

Counter-Designation of Record because the record as designated by Defendants/Appellants was complete at that date.

After the Petition in Error was filed, this Court entered the Order Approving the Infinity Contract on March 12, 2003. The Conservator consummated the sale of the Conservatorship Assets to Infinity on March 24, 2003, and filed his Report to the Court Regarding Closing on the Sale of Conservatorship Assets on June 3, 2003. The Conservator has since made distributions of sale proceeds to investors pursuant to the instructions issued by the Court and on September 16, 2003 filed the Conservator's Report to the Court Regarding Disbursement of Sale Proceeds to Investors.

As noted by the United States Supreme Court in *Board of License Commissioners of the Town of Tiverton v. Pastore*, 469 U.S. 238, 240, 105 S.Ct. 685, 686 (1985), counsel have a "continuing duty to inform the Court of any development which may conceivably affect the outcome" of the litigation, particularly when the development may deprive the Court of jurisdiction. Similarly, the Oklahoma Supreme Court has recognized that it may take cognizance of facts arising during the pendency of an appeal if such facts have a direct impact on the issues tendered for review. *See Northeast Oklahoma Electric Cooperative, Inc. v. State of Oklahoma ex rel Corporation Commission*, 1991 OK 28, 808 P.2d 680, 683 fn. 6; *City of Tulsa v. Chamblee*, 1940 OK 431, 106 P.2d 796, 797-98.¹ In fact, in *City of Tulsa*, the Oklahoma Supreme Court further stated that facts occurring during the pendency of the appeal are particularly noteworthy where they affect the right and duty of the Court to proceed in the

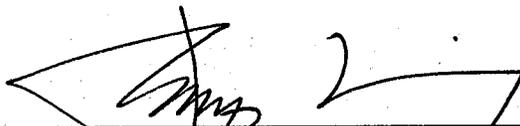
¹ Similarly, under 12 Okla. Stat. § 990.2(B) the successful party to a post-trial "motion to correct, open, modify, vacate or reconsider" must to advise the Supreme Court of the action taken on such motion, although that section is not directly applicable to the pleadings at issue here.

exercise of its appellate jurisdiction. *Id.* at 798. Under such circumstances, Supreme Court Rule 1.28(b) permits materials not before the trial court at the time of the decision appealed to be included in the record on appeal pursuant to an order of the trial court.

In the current case, the Conservator's Report to the Court Regarding Disbursement of Sale Proceeds to Investors directly impacts the Supreme Court's jurisdiction of the subject appeal because the consummation of the sale and subsequent disbursements of proceeds to investors has rendered the appeal moot. Accordingly, the Conservator has a duty to inform the Supreme Court of these facts. Therefore, the Conservator seeks this Court permission to supplement the record in Oklahoma Supreme Court Case No. 98854 to include the Conservator's Report to the Court Regarding Disbursement of Sale Proceeds to Investors.

CONCLUSION

For the reasons stated herein, the Conservator hereby requests that its Motion to Supplement Designation of Record for Appeal be granted as set forth herein.



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CERTIFICATE OF MAILING

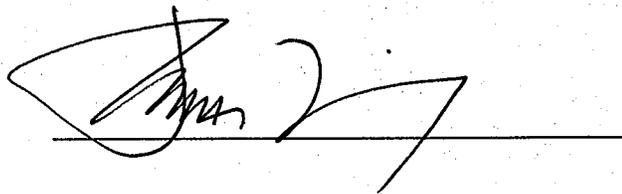
This is to certify that on the 16th day of September, 2003, a true and correct copy of the foregoing document was mailed via First Class Mail, postage pre-paid to:

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A handwritten signature in black ink, appearing to read 'Patricia Presley', is written over a horizontal line.