

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

APR 13 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.)

Case No. CJ-2005-3799

**PLAINTIFF'S MOTION TO STRIKE DEFENDANTS' AMENDED PETITION ADDING
THIRD-PARTY DEFENDANTS FARMERS & MERCHANTS BANK, FARMERS &
MERCHANTS BANCSHARES, INC., JOHN V. ANDERSON, AND JOHN TOM
ANDERSON**

Plaintiff, Oklahoma Department of Securities, *ex rel.* Irving L. Faught, Administrator (Plaintiff), moves this Court to strike Defendants Barry and Roxanne Pollard's amended petition adding third-party defendants, Farmers & Merchants Bank, Farmers & Merchants Bancshares, Inc., John V. Anderson, and John Tom Anderson (F&M Third-Party Defendants). In support of its Motion, Plaintiff shows the Court the following:

On May 11, 2005, the Plaintiff filed their petition against Defendants Barry and Roxanne Pollard (Defendants). Following the transfer of the matter to this Court, Defendants filed their answer on January 25, 2006. Within the answer, Defendants filed a third-party petition against AXA Advisors, LLC and AXA Equitable Life Insurance Company. On March 15, 2007, this Court ruled that the Defendants' claim against AXA Advisors, LLC be sent to arbitration. On

March 29, 2007, this Court ruled that Defendants could continue with their third-party petition as to Equitable Life Insurance.

On April 9, 2007, the Defendants filed their amended third-party petition to omit their claim against AXA Advisors, LLC, and without following the Oklahoma Pleading Code, unilaterally added the F&M Third-Party Defendants. Counsel for the Defendants did not provide notice to the other parties in this case and did not ask leave of this Court to amend their third-party petition to add parties.

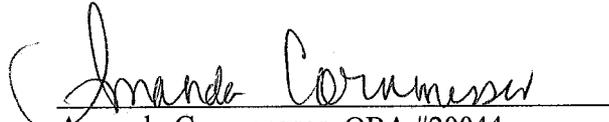
Under 12 O.S. § 2014, a third-party plaintiff must obtain leave of court by motion and give notice to all parties to the action if he files the third-party petition later than ten (10) days after he serves his original answer. Defendants filed their answer on January 25, 2006 – almost 15 months ago. This Court ruled that the Defendants amend their petition as to Equitable Life Insurance only.

In *Hodge v. Morris*, 945 P.2d 1047, the Court ruled that under the Oklahoma Pleading Code, third-party practice mandates that a plaintiff assert a claim against a third-party defendant within applicable limitations period governing plaintiff's claim against defendant. As in the *Hodge* case, Defendants took no action to assert a separate and distinct claim directly against the F&M Third-Party Defendants until long after their original third-party petition. In addition, Defendants have been on notice since April of 2006 of the Plaintiff's lawsuit against F&M Bank filed in the District Court of Oklahoma County. Judge Parrish allowed other Schubert and Associate investors to intervene in that matter and would undoubtedly have permitted Defendants' intervention.

The Plaintiff objects to the filing of Defendants' amended petition as to the F&M Third-Party Defendants. Defendants have failed to follow the Oklahoma Pleading Code. To permit

them to proceed with their claim against these additional parties would result in unfair surprise relative to all the parties. Furthermore, it would unnecessarily complicate and delay the pending case. Therefore, this Court should not permit the addition of the F&M Third-Party Defendants to this lawsuit.

Respectfully submitted,

A handwritten signature in cursive script that reads "Amanda Cornmesser". The signature is written in black ink and is positioned above a horizontal line.

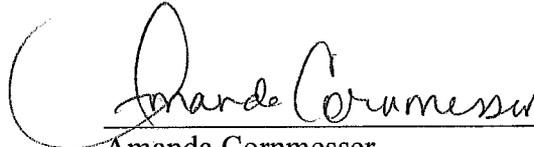
Amanda Cornmesser, OBA #20044
Gerri Stuckey, OBA #16732
Melanie Hall, OBA #1209
Oklahoma Department of Securities
120 N. Robinson, Suite 860
Oklahoma City, OK 73120
Attorneys for Plaintiff, Oklahoma
Department of Securities

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 13th day of April, 2007, a true and correct copy of the above and foregoing was mailed by U.S. Mail, with postage prepaid thereon, addressed to:

Ronald D. Fulkerson
Shawn D. Fulkerson
Carolie E. Rozell
Fulkerson & Fulkerson, P.C.
10444 Greenbriar Place
Oklahoma City, OK 73159

Judy Hamilton Morse
Regan Strickland Beatty
Crowe and Dunlevy
20 N. Broadway, Ste. 1800
Oklahoma City, OK 73102



Amanda Cornmesser