insiders in the Company and benefitted to the detriment of other investors. The Receiver incorporated all factual material already before the Court from the prior briefings/hearings and re-argued that Doyle’s claim should be equitably subordinated to the claims of other investors. On April 27, 2016, the Court issued its Final Order approving the Receiver’s recommendations.

Contrary to Doyle's assertions, the Court's Final Order: (1) properly denied Doyle's claim because he was an insider not intended to be protected by the securities laws; (2) properly treated Doyle as an insider based on his investments that gained him financial control of the Company; (3) properly applied equitable subordination based on Doyle's inequitable conduct which harmed other investors and benefited by him; (4) properly relied on the trial judge's own review of the facts and arguments, and; (5) properly supported its conclusion with facts admitted into the record.

SUMMARY OF RECORD¹

The receivership was initiated in August, 2014 by Plaintiff Oklahoma Department of Securities ("Dept.") based on its investigation and determination that eight (8) entities and individual defendants, including the Company, had violated Oklahoma securities laws by selling unregistered securities through unregistered agents, and that the Seabrooke Defendants had committed fraud in the sale of securities to certain investors. [R000001-018]. The Court's Aug. 11, 2014 Order concluded "there is justifiable basis to believe that defendants have violated the registration and fraud provisions of the Act..." and appointed Ryan Leonard as Receiver for all Defendants. [R000020-021; R Tr-II-69/22 thru 71/25]. On Sept. 5, 2014, the Court entered a temporary injunction that prohibited Defendants, including

¹ Citations to [R- - - - -] are to the page(s) in the Appeal Record. Citations to Tr-I- are page and lines from the Hearing Transcript of Sept. 9, 2014. Citations to T-II- are to the Hearing Transcript of Aug. 5, 2015. Citations to Tr-III- are to the Hearing Transcript of Aug. 10, 2015. Citations to hearing exhibits are as follows: DEx_ refers to Doyle Exhibit; REx. __ refers to Receiver Exhibit; and PEx. refers to the Dept. Exhibit. Findings of Fact or Conclusions of Law recited in the Court's Aug. 21, 2015 Order are **in bold [R- - - - -]**. Where the text itself is taken directly from the Court's April 27, 2016 Final Order, **the entire text is in bold.**

the Company, from offering or selling any securities in the state. [R000032-042]. It directed the Receiver to marshal Defendants' assets and preserve them for later distribution. [*Id.*]

The Company's asset was the Hotel. [Tr-I-14/15 thru 15/9]. Tom Seabrooke ("Seabrooke") was "manager" of the Company under its Feb. 3, 2011 Operating Agreement. [D.Ex.1, p.10]. **Doyle signed that Operating Agreement in which he was designated as co- "manager/partner" along with Seabrooke.** [Tr-II-74/4-22; DEx.1, p.25]. **The Operating Agreement reflected that Doyle and Seabrooke were the only owners as a result of the investments they had previously made.** [DEx.1, p. 26]. Doyle understood he had the right to be involved with Hotel operations and communications. [Tr-II-75/13 thru 76/11]. He actively participated in financing the Company's debt, including pledging his personal guaranty of that debt, and later agreeing to pledge storm damage insurance proceeds (intended in part to repair the Hotel) to pay-down the Bank debt he had personally guaranteed. [Tr-II-22/11-14; 120/22 thru 124/10; DExs.2, 3, 5, 6; REx. 9]. When the court imposed the Receivership, Doyle financially controlled 80% of the Company's ownership (35% outright and collateral rights over an additional 45%²). [R000567]; [Tr-II-59/8-17].

Seabrooke was alleged to have defrauded other investors and the Company itself was alleged to have sold unregistered securities to Company investors. [R000001-031]. During the period before 2011, five (5) investors, who had collectively invested a gross \$849,000 (a net \$641,958 after considering payments received), had received a collective 13% ownership in the Company and collateral rights against another 1% ownership. [R000600, 000606, 000607, 000611, 000617; Tr-III-274/13 thru 275/9; 277/11 thru 279/5; 282/19 thru 284/24].

² Seabrooke pledged 45% of his Company ownership to Doyle so that Seabrooke had to repay the monies he owed to Doyle before he "would get that 45% back." Seabrooke never repaid the debt and Doyle still "has" the 45% collateral ownership. [Tr-II-72/11 thru 73/5].

These investor/owners were Faith and Kenneth Bristow (0.5% ownership), Kelly Burfict (0.5% ownership), Malene Eckhardt (1% ownership), and HPJ Family Limited Partnership (11% ownership and collateral rights against another 1%). [*Id.*]. Four of the five investors never received any distributions from the Company. [R000600, R000607].

Thus, while the Feb. 3, 2011 Operating Agreement reflected that Doyle and Seabrooke were the only owners of the Company, **as of that date there were five (5) other persons already claiming interests in the Company as a result of investments they had previously made.** [*Id.*]; [DEx.1, pg. 25]. **Doyle was aware of a 1% investor in addition to himself and Tom Seabrooke, however he never investigated to see who the other investor was, whether there were other additional investors, or who the creditors of the Company were.** [R000568] [T-II-55/121-16; 108/2-5 and 13-19]. In representations made by Doyle to obtain a loan in 2013 from the federal government, he failed to acknowledge any other owners, including the 1% owner he knew about. [DEx.5].

Three other individuals collectively invested approximately \$408,000 (net \$237,458 after considering payments received) in “equity” or “security interests” in the Company and/or the Hotel.”³ Two (2) of them, Bobby McCants and Carolyn Poage, were sold unregistered securities in the Company after Doyle had financial control of the Company.⁴

As the Receiver marshalled the assets of Defendants, it became apparent the Hotel was operating at a significant deficit; accordingly, the Receiver sought an emergency order

³ Kendall McGowan invested \$270,000 in 2009 for security interests in the Hotel. [R000617-000618]. Bobby McCants invested \$99,000 and was given a \$100,000 note in Jan. 2013 and collateral in undefined Hotel “equity. [R000615-000616]. Carolyn Poage was given a promissory note in Jan. 2013 for \$39,000 secured by Hotel equity. [R000619].

⁴*Id.*; [R000615; R000619]; [DEx.1, p. 26; DExs. 7, 8 and 9]

releasing the Hotel from the Receivership due to expenses that would have to be paid by the Receiver and the relative value of the Hotel. [R000027-031]. The Court released the Hotel as Receivership asset⁵ on Sept. 9, 2014 with a critical caveat that, if the Hotel was sold for an amount in excess of what was owed on valid mortgages, the remaining proceeds would be used to pay investor restitution owed by the Defendants as determined by the Court. [R000045]. This proved to be relevant when the Hotel was sold in December, 2014, and \$187,858 remained after payment of the mortgage debt to the first and second mortgagees, Quail Creek Bank (the "Bank") and the Small Business Administration ("SBA"). [R000189-0195]. Doyle's personal guaranty liability for \$1,893,492 was extinguished insofar as the Bank debt in this amount was paid-off from the sale proceeds. [R000127; R000184-0].

On April 7, 2015, Doyle filed a motion seeking this \$187,858 based on a third mortgage from the Company to him "in excess of \$3 million," which he asserted as a perfected lien against the Hotel. [R000196-0227]. Thereafter, Doyle submitted his claim in the Receivership for \$3,034,073 against the Company, also based on this third mortgage. [REx.17]. The alleged third mortgage was dated April 9, 2014 from the Company to Doyle based on a Promissory Note of the same date ("Doyle's Mortgage"). [DExs. 10 & 11]. The Dept. and the Receiver both objected, arguing *inter alia* that the proceeds should remain in the Receivership because: (1) Doyle's Mortgage was not valid or substantiated; (3) Doyle had substantial financial control over the Company, including the right to enforce payment, and used that for his own benefit; and; (2) any monies invested by Doyle should be equitably recharacterized as capital contributions to the Company and/or equitably subordinated to the claims of other investors. [R000290-0351; R000433-0564; and R000412-0432].

⁵ The Company itself remained a Defendant in the Receivership. [Tr-I-6/9 thru 7/6].

After reviewing the facts in the parties' respective motions and after 2 days of hearings (Aug. 5 and 10, 2015), the Court ruled that Doyle's Mortgage should be recharacterized as a capital contribution to the Company and ordered the \$187,585 to be paid to the Receiver [R000565-0572]. The Court's findings of fact and legal conclusions are in its Aug. 21, 2015 Order, which concluded that "*all funds, regardless of whether Wayne Doyle or Remington Express and regardless of who the payee was, should be reclassified as contributions to capital.*" [R000570].

The Court focused on twelve (12) factors relevant to whether a loan should be equitably recharacterized as a capital contribution, almost all of which favored recharacterization [R000569]. The factual findings and legal conclusions by the Court supported these factors, and also demonstrated that Doyle had exercised control as a Company "insider" in a series of transactions which were less than "arms-length" and, although beneficial to Doyle, were harmful to the Company and/or its non-insider investor/owners. [R000565-0571].

In acquiring his initial ownership of the Company on Feb. 3, 2011, Doyle acknowledged in writing that he was assuming liability, as personal guarantor, of all outstanding loans owed by the Company to the Bank, that there were several liens and encumbrances against the Hotel and the Company totaling an estimated \$640,000, that he was accepting liability of any and all liens and encumbrances, and that he was aware that the Hotel had not reported a profit in its previous years of existence dating back to 2007. [R000566]; [Tr-II-114/2 thru 115/22; Tr-II-149/1-19; R000455; REx.9]. Later, in Dec. 2013, Doyle assisted in getting a Company loan from the Small Business Administration (SBA). [DEx. 5]. Thus, Doyle had *unique inside knowledge* of the

Company's dire financial condition when he first invested. The Court found there was no indication under the Company's Operating Agreement that Doyle made a capital contribution when he acquired his initial ownership. [R000566]. Instead, on Feb. 3, 2011, Doyle contributed substantial funds to the Company to pay down the loan debt to the Bank, for which he was personally liable as a guarantor. [R000565]; [Tr-II-131/6-16; 117/4-23; 118/2-6]. His initial monetary investment (\$299,500) was paid directly to the Bank to reduce his own liability. [Id]. He then treated the \$299,500 as a loan to the Company [DEx.13]. Doyle claims he initially acquired a 25% ownership. [Tr-II-22/3-15].

Even after he acquired his ownership, Doyle knew the Hotel was operating at a loss and not doing well financially [R000566]. On Dec. 21, 2011, the Company, Tom Seabrooke, Doyle and the Bank entered into another agreement because the Bank was concerned about payment of the loan[s] because they were in default. [R000566]; [Tr-II-120/12 thru 121/8; REx.9]. That agreement mentions the Bank had filed a foreclosure action. Although the Company was trying to locate another lender to refinance the loan, it was ultimately unable to find additional financing. [R000566]. [REx.9]. Doyle agreed the Bank could apply proceeds (from a \$2.213 million insurance policy settlement for repair of storm damage to the Hotel) to pay-down the Bank loan which Doyle had personally guaranteed. [Tr-II-120/12 thru 121/8;122/10-22;124/11-18; REx.9]. Less than a month later, included in the payments Doyle received from the Company was a payment of \$228,892 on Jan. 27, 2012. [R000568] [Tr-II-143/4-22]. According to Doyle, this was a bonus payment for Doyle's "risk compensation." [R000568]; [R000455]. The source of that payment was the same insurance proceeds paid to the Company for repair of storm damage that had caused the Hotel to close-off a

percentage of its rooms to the public. [Tr-II-143/4—22; 145/7-17]. Doyle understood when he received the \$228,894 there was storm damage to the Hotel rooms that was not being repaired due to lack of funds and the damage was affecting the Hotel's ability to generate revenues. [Tr-II-145/7 thru 146/8]. Doyle also conceded that the \$228,892 payment was money out of the insurance settlement that would have normally gone to the Hotel, but instead benefitted him personally. [Tr-II-147/2-12].

In findings challenging the veracity of Doyle's "loan testimony," the Court found the Company books never reflected loans to Doyle. [R000568] [Tr-II-212/11-17]. It also found Doyle's Mortgage, executed approximately 120 days before the Receivership, was "prepared by Doyle's attorney to preserve his interest" and that Doyle did not know if the Company's attorney had "ever reviewed the documents." [R000565, R000567]; [Tr-II-57/4-18; 73/7-20]. His mortgage was filed of record April 14, 2014 [Tr-II-34/20-35/4; DEx.11].

The Court took aim at specific portions of the alleged loans due to their specious circumstances. Doyle's first *attempt to document* "loans" to the Company came in Dec. 2012. Doyle produced three (3) *unsigned* promissory notes from the Company to Doyle, each dated Dec. 23, 2012. [DExs. #7, #8 and #9]. Between 2009-2010 (long before Doyle became an owner in the Company), he had allegedly invested \$1.1 million⁶ with *other individuals and entities* (Defendant Seabrooke personally, Defendants Seabrooke Investments, LLC, and Oakbrooke Homes LLC). [R000565]. This \$1.1 million⁷ was contributed without "any written documentation," including any documentation that they

⁶ Doyle claimed he invested another \$100,000 with Seabrooke in April, 2011, making a total of \$1.2 million paid to other persons/entities that he included as if it was a loan to the Company, but acknowledged he was not sure which entity was the intended beneficiary. [R000489-0490]. The Court found it was without written documentation. [R000567].

⁷ *Id.*

were loans. *[Id]*. Nonetheless, this money – paid to *persons and entities other than the Company* – was included by Doyle in the unsigned promissory notes as though they were *loans to the Company*. According to the Doyle, these illusory funds earned him an additional collateral interest in 45% of Company ownership as well as an increased outright ownership over and above the 25% he acquired in Feb. 2011. [Tr-II-22/17-21]. This gave him 80% control over Company ownership. [R000566] [R000470-0476; [Tr-II-24/1-17;24/24 to 29/10; 97/3-25; DExs. 7, 8 and 9]. Doyle did this even though he conceded (and the Court ruled) he had no proof these funds were ever used for the benefit of the Company. [Tr-II-89/11-25] [R000565; R000575]. The Court ruled “any funds” contributed to Seabrooke or these other Seabrooke entities were “not subject to” Doyle’s Mortgage. [R000569].

The Court also focused on investments by Remington Express, Inc., and the fact that Doyle was attempting to treat contributions by Remington as if they were his own.⁸ It ruled that Remington Express was an entity separate from Wayne Doyle and funds provided by Remington were not subject to Doyle’s Mortgage. [R000569] [Tr-II-130/9-15].

The Court addressed contributions made to the Company after the Receivership. **After the Receivership was imposed on Aug. 11, 2014, Doyle (or Remington Express) contributed \$278,000 to the Company to pay down the loan debt to the Bank for which he was personally liable as guarantor. [R000568].** Of that total, Doyle alone (excluding Remington) provided only \$178,000 [R000568]. This was contributed by Doyle after the Company had been placed into Receivership for securities violations and *after* the Court

⁸ The Court ruled these amounts were provided by Remington Express: \$50,000 to Seabrook on 5/13/2011; \$100,000 to the Company on 9/25/2012; \$100,000 to the Company on 9/10/2014. [R000567-000568]. Another \$50,000 was paid by Remington Express on 5/13/2011, making the total \$300,000. [Tr-II-129/2 thru 130/15].

found reason to believe the Company violated the registration provisions of the Act. [Tr-II-69/15 thru 71/25]. The court concluded Doyle “wanted to protect his investment by keeping the Hotel open” and that he “needed to keep the Hotel open to get a better sales price for the Hotel.” [R000568]. **Doyle had personally guaranteed the Bank loan and needed to keep the Hotel open to get a better sales price for the Hotel.** [Tr-II-158/24 thru 161/11]; [R000568]. This would reduce his personal liability of the Bank debt which would be paid from the sale. [Id.]. Doyle also testified (and the court ruled) his \$10,800 furniture purchase for the Company was repaid to him. [Tr-II-170/1 thru 171/25; REx.17].

The Court examined monies paid to (or withdrawn by) Doyle and Remington Express and a separate summary of funds included in Doyle’s Mortgage. It found Doyle and Remington Express provided \$2,355,200 to Seabrooke entities, including the Company, and received \$681,577 from them. [R000565 & R000568] [PEX.1 and DEX.13]. Those records, combined with Doyle’s testimony and the Court’s findings reveal the following facts *relative to the Company*:

\$2,355,200 Total – included in Doyle’s Mortgage and given by Doyle and Remington
\$1,200,000 of this Total – not provided to Company, but instead to other persons/entities
\$300,000 of this Total – not provided by Doyle, but instead by separate entity (Remington)
\$178,000 of this Total – provided after Hotel released from Receivership so Hotel would sell at higher price, thereby reducing Doyle personal guaranty
\$299,500 of this Total – paid by Doyle directly to Bank, reducing his personal guaranty
\$10,800 of this Total – later repaid to Doyle

\$366,900	Net Loss to Doyle after above reductions
\$419,297	Received by Doyle from Company⁹

\$52,397	Net Gain to Doyle after Amount Received by Doyle
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⁹ See PEX.1 -Total amount is from Column entitled “Withdrawn” relative to Company.

On Dec. 21, 2015, the Company and Tom Seabrooke stipulated that they would pay restitution to investors “to be identified by the Court” from funds held or recovered by the Receiver. [R000586]. On Dec. 22, 2015, the Receiver recommended the allowance/disallowance and classification of claims. [R000593-0632]. He reported thirty (30) claimants had filed claims for \$15,275,951 and only \$1,735,929 in general assets were available for distribution. [R000595, R000630]. No claim was filed on behalf of Remington Express, Inc. [R000593-0632]. The Receiver recommended approval of \$2,780,654 in claims, with distribution to occur pro-rata among the approved claimants. [*Id.*]. The largest claims denied by the Receiver in their entirety were submitted against the Company by two of its insiders. Ron Hope, who had transferred his Company ownership to Doyle in 2011, claimed over \$3 million. The Receiver recommended Hope’s claims be denied because he had been a principal owner, knew the dire financial condition of the Company, had likely benefitted from funds of other investors, and had been released from his personal guaranty of Bank debt. [R000610]. The Receiver denied Doyle’s claims (also over \$3 million) based on similar reasoning: (1) Doyle had significant ownership and financial control over the Company; (2) Doyle knew the Company’s dire financial condition from the outset of his investment; (3) Doyle had engaged in various less than arms-length dealings with the Company that profited him while injuring the Hotel, the Company and its outside investors. [R000603-0606]. The Receiver incorporated his prior facts and arguments that Doyle’s claims should be equitably subordinated to outside investors. [R000606].

Responding to Doyle’s Objection to his recommendation, the Receiver filed an extensive brief on Feb. 18, 2016. [R000651-0660]. Again, the Receiver incorporated his prior facts and arguments that Doyle’s claim should be equitably subordinated. [*Id.*]. After

a hearing on Feb. 29, 2016, the Court informed counsel by email on March 1, 2016 that, based on its review of the Receiver's Report, as well as Objections thereto and argument of counsel, it was approving the Receiver's recommendations. [R000732]. Thereafter, on April 18, 2016, and pursuant to the Court's instructions, the Receiver and the Dept. submitted proposed findings of fact and conclusions of law. [R000733-734]. Doyle did not file any objection to these submissions. Thereafter, the Receiver received from the Court a signed Final Order, dated April 27, 2016 [R000709-0721] and, following the Court's directions, sent a copy of it the same day to all counsel, including Doyle's counsel. [R000736; R000734]. Doyle never objected to the Court about the procedure under which this Final Order was issued. With specific findings of fact and conclusions of law, the Court's Final Order ruled Doyle was an "insider" who had acted inequitably to create an unfair advantage for himself to the substantial detriment of other non-insider investors. [Id]

ARGUMENT AND AUTHORITIES

I. THE STANDARD OF REVIEW ON APPEAL

On appeal, the trial court's decision will not be disturbed unless it is clearly against the weight of the evidence or contrary to law or established principles. *State of Oklahoma ex rel. Weatherford v. Senior Sec. Life Ins. Co.*, 1996 OK CIV APP 32, ¶5, 916 P.2d 288, 290, citing *Dumas v. Conyer*, 1968 OK 165, ¶ 21, 448 P.2d 835. In this case involving distribution of assets seized for violation of securities laws, there is broad discretionary power in the trial court to craft an equitable decree..." [which], as a "necessary corollary, narrows the scope of appellate review." *S.E.C. v. Wang*, 944 F.2d 80, 85 (2nd Cir. 1991).

II. THE COURT'S BROAD EQUITABLE AUTHORITY AND THE LAW OF THE CASE

The trial court was empowered to do equity in this action brought under the Oklahoma Securities Act 71 O.S. §1-1-1 et. seq. The rights and remedies provided in the Oklahoma Securities Act “are in addition to other rights or remedies that may exist at law or in equity.” *State of Oklahoma ex rel. Day v. Southwest Mineral Energy, Inc.* 1980 OK 118, ¶18, 617 P.2d 1334, 1338. Once the Court’s equity jurisdiction was invoked, it could “fashion appropriate remedies.” *Id.* In crafting the distribution plan, it properly considered interpretation of federal securities acts upon which Oklahoma’s securities laws are modeled. *Oklahoma Dept. of Securities ex rel. Faught v. Blair*, 2010 OK 16, ¶ 8, 231 P.3d 1095. Accordingly, it had “authority to approve any plan provided it is ‘fair and reasonable,’” *S.E.C. v. Wang*, 944 F.2d at 81. The plan of distribution only needed to be “equitable and reasonable” in the aggregate. It could engage in the “kind of line drawing [that] inevitably leaves out some claimants.” *Official Committee of Unsecured Creditors of Worldcom, Inc. v. SEC.*, 467 F.3d 73, 83 (2nd Cir. 2006) quoting *S.E.C. v. Wang*, 944 F.2d at 88.

Doyle argues the Court’s reliance on the doctrine of equitable subordination represents a matter of first impression involving adoption of “foreign” law. However, it is unremarkable that the Court would reference this well-established tenet of common law. Long before Congress’ formulation of current bankruptcy law, the common law developed equitable subordination. As the 10th Circuit concluded, Congress intended the pre-existing principles of “common law equitable subordination” to be incorporated in modern bankruptcy law. *In re Hedged-Investment Associates, Inc.*, 380 F.3d 1292, 1300 (10th Cir. 2004); see also *Pepper v. Litton*, 308 U.S. 295, 307 (1939) (common law equitable power exists to subordinate claims of officer/director/stockholder to other creditors). Oklahoma

adopted the common law by statute and it is in "force in aid of the general statutes." 12 O.S. 2.

In its April 27, 2016 Final Order for distribution, the court adopted its prior Aug. 21, 2015 Order, including all of its respective findings of fact and conclusions of law. [R000712]. Doyle's appeal does not challenge that Aug 21, 2015 Order, or any of its findings or conclusions. Thus, they should be accepted for purposes of this appeal. The settled-law-of-the-case doctrine "operates to bar relitigation of ...[issues] the aggrieved party failed to raise on appeal." *Smedsrud v. Powell*, 2002 OK 87, ¶13, 61 P.3d 891, 896. Many of those findings and conclusions bear upon the issues in this appeal.

**III. AS AN INSIDER, DOYLE'S CLAIM WAS PROPERLY DISALLOWED
BECAUSE HE WAS NOT INTENDED TO BE PROTECTED IN THIS
SECURITIES RECEIVERSHIP**

Doyle argues the Court's distribution plan was inequitable because he was in the same class as many other non-commercial investors who had been "fleeced" by Tom Seabrooke into making loans or capital contributions, but was discriminated against when the Court denied his claim. Doyle overlooks two salient facts: (1) he was not in the same class as investors who were fleeced because, unlike those investors, he was a Company insider who was not fleeced, but instead had inside knowledge which he used to gain financial control of the Company for his own benefit and to the detriment of the Company and other investors; (2) he was not discriminated against because he, along with one other investor, were in a class of insiders whose claims were denied in their entirety.

The Court was faced with a shortfall of approximately \$13.5 million between the total claims and assets available for distribution. In deciding where to draw the line for disallowing claims, the Court addressed these claimants: (1) commercial lenders with filed

mortgages/security interests; (2) outside investors who were sold unregistered securities without any inside knowledge of Defendants' true financial condition or the ability to control that condition; and (3) owners like Doyle and Ron Hope, who had knowledge of the Company's financial condition, the ability to control it, and profited at the expense of the uninformed investors.¹⁰

As the Court noted in its Final Order, the purpose of this Receivership, which arose out of Defendants' Oklahoma securities law violations, was "to protect the uninformed from manipulative and deceptive practices when dealing in securities," *State ex rel. Day v. Southwest Mineral Energy, Inc.*, 1980 OK 118, ¶20, 617 P.2d at 1338. [R000718]. Under the Securities Act, our Legislature did not intend to "allow those guilty of manipulative practices to profit..." *Id.* "The overriding goal of these proceedings should be fairness to the defrauded investors[.]" *S.E.C. v. Byers*, 637 F. Supp. 2d 166, 176 (S.D.N.Y. 2009). The Court properly considered Doyle's "insider" status to determine his treatment. If he was an "informed insider" rather than a victim of fraud, this alone was sufficient to justify the Court treating him differently from those "uninformed outside investors" who were victimized.

The Court explained that [w]hile an "insider" includes a partner, it also includes others who have a sufficiently close relationship with the company that their conduct is made subject to closer scrutiny than those dealing at arm's length with the company.¹¹ Access to inside information about the company and history of dealings which show a lack of arm's

¹⁰ See Receiver's Report on Claims/ Recommendation for Classification. [R.000593-0632].

¹¹ See *In re Kunz*, 489 F.3d 1072, 1079 (10th Cir. 2007) (insider status may be based on relationship sufficiently close that the two were not dealing at arm's length).

length transactions are circumstances which point to insider status. Actual, legal control of the company is not necessary to show insider status. *Anstine v. Carl Zeiss Meditec AG (In re U.S. Medical, Inc.)*, 531 F.3d 1272 (10th Cir. 2008). A relevant consideration indicating insider status exists where the person has guaranteed the debts of the company and has the ability to reduce his personal liability by having the company pay the personally guaranteed debt. *Hirsch v. Va Tarricone (In re A. Tarricone, Inc.)*, 286 B.R. 256, 2002 Bankr. LEXIS 1438 (March 14, 2002, U.S. Bankruptcy Court., S.D.N.Y.) [R000716].

The Court found that Doyle was the consummate “insider”: “Based on his status as a member/partner of the Company, his knowledge of the financial condition of the Company, his personal guaranty of the Company’s Bank debt at a time when no commercial lender would have made a loan to the Company, and his less than arm’s length dealings with the Company, Doyle was an insider of the Company.” [R000716]. He was in financial control of the Company when it issued unregistered securities to other investors in 2013, made no attempt to investigate the identity of outside investors in the Company, and ultimately manipulated the Company in a variety of ways for his own benefit and to the detriment of the Company and those uninformed investors. The Court properly disallowed the claims of Doyle and Hope – the only two (2) insiders asserting claims in the Receivership – for a very good reason. They were not “uninformed” investors intended to be protected from the harm caused by Defendants’ security law violations. The distribution plan was equitable in its treatment of Doyle.

IV. THE COURT PROPERLY DETERMINED DOYLE WAS AN INSIDER AS TO THE ENTIRETY OF HIS CONTRIBUTION

Doyle argues the Court’s distribution plan was legally flawed because it treated him as an “insider” as to monies he invested with Seabrooke and other Seabrooke entities before

he became an owner in the Company in 2011. According to Doyle, he could not be an insider of the Company before he was an owner, and the Court cannot subordinate this \$1.1 million¹² portion of his claim. Doyle's argument ignores the fact that this investment was the very tool by which he cemented his existing insider status as an owner by adding *financial control of the Company*.

According to Doyle, he acquired a 25% ownership in the Company in 2011 when he he personally guaranteed the Bank Debt and his ownership increased as he made further investments. In Dec. 2012, he acquired more ownership and gained financial control of the Company through transactions which, according to Doyle, were documented in three (3) unsigned promissory notes, each of which was dated Dec. 22, 2012. The notes consolidated and re-allocated to the Company the \$1.1 million that Doyle had invested years before in *other individuals and entities* (Defendant Seabrooke personally, Defendants Seabrooke Investments, LLC, and Oakbrooke Homes LLC). These funds were also illusory since they did not benefit the Company even though they benefited Doyle. He effectively gained financial control over 80% of the Company ownership (35% outright and 45% collateral).

Doyle then used his financial control to protect himself against other owners and investors: refusing to investigate or acknowledge them, diluting their ownership, continuing his undercapitalizing of the Company, and refusing to repair the storm damage needed to generate Hotel revenues. Then, in April 2014, about 120 days before the Company was placed in Receivership, Doyle attempted to document his investment, including these illusory funds, as if it was a perfected *mortgage lien* on the Hotel. Using his personal attorney and without any independent review by the Company's attorney, Doyle included

¹² See footnote 6 herein.

what he later claimed was \$1.2 million¹³ invested with other Seabrooke entities and \$300,000 not contributed by Doyle, *as if they were a secured mortgage and recorded the mortgage.*

By invalidating Doyle's Mortgage, the Court recharacterized all investments by Doyle and Remington Express, Inc. as capital contributions. [R000570]. Doyle does not appeal that ruling, but argues that the Court's recharacterization of his investments as capital contributions was the "sole penalty" the Court could impose against him. Doyle offers no relevant legal authority to justify this conclusion. Under appropriate facts, a court may both recharacterize investments as capital contributions and subordinate the claim arising from those capital contributions to other creditors. See *Tanzi v. Fiberglass Swimming Pools, Inc.*, 414 A.2d 484, 491 (R.I. 1980) (re-classifying secured loan to insider as capital contribution, then subordinating same to general creditors). As the 10th Circuit explains, the two doctrines require different analysis and serve different purposes. "Recharacterization is not based on enforceability of a claim; it is based on establishing the true substance of a transaction" whereas "[e]quitable subordination is not based on the substance of the transaction, but rather on the behavior of the parties involved, and is intended to remedy some inequity or unfairness." *In re Alternative Fuels, Inc.*, 507 B.R. 324, 334-341 (10th Cir. BAP 2014). Recharacterization alters the claim from loan to capital contribution. This may in some cases cause the claimant to lose priority so that it falls behind other creditors. *Id.* Equitable subordination results in the claim being subordinated to any or "all" other claims as necessary to rectify the harm and achieve equity. *In re Hedged-Investments Associates, Inc.*, 380 F.3d 1292, 1297-1300 (10th Cir. 2004). Just as the Court properly recharacterized Doyle's mortgage as a capital contribution, it properly subordinated Doyle's claim, as an

¹³ See footnote 6 herein.

insider, to those of all other investors in order to rectify the harm caused by Doyle, including the harm caused by his gaining financial control of the Company through an illusory investment.

**V. THE COURT PROPERLY APPLIED EQUITABLE SUBORDINATION
BASED ON THE EVIDENCE OF HARM TO OTHER INVESTORS AND UNFAIR
ADVANTAGE GAINED BY DOYLE**

Doyle argues that the Court failed to properly apply the doctrine of equitable subordination because the Court was not presented with evidence of the *amount* of harm to other investors from Doyle's inequitable conduct. While acknowledging that the Court found he caused "substantial harm" to other investors, Doyle contends this was insufficiently "generic." In truth, the appellate record is replete with the Court's findings of Doyle's inequitable conduct, the resulting harm to outside investors, the resulting advantage gained by Doyle, and, where ascertainable, evidence of those amounts. That the Court did not monetize all injury is understandable for two reasons. First, much of the injury was not easily reduceable to specific amounts (*e.g.*, outside Company owners suffered dilution of their ownership and also lost potential Hotel revenues from Doyle's conduct). Second, in this securities Receivership – where there are limited assets and where Doyle was an insider (not intended to be protected) – it would grossly undervalue the injury if Doyle were included (with non-insider investors) in a pro-rata distribution of the meager Receivership assets.

The common law doctrine of equitable subordination requires proof of two elements: (1) inequitable conduct on the part of the claimant; and (2) injury to the other creditors or unfair advantage for the claimant resulting from the claimant's conduct. *In re Hedged-Investments Associates, Inc.*, 380 F.3d at 1300. The Court established Doyle as an "insider" and clearly identified a variety of harmful actions, including actions by which he gained an

unfair advantage, all of which were sufficiently inequitable and unfair to justify subordinating his claims to the allowed claims of other investors. Doyle's inequitable conduct was identified in the April 27, 2016 Final Order and its adoption of the Aug. 21, 2015 Order.

That inequitable conduct included Doyle's refusal to investigate, identify and communicate with other Company owners/investors. These individuals and entities were victims of the Company's violations of security laws, some of whom were sold securities after Doyle gained financial control of the Company. None of them knew (as Doyle did) the true financial condition of the Company. Five of these investors were owners of a collective 11% interest in the Company based on having contributed "real" money (\$849,000). Yet, their ownership was severely diluted by Doyle's refusal to focus on the long term financial sustainability of the Company, choosing instead to undercapitalize the Company, attempting to recoup illusory contributions, and eliminating his personal liability to the Bank.

Doyle's severe undercapitalization of the Company began in 2011 with his first investment of \$299,500. It was not used to capitalize the Company (already suffering dire financial problems from storm damage). Instead, it was simply given directly to the Bank to pay-down the debt for which Doyle had become personally liable. To add insult to injury, Doyle then treated this as a loan to the Company. In Dec. 2011, Doyle agreed the Bank could apply proceeds (from a \$2.213 million insurance policy settlement for repair of storm damage to the Hotel) to pay-down the Bank loan which Doyle had personally guaranteed. Less than a month later, in Jan. 2012, Doyle obtained a preferential payment of \$225,000 from the Company out of insurance proceeds desperately needed to repair storm damage to the Hotel so that it could generate revenue. In 2012, Doyle secured 80% financial control

of the Company by *pretending* to loan the Company \$1.2 million which had previously been paid to Seabrooke and other Seabrooke entities. Although Doyle gained financial control of the Company through this scheme, it provided no benefit to the Company and further diluted the ownership of the outside investors. Doyle's subsequent attempt in April 2014 to include this \$1.2 million into a perfected mortgage debt forced the Receiver to litigate the validity of the Doyle Mortgage. This litigation resulted in the Court's recharacterization of the mortgage as a capital contribution, but cost creditors in that the Receiver's litigation fees and expenses, further reducing the meager Receivership assets available for their claims. Finally, while Doyle had the Company pay him back \$419,297, the outside owner/investors had no such financial control over the Company, with the result that 4 of the 5 outside owners of the Company received nothing. Once the Company was placed in Receivership, Doyle still made no effort to identify Company investors who had been fleeced by the Company and his co-partner/manager (Tom Seabrooke). Instead, his self-interested goal was to pay the Hotel bills in order to keep it open – all for the purpose of selling the Hotel at a higher price and paying off the Bank debt for which he was personally liable. In Dec. 2014, the Hotel sold with enough funds to pay the Bank, extinguishing Doyle's guaranty.

It is revealing to compare how Doyle fared on his investments in the Company¹⁴ compared to how the Company's outside owners/investors fared on their investments. From that comparison, it is easy to conclude (as the Court did) that Doyle's "inequitable conduct" as a Company "insider" resulted in substantial injury – not only harm to non-insider investors, but also advantages to Doyle. As an insider with knowledge and control over the

¹⁴ This does not include investments by Remington Express, Inc. which did not file a proof of claim in the Receivership and was ruled to be an entity separate and apart from Doyle.

Company's finances, Doyle had a net gain of \$52,397 (see table at p.13). He was also able to extinguish his personal liability to the Bank totaling \$1,893,492. Conversely, the outside owners – who had no inside knowledge of the Hotel's finances or ability to control them – had a *net loss of \$641,598* and severely diluted *ownership* interests. Other Company investors suffered a collective net loss of \$237,458. Two of them were sold unregistered securities while Doyle had financial control of the Company. With insufficient Receivership assets to fully re-pay the non-insider investor/owners in the Company for their allowed claims, it would be grossly inequitable to diminish any of their claim by allowing Doyle to recover pro-rata with them. This also applies to all other non-insiders who have allowed claims against the Receivership assets. Given that Doyle is not intended to be protected by this securities Receivership, it would be inequitable for him to recover pro-rata with them.

**VI. THE COURT'S FINAL ORDER IS PROPERLY SUPPORTED BY
THE FACTS AND EVIDENCE BEFORE THE COURT**

Doyle contends that the trial court “abdicated its duties to review and craft an order” and “allowed a grossly overreaching Final Order which is unsupported by the evidence.” According to Doyle, this occurred when the Receiver improperly crafted findings out of whole cloth which the trial judge “rubber stamped” as a “punishment” against Doyle “for challenging the receiver.” While these allegations are serious, they are more disturbing for their lack of any proof.

The allegation of “rubber stamping” apparently arises in part from the procedure followed by the Court in issuing the April 27, 2016 Final Order. Doyle's counsel believes he was procedurally disadvantaged when the Receiver's proposed draft of the Final Order was entered by the Court “without allowing objections” to be filed by Doyle. The timeline of events is as follows: On March 1, 2016 the trial judge informed all counsel by email that

she had “reviewed the Receiver’s Report, as well as the Objections thereto and heard argument of counsel. Based on this review, the Court approves all the recommendations contained in the Receiver’s report. The Court denies the Objections filed by Wayne Doyle [and others.” Subsequently the trial judge determined that a Judgment in a form that contained findings of fact and conclusions of law should be submitted and so advised the Receiver. By letter, dated April 18, 2016, the Receiver’s counsel submitted his draft of the judgment with a cover letter to all counsel, including Doyle’s counsel. This was done in conformity with 12 O.S. 696.2(A), which provides as follows:

After the granting of a judgment, decree or appealable order, it shall be reduced to writing in conformance with Section 696.3 of this title, signed by the court, and filed with the court clerk. *The court may direct counsel for any party to the action to prepare a draft for the signature of the court*, in which event, the court may prescribe procedures for the preparation and timely filing of the judgment...

(emphasis added). Doyle’s allegation that Rule 11 (D) of the Oklahoma County Local Rules was violated is simply untrue. That Rule pertains to “motions” and the settlement of journal entries when the parties disagree on the form. It is not relevant to the submission of the final judgment in this case. Finally, Doyle did not raise the alleged violation of Rule 11(D) or any other objection with the Court even though he was timely informed about the Receiver’s submission of a proposed Judgment to the Court.

Doyle’s suggestion that the trial judge then “rubber stamped” the Receiver’s draft without careful review of it or the evidence is an unfounded assumption contradicted by the record. On April 27, 2016, the Court informed all counsel as follows:

“I have reviewed the transcript of proceedings from the Feb. 29, 2016 hearing, as well as the Receiver’s proposed Order and Judgment. The Order and Judgment accurately reflects the Court’s ruling and has been signed. Mr. Edinger should file the Order and provide file stamped copies to all counsel...”

This communication from the trial judge clearly demonstrates that she performed a careful review both of the proceedings and the proposed draft submitted by the Receiver before signing the Judgment. To suggest she “abdicated her duties,” and intended to “punish” Doyle because he challenged the Receiver is to impune the judicial process without proof.

Finally, the suggestion that the Receiver “improperly crafted findings out of whole cloth” is factually unsupported. As his principal example of this, Doyle’s counsel points to the following finding in the Final Order:

“Also on Feb. 3, Doyle signed an Operating Agreement for [the Company] in which he was designated as co-“managing partner” along with Tom Seabrooke.” [R000712].

Doyle’s counsel then alleges that this is “exactly the opposite of the August 21, 2015 Order” in which the Court found as follows:

“Doyle was at all time a member but not manager of [the Company].” [R000566].

The two factual findings are not contradictory as Doyle’s counsel suggests. Indeed, they are entirely consistent with the record. Doyle did sign the Operating Agreement with Tom Seabrooke where Doyle was designated as “managing partner” along with Tom Seabrooke, both of whom were also designated as “members.” [DEx.1, pp. 25-26]. It is also true that Tom Seabrooke, not Doyle, was the “Manager” under Operating Agreement. [DEx.1, p.10].

Next Doyle argues that Findings of Fact Nos. 2-5 and 7 of the April 27, 2016 Final Order “went far beyond those findings contained in the August 21, 2015 Order or any facts presented at the hearing held on February 29, 2016.” This is not true. As shown below, many findings were supported by similar findings from the Aug. 21, 2015 Order.

Portions of Fact No. 3 “Doyle was aware of a 1% investor in [the Company] in addition to himself and Tom Seabrooke, however Doyle never investigated to see

who the other investor was, whether there were other additional investors, or who the creditors of [the Company] were.” **This was supported by Fact No. 23 from the Aug. 21, 2015 Order. [R000568].**

Portions of Fact No. 4 “After the Receivership was imposed on August 11, 2014, Doyle contributed \$278,000 to [the Company] to protect his investment by keeping the Hotel open. Doyle personally guaranteed the Quail Creek Bank loan and needed to keep the Hotel open to get a better sales price for the Hotel.” **This was supported by Fact Nos. 17-18 from the Aug. 21, 2015 Order.**

Portions of Fact No. 5 “On December 21, 2012 [the Company], Tom Seabrooke and Doyle entered into an agreement with Quail Creek Bank because the Bank was concerned about payment of the loan because they were in default. The Agreement mentions that the Bank had filed a foreclosure action. At the time, [the Company] was trying to locate an additional lender to refinance the loan but was ultimately unable to find additional financing.” **This was supported by Fact No. 9 from the Aug. 21, 2015 Order.**

Portions of Fact No. 7 “Included in the payments Wayne Doyle received from [the Company] was payment of \$228,894 on January 27, 2012. According to Doyle, this was as a bonus for Doyle’s ‘risk compensation.’” **This was supported by Fact No. 20 from the Aug. 21, 2015 Order.**

All other portions of the above Fact Nos. 2-5 and 7 were supported by evidence in the record and presented to the Court without objection (or with objection overruled). The record included facts contained in motions, briefs, hearing testimony and exhibits – all of which were accepted by the Court in connection with arguments before and during the Aug. 5 & 10 hearings.¹⁵ At that time the Receiver was arguing, just as it did later in connection with the Final Order, that Doyle’s investment should be equitably subordinated to the claims of all other creditors. Although it considered the Receiver’s facts and arguments on this issue, the Court chose not to decide that issue in its Aug. 21, 2015 Order. This made sense given that the limited issue before the Court was whether Doyle’s mortgage was a *valid lien*. However, the facts submitted and accepted by the Court were later appropriately presented

¹⁵ These facts are included in the Summary of Facts herein with citation to the record.

again by the Receiver in making his recommendation for disallowance of Doyle's claims. [R000602-0606]. Once again the were presented by the Receiver in his Response to Doyle's Objection to the Receiver's Recommendation. [R000651-0660]. Doyle offered no objection or motion to strike these facts. Accordingly, these facts were properly considered and relied upon when the Court once against addressed the equitable subordination argument and issued its Final Order. Doyle's effort to restrict the Court to only considering a narrow set of facts introduced at the Feb. 29, 2016 hearing is a legally unsupported tactic apparently designed to evade unfavorable portions of the appellate record.

Doyle offers a similar argument for why the Court's Conclusion No. 8 in the Final Order lacks evidentiary support. Once again, Doyle assumes the Court is restricted to only considering evidence presented at the Feb. 29, 2016 hearing or adopted in the Aug. 21, 2015 Order. Based on that assumption, Doyle argues Conclusion No. 8 – describing the Doyle's inequitable and unfair conduct – “lacks any evidentiary support.” As seen in the Summary of Facts herein, the record is replete with proof of that inequitable and unfair conduct by Doyle. It is Doyle's burden to show the intrinsic fairness of his conduct toward other owners; he did not meet that burden. *Beard v. Love*, 2007 OK CIV APP 118, ¶ 29, 173 P.3d 796.

CONCLUSION

The Court's Final Order is not clearly against the weight of the evidence or contrary to law or established principles. It should be affirmed.

Respectfully Submitted,


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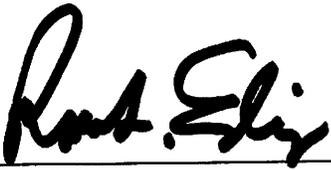
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CERTIFICATE OF MAILING

The undersigned hereby certifies that on this 30th day of January, 2017, a true and correct copy of this pleading was served via First Class Mail, postage prepaid, to:

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