

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

APR 19 2007

PATRICIA PRESLEY, COURT CLERK
by _____
DEPUTY

OKLAHOMA DEPARTMENT OF)
SECURITIES ex rel. IRVING L.)
FAUGHT, ADMINISTRATOR,)

Plaintiff,)

v.)

BARRY POLLARD AND)
ROXANNE POLLARD,)

Defendants and Third Party)
Plaintiffs,)

v.)

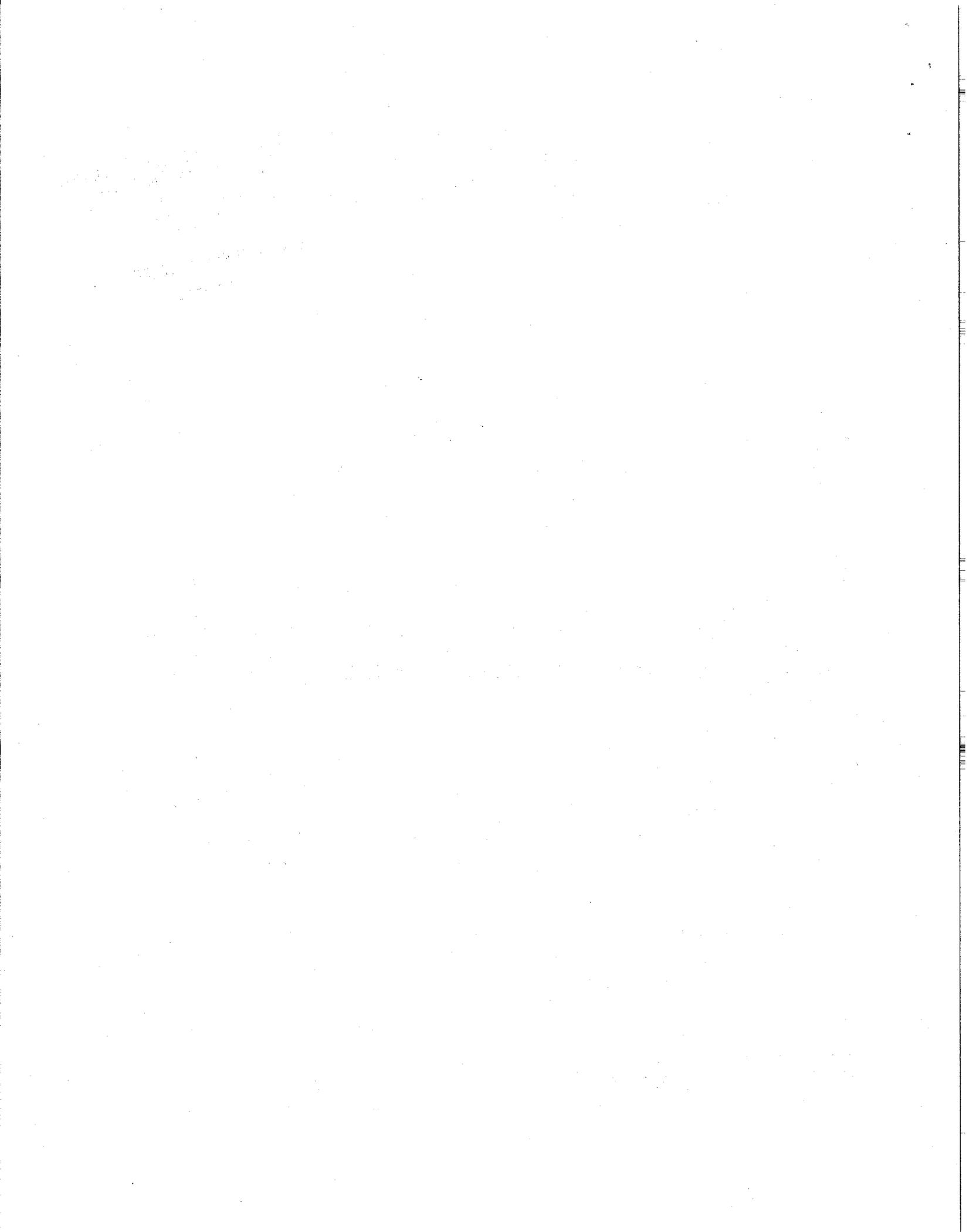
AXA ADVISORS, LLC, a Delaware)
Limited Liability Company; and AXA)
EQUITABLE LIFE INSURANCE)
COMPANY, f/k/a EQUITABLE LIFE)
ASSURANCE SOCIETY OF THE)
UNITED STATES,)

Third Party Defendants.)

Case No. CJ-2005-3799
Hon. Vicki Robertson

**RESPONSE IN SUPPORT OF PLAINTIFF'S MOTION
TO STRIKE DEFENDANTS' AMENDED PETITION**

AXA Equitable Life Insurance Company ("AXA Equitable") files this Response in support of Plaintiff's, the Oklahoma Department of Securities, Motion to Strike Defendant's Amended Petition Adding Third-Party Defendants Farmers & Merchants Bank, Farmer & Merchants Bancshares, Inc., John V. Anderson, and John Tom Anderson (the "F & M Third Party Defendants") filed April 13, 2007 (the "Motion to Strike"). In support, AXA Equitable states as follows:



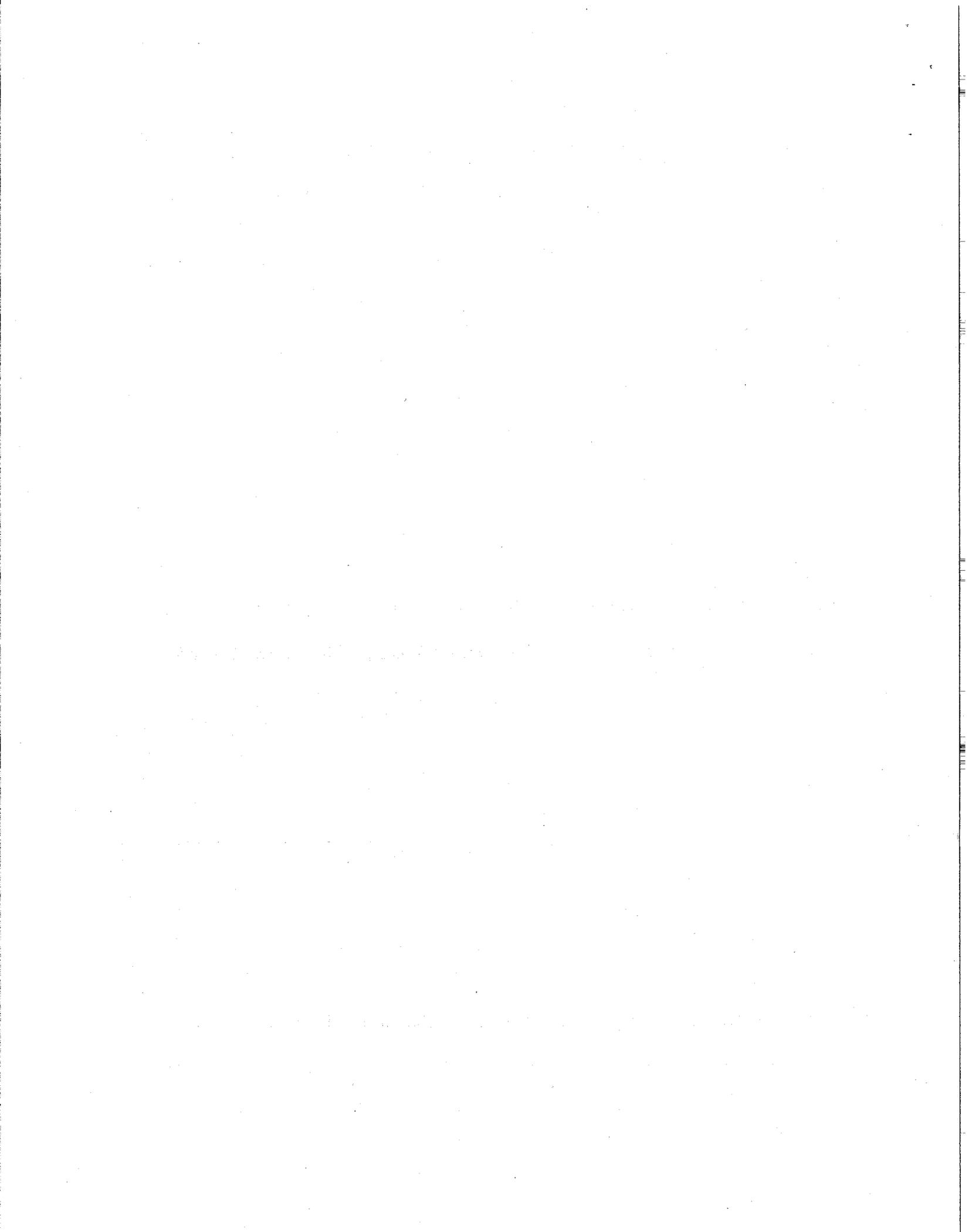
BRIEF IN SUPPORT

A. The addition of the F & M Third Party Defendants creates additional burden and expense to AXA Equitable and delays these proceedings unnecessarily.

AXA Equitable and its affiliated company AXA Advisors LLC (collectively “AXA”) are already subject to two forums (and the related expense) with regard to Defendants’, Barry and Roxanne Pollard (“Defendants” or “Pollards”) claims against AXA. On March 15, 2007, the Court ordered that Defendants’ claims against AXA Advisors, LLC be submitted to arbitration. The Court, however, denied the request to compel arbitration of Defendants’ claims against AXA Equitable and gave Defendants leave to file an amended petition to state claims against AXA Equitable. Defendants filed their Amended Third Party Petition on April 9, 2007 (the “Amended Petition”)—nearly 15 months after they filed their first Third Party Petition. However, rather than amending their claims against AXA Equitable, Defendants improperly brought entirely new and different claims against the F&M Third Party Defendants.

If indeed the Pollards have claims against AXA Equitable that are properly asserted in this Court rather than being compelled to arbitration, such claims must relate to the insurance policies between AXA Equitable and the Pollards rather than the overall securities fraud claims related to activities of Marsha Schubert.¹ They have nothing to do with the claims asserted against AXA Equitable, and it is unduly burdensome on AXA

¹ If the Pollards’ claims against AXA Equitable don’t relate to the separate insurance policies, then such claims should be subject to arbitration along with the claims against AXA Advisors LLC.



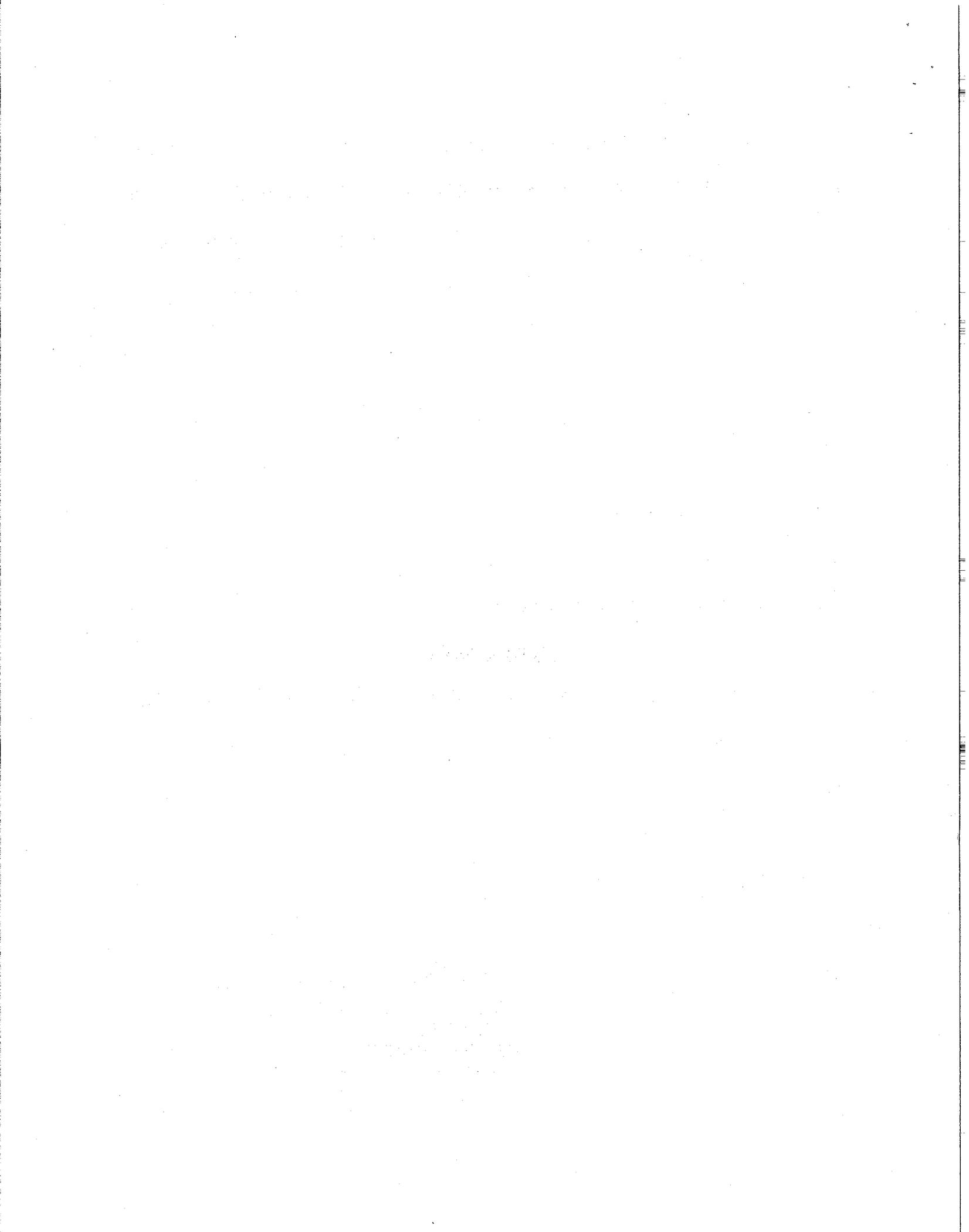
Equitable to have such claims against the F&M Third Party Defendants joined in this case.

B. The Pollards cannot unilaterally add additional parties without leave of Court and should not be allowed to permissively join the F&M Third Party Defendants in this case.

As stated in the Motion to Strike, procedurally Third Party Defendants cannot simply add the F & M Third Party Defendants without leave of this Court. 12 Okla. Stat. §2021. One is not allowed at this point in time to unilaterally just add new parties. *Id.*

Even if the Pollard's had bothered to seek leave prior to unilaterally adding the F&M Third Party Defendants, joinder shouldn't be allowed. The claims against AXA Equitable have absolutely nothing to do with the claims asserted by the Pollards against the F&M Third Party Defendants which appear to rely on alleged improper banking procedures and handling of Marsha Schubert's accounts with the F&M Third Party Defendants. These are not claims that must be joined under 12 Okla. Stat. §2019. Thus, the Court must consider if this would be a proper permissive joinder under 12 Okla. Stat. §2020(A)(2).

The claims against AXA Equitable (if indeed they arise out of the insurance policies which were all acquired in the early 1990s) would substantially predate the activities giving rise to the claims asserted against F&M Third Party Defendants as the Court may recall from the prior arguments the Pollards made to avoid having the claims against AXA Equitable compelled to arbitration. Therefore they do not arise out of the same transaction or occurrence or involve common issues of law or fact as required under §2020(A)(2).



Further, even if the Court were to find that as a permissive matter, the Court could allow joinder under §2020(A)(2), to do so would prejudice AXA Equitable on top of the prejudice to Plaintiff as a result of the undue delay and expense in having new parties added with facts not relevant to the issues involved in the claims against AXA Equitable. Discovery, at a minimum, will involve facts related to the F&M Third Party Defendants that would otherwise not be required in this case without their addition to it. In addition, the Pollards have other options. They could easily intervene in the Plaintiff's separate action against the F&M Third Party Defendants or could simply file a new lawsuit against the F&M Third Party Defendants. As a result, this Court should strike the improperly joined claims against the F&M Third Party Defendants and deny any attempt to allow permissive joinder of them in this case.

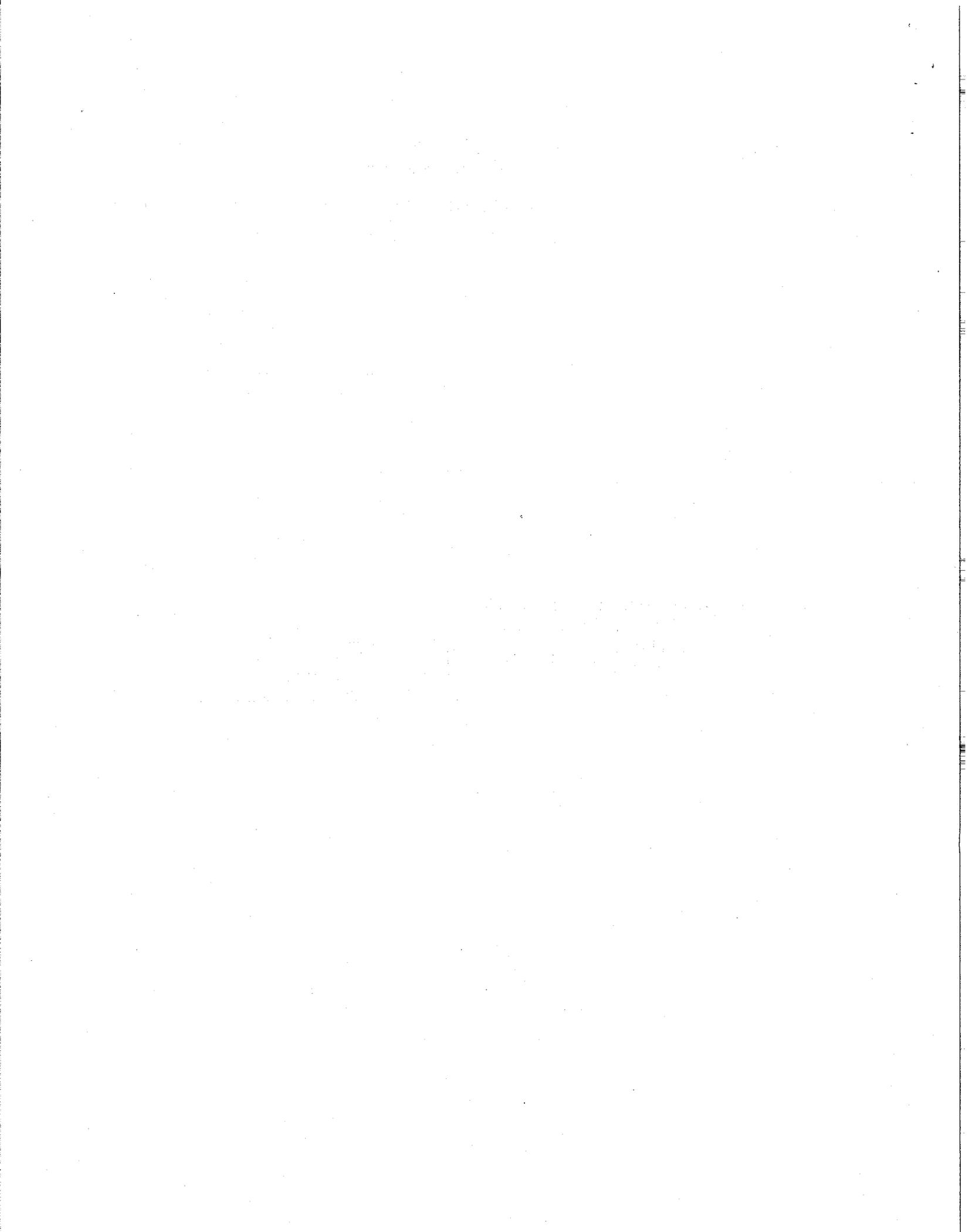
CONCLUSION

Because this is not the proper forum for Pollards' claims against the F & M Third Party Defendants, and due to the excessive expense, burden, and delay caused by the Pollards' improper attempt to join additional parties, AXA supports Plaintiff's Motion to Strike and requests entry of an order striking the claims related F & M Third Party Defendants contained in the Amended Petition.

Respectfully submitted,



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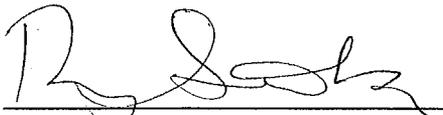
ATTORNEYS FOR AXA ADVISORS, LLC and
AXA EQUITABLE LIFE INSURANCE
COMPANY

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 19th day of April, 2007, a true and correct copy of the foregoing document was mailed, postage pre-paid to:

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