IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

DEC 19 2008

PATRICIA PRESLEY, COURT CLERK
by _____
DEPUTY

Oklahoma Department of Securities *ex rel.* Irving L. Faught, Administrator,	)	
Plaintiff,	)	
v.	)	Case No.: CJ-2008-9048
Powder River Petroleum International, Inc., an Oklahoma corporation, and Brian Fox, an individual,	)	
Defendants.	)	

PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION FOR CHANGE OF VENUE

Plaintiff, Oklahoma Department of Securities, *ex rel.* Irving L. Faught, Administrator, respectfully submits this response to the Defendants' Motion for Change of Venue purportedly filed on behalf of Defendants Powder River Petroleum International, Inc. ("Powder River") and Brian Fox on or about December 1, 2008. In support of this response, Plaintiff states as follows:

1. On or about July 14, 2008, a District Court Judge entered the Order Appointing Receiver ("Receivership Order"), attached hereto as Exhibit A and incorporated herein by reference, in *Chang v. Powder River Petroleum Intl., Inc.*, CJ-2008-4855, in the District Court of Tulsa County ("Tulsa Lawsuit").

2. The Receivership Order appointed a receiver over Defendant Powder River ("Receiver") and vested the Receiver with "full powers of an equity receiver." Or. Appointing Receiver at 2, *Chang v. Powder River Petroleum Intl., Inc.*, CJ-2008-4855 (Tulsa

County District Court, July 14, 2008). The Receiver was specifically granted the power and authority to, *inter alia:*

a. "Take custody, control and possession of all records, assets, funds, personal property, vehicles, bank accounts, brokerage accounts, real property premises and other materials of any kind in the possession of or under the direct or indirect control of the Receiver Estate or the Receivership Entities . . ." ;

b. "Conduct the business operations of the Receivership Entities . . .";

c. "Institute, defend, compromise or adjust such actions or proceedings in state or federal courts now pending or hereinafter instituted, as may in his discretion be advisable or proper for the protection and administration of the Receivership [sic] Estate"; and

d. "Take any such action which could be taken by the officers, directors, managers, members, partners, trustees or other principals of the Receiver Estate[.]" *Id.* at 3-5.

Further, the Receivership Order states, "No person holding or claiming any position of any sort with the Receiver Estate shall possess any authority to act by or on behalf of any of [sic] the Receiver Estate, except as authorized by the Receiver." *Id.* at 2.

3. The Receivership Order defined "Receivership Entities" to mean Powder River and its subsidiaries and affiliates. *Id.*

4. The Receivership Order defined "the Receiver Estate" to mean "Defendant Powder River, its assets, and the assets of its subsidiaries and affiliates." *Id.* Powder River's assets were defined to include "all real and personal property held in the name of any of the Receivership Entities, all contract rights of Powder River, all legal and equitable claims of

any of the Receivership Entities, all banking, brokerage and depository accounts of any of the Receivership Entities, all electronic currency account of any of the Receivership Entities, and all internet payment processor accounts of any of the Receivership Entities." *Id.*

5. The Receivership Order remains in full force and effect.

6. An answer was filed in this matter on behalf of Defendant Powder River, by and through the Receiver, on December 1, 2008 ("Defendant Powder River's Answer").

7. Defendant Powder River admitted in Defendant Powder River's Answer that the proper venue for this action is Oklahoma County. Ans. Def. Powder River ¶ 3 (Dec. 1, 2008).

8. The Receiver has not retained or authorized the law firm of Edwards & Mailath, LLP, or Leslie Shelton, to provide legal representation to Defendant Powder River in this matter and did not authorize them to contest venue on behalf of Defendant Powder River. See the Affidavit of Bruce W. Day attached hereto as Exhibit B and incorporated herein by reference.

9. Defendant Powder River's principal office and place of business was relocated to the offices of Day, Edwards, Propester & Christensen, P.C., 2900 Oklahoma Tower, 210 Park Avenue, Oklahoma City, County of Oklahoma ("Oklahoma City Office"), subsequent to the entry of the Receivership Order on July 14, 2008, and prior to the commencement of this action on October 8, 2008. Defendant Powder River's principal office and place of business currently remains at the Oklahoma City Office. Defendant Powder River has no other office leased or in operation and did not have any other such office on October 8, 2008. See Exhibit B hereto.

10. Defendant Powder River's administrative offices were relocated to the Oklahoma City Office between July 14, 2008, and October 8, 2008, and remain there today. See Exhibit B hereto.

11. Defendant Powder River's telephone calls and mail have been forwarded to the Oklahoma City Office since July 14, 2008, or soon thereafter. See Exhibit B hereto.

12. Defendant Powder River's records, computers, and servers were relocated to the Oklahoma City Office between July 14, 2008, and October 8, 2008, and remain there today. See Exhibit B hereto.

13. All business operations and activities of Defendant Powder River are directed by the Receiver from the Oklahoma City Office and have been since approximately July 14, 2008. The Receiver is in control of all of the identified and located assets of Defendant Powder River. See Exhibit B hereto.

14. Defendant Powder River has no employees and did not have any employees on October 8, 2008. See Exhibit B hereto.

15. Defendant Powder River's website provides the address of the Oklahoma City Office as the address for Defendant Powder River. See Exhibits B and C hereto.

16. Beginning on or around July 29, 2008, filings made with the United States Securities and Exchange Commission ("SEC") on behalf of Defendant Powder River have provided the address of the Oklahoma City Office as the address of Defendant Powder River's "Principal Executive Offices." See Exhibits D through G hereto.

ARGUMENTS AND AUTHORITIES

A. Defendant Powder River admits Oklahoma County is a proper venue.

Paragraphs 1 through 8 above are incorporated herein by reference.

The Receiver has the sole authority to act on behalf of Powder River and to defend any action or proceeding against Powder River. The Receiver authorized counsel from the law firm of Day, Edwards, Propester & Christensen, P.C., to represent Defendant Powder River in this matter. Authorized counsel filed Defendant Powder River's Answer in which Defendant Powder River admitted that Oklahoma County is a proper venue for this action. As such, venue as to Defendant Powder River should be deemed proper in Oklahoma County.

B. Venue as to Defendant Powder River is proper in Oklahoma County under Okla. Stat. tit. 12, § 134.

Paragraphs 1 through 16 above are incorporated herein by reference.

Defendant Powder River is a domestic corporation. Okla. Stat. tit. 12, § 134 sets forth permissible venues for domestic corporations. Section 134 authorizes an action against a domestic corporation to be brought "in the county in which it is situated, or has its principal office or place of business, or in which any of the principal officers thereof may reside, or be summoned, or in the county where the cause of action or some part thereof arose, or in any county where a codefendant of such corporation created by the laws of this state may properly be sued."

"The location of a corporation's principal place of business is a factual question to be determined on a case-by-case basis through review of the corporation's total activity." *Briggs v. Am. Flyers Airline Corp.*, 262 F. Supp. 16, 18 (N.D. Okla. 1966); *see e.g. Amoco Rocmount Co. v. Anschutz Corp.*, 7 F.3d 909, 915 (10th Cir. 1993). In making such determination, a variety of factors are to be considered. *Briggs*, 262 F. Supp. at 915. Those factors include, but are not limited to, "the location of the corporation's nerve center, administrative offices, production facilities, [and] employees . . . ." *Id.* (quoting *White v.*

Halstead Indus., Inc., 750 F. Supp. 395, 398 (E.D.Ark. 1990)). Such factors are to be balanced "in light of the facts of each case." *Id.*

Defendant Powder River's principal office and place of business was moved to Oklahoma County prior to the time Plaintiff initiated this action, and it remains there. Defendant Powder River's business operations in Calgary, Canada were effectively terminated after the appointment of the Receiver. *See* Defs.' Combined Mots. (I) To Vacate T.R.O., Or. for Temp. Inj., and Or. Appointing Receiver; (ii) To Discharge Receiver, or in the Alt., To Modify or Suspend Receiver's Powers; (iii) For Turnover of Defs.' Prop. and Recs.; (iv) To Increase Receiver's Bond; (v) To Dismiss for Lack of Personal Jxn.; (vi) Req. for Hrg., and Br. in Support Thereof at ¶ 52, *Chang v. Powder River Petroleum Intl., Inc.*, CJ-2088-4855 (Dist. Ct. of Tulsa Co., Aug. 15, 2008), attached hereto as Exhibit H. The Receiver relocated Defendant Powder River's records, computers, and servers to the Oklahoma City Office and obtained control over Defendant Powder River's oil and gas producing properties and other assets.

Defendant Powder River's administrative office was relocated to the Oklahoma City Office prior to the commencement of this action. Defendant Powder River's telephone calls and mail are received at the Oklahoma City Office, and the address of the Oklahoma City Office is provided as the company's contact information on its website and as its "Principal Executive Offices" in SEC filings.

Defendant Powder River's nerve center was also relocated to the Oklahoma City Office prior to the commencement of this action. The Receiver directs all business operations and activities of Powder River from the Oklahoma City Office. Defendant Powder River has no other leased office space and no other office in operation and did not

have any other such office when this action was initiated on October 8, 2008. Further, Defendant Powder River has no employees and did not have any on October 8, 2008.

In the event the Oklahoma City Office is not Defendant Powder River's principal place of business, Defendant Powder River is at least "situated" in Oklahoma County by virtue of its operations in the Oklahoma City Office. For purposes of Okla. Stat. tit. 12, § 134, a corporation is "situated" in any county where it has and maintains an office or place of business, and "servants, employees or agents engaged in conducting and carrying on the business for which it exists." *Public Service Co. of Okla. v. Hawkins*, 1944 OK 101, 149 P.2d 783, 787. Since the appointment of the Receiver, Defendant Powder River has maintained an office in Oklahoma County, and any business of Powder River that has been conducted during such time has been conducted in or from the Oklahoma City Office.

Oklahoma County is a proper venue as to Defendant Powder River under Okla. Stat. tit. 12, § 134 because its principal office and place of business is located here, and the company is situated here.

C. Venue as to Defendant Brian Fox is proper in Oklahoma County under Okla. Stat. tit. 12, § 137.

Defendant Brian Fox is a nonresident of this state. Okla. Stat. tit. 12, § 137 sets forth permissible venues for nonresidents. "In addition to the other counties in which an action may be brought against a nonresident of this state . . .," Section 137 authorizes an action against a nonresident in "any county in which there may be property of or debts owing to such defendant, or where such defendant may be found, or in any county where a codefendant may be properly sued[.]" For the reasons set forth above, the codefendent of Brian Fox may be properly sued in Oklahoma County. As such, venue as to Defendant Brian Fox exists in Oklahoma County under Section 137.

D. Venue is proper and possibly mandatory in Oklahoma County under Okla. Stat. tit. 71, §§ 1-603.

Section 1-603 of the Oklahoma Uniform Securities Act of 2004 ("Act"), Okla. Stat. tit. 71, §§ 1-101 through 1-701 (Supp. 2004), statutorily creates Plaintiff's authority to initiate civil actions in Oklahoma's district courts. Section 1-603 only authorizes Plaintiff to initiate civil actions "in the district court of Oklahoma County or the district court of any other county where service can be obtained . . . ." By virtue of Section 1-603, Plaintiff's choice of venue is different than that of a private plaintiff.

In this action, Plaintiff's chosen venue is Oklahoma County. Such venue is proper under Sections 134 and 137 of Title 12, for the reasons set forth above, and Section 1-603 of the Act. Interestingly, positions asserted in Defendants' Motion for Change of Venue mandate venue in Oklahoma County under Section 1-603 of the Act, pursuant to *Schwartz v. Diehl*, 1977 OK 115, 568 P.2d 280 (interpreting the applicability of Section 143 of Title 12).

Defendant Brian Fox is an individual non-resident who was personally served with the summons and Petition in Oklahoma County pursuant to Okla. Stat. tit. 12, § 2004(C). Although Defendant Brian Fox has not otherwise objected to service of process upon him, Defendant Brian Fox asserts in his Motion for Change of Venue that service of process upon him was "illegal under immunity granted to him by virtue of his entering Oklahoma County for the sole purpose of conducting discovery and preparing for a court hearing in Tulsa County." Defs.' Mot. Change Venue at 5 (Dec. 1, 2008). Defendant Brian Fox's position seems to be that he was immune from service of process anywhere in Oklahoma, including Tulsa County, on October 8, 2008, because he is a nonresident who entered Tulsa County on or about October 6, 2008, for the limited purpose of attending a deposition and an evidentiary hearing in the Tulsa Lawsuit and that his trip to Oklahoma County on October 8, 2008, was

for the sole purpose of reviewing documents "to assist in his defense at the evidentiary hearing." *Id.* at 6.

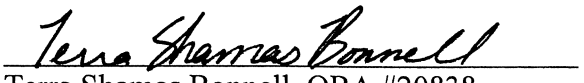
Assuming *arguendo* that Defendant Brian Fox was totally immune from service of process by virtue of his entry into Oklahoma for purposes of litigation, Plaintiff could only initiate this action in Oklahoma County pursuant to Section 1-603 of the Act. Under the interpretation of the venue statutes relied on by Defendant Brian Fox, Okla. Stat. tit. 12, § 143 would not be relevant because venue would statutorily be authorized in only one county, Oklahoma County. "The provisions of § 143 that venue statutes are 'cumulative' and disallowing preference of one statute over another, are necessarily dependent upon venue being proper in two or more counties. It is clear that § 143 is not applicable where venue is statutorily authorized in only one county." *Schwartz*, 568 P.2d at 283.

CONCLUSION

Oklahoma County is a proper venue for this action. Defendant Powder River admitted in Defendant Powder River's Answer that the chosen venue is proper. In addition, venue as to Defendant Powder River is proper in Oklahoma County under Okla. Stat. tit. 12, § 134 because Defendant Powder River's principal office and place of business is, and was at the time this action was initiated, located in Oklahoma County. Defendant Powder River is also "situated" in Oklahoma County and was so at the time this action was initiated. Venue as to Defendant Brian Fox is proper in Oklahoma County under Okla. Stat. tit. 12, § 137 because his codefendant, Powder River, may be properly sued in Oklahoma County. Finally, Section 1-603 of the Act authorized Plaintiff to initiate this action in Oklahoma County.

Plaintiff respectfully requests that the Court deny Defendants' motion for change of venue.

Respectfully submitted,



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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

The undersigned certifies that on the 19th day of December, 2008, a true and correct copy of the foregoing was mailed to the following address:

Bruce W. Day, OBA #2132
Tara A. LaClair, OBA #21903
Kelley C. Callahan, OBA #1429
Day, Edwards, Propester & Christensen, P.C.
210 West Park Avenue, Suite 2900
Oklahoma City, OK 73102-5605
ATTORNEYS FOR DEFENDANT POWDER RIVER

Rodney A. Edwards
Melissa Mailath
Leslie Shelton
6226 East 101st Street, Suite 100
Tulsa, OK 74137
ATTORNEYS FOR DEFENDANT BRIAN FOX

Terra Shamas Bonnell

IN THE DISTRICT COURT OF TULSA COUNTY
STATE OF OKLAHOMA

MARK CHANG, an individual; ALAN KWOK WAI WONG, an individual; LIM HONG BENG, an individual, HUIOS ENERGY, LLC, an Oklahoma limited liability company; and OILPODS SINGAPORE PTE LTD., a Singapore private limited company,	)	DISTRICT COURT FILED JUL 14 2008 SALLY HOWE SMITH, COURT CLERK STATE OF OKLA. TULSA COUNTY
Plaintiffs,	)	
vs.	)	Case No. CJ-2008-4855
POWDER RIVER PETROLEUM INTERNATIONAL, INC., an Oklahoma corporation; and BRIAN FOX, an individual,	)	
Defendants.	)	

ORDER APPOINTING RECEIVER

WHEREAS, Plaintiffs have filed a Motion for Appointment of Receiver over Defendant, Powder River , with full and exclusive power, duty and authority to: administer and manage the business affairs, funds, assets, choses in action and any other property of Defendant; marshal and safeguard all of the assets of Defendant, POWDER RIVER, and take whatever actions are necessary for the protection of the investors.

WHEREAS, the Plaintiffs have made a sufficient and proper showing in support of relief requested by evidence demonstrating a case of violations of the Oklahoma and federal securities laws by Defendants.

WHEREAS, the Plaintiffs have submitted the credentials of a candidate to be appointed as Receiver of all of the assets, properties, books and records, and other items of Defendants, including any properties, assets and other items held in Defendants'

EXHIBIT
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names, or their principals' names, and the Plaintiffs have advised the Court that this candidate is prepared to assume this responsibility if so ordered by the Court;

NOW, THEREFORE, IT IS ORDERED AND ADJUDGED that Bruce W. Day is hereby appointed the Receiver over Defendant, POWDER RIVER.

Based upon the foregoing:

IT IS HEREBY ORDERED that Bruce Day is appointed as Receiver, with ~~out~~ $5,000,000 bond, with full powers of an equity receiver for Powder River Petroleum International, Inc. and Oklahoma corporation and successor in interest by merger to Powder River Basin Gas Corp., a Colorado corporation (collectively "Powder River"), its subsidiaries and affiliates (hereinafter, the "Receivership Entities"). Defendant Powder River, its assets, and the assets of its subsidiaries and affiliates, are collectively referred to herein as "the Receiver Estate". Powder River's assets, for purposes of this Order, are defined to include all real and personal property held in the name of any of the Receivership Entities, all contract rights of Powder River, all legal and equitable claims of any of the Receivership Entities, all banking, brokerage and depository accounts of any of the Receivership Entities, all electronic currency accounts of any of the Receivership Entities, and all internet payment processor accounts of any of the Receivership Entities. No person holding or claiming any position of any sort with the Receiver Estate shall possess any authority to act by or on behalf of any of the Receiver Estate, except as authorized by the Receiver. All persons, including but not limited to the Defendants and their officers, agents, servants, employees, attorneys, subsidiaries, affiliates, and all persons in active concert or participation with

them, who receive actual notice of this Order by personal service or otherwise, are enjoined from in any way interfering with the operation of the Receivership or in any way distributing or disposing of the assets of the Receivership Estate and from filing or prosecuting any actions or proceedings which involve the Receiver or which affect the Receivership Estate, specifically including any proceeding initiated pursuant to the United States Bankruptcy Code, except with prior permission of this Court.

IT IS FURTHER ORDERED that the Receiver shall have and possess all powers and rights of any equity receiver to administer and manage the Receiver Estate in a commercially reasonable manner, with the intent to maximize the value of the Receiver Estate, including, but not limited to the power and authority:

1. to take custody, control and possession of all records, assets, funds, personal property, vehicles, bank accounts, brokerage accounts, real property premises and other materials of any kind in the possession of or under the direct or indirect control of the Receiver Estate or the Receivership Entities and, until further order of this Court;
2. to manage, control, operate and maintain the Receiver Estate, to use income, earnings, rents and profits of the Receiver Estate, with full power to sue for, collect, recover, receive and take into possession all goods, chattels, rights, credits, monies, effects, lands, books and records of accounts and other documents, data and materials;
3. to conduct the business operations of the Receivership Entities, including the purchase and/or sale of real or personal property or inventory, the continuation and termination of any contract, employment arrangement and

all other aspects of any active business operation;

4. to make such ordinary and necessary payments, distributions, and disbursements as he deems advisable or proper for the marshaling, maintenance or preservation of the Receivership Estate;

5. to terminate business operations and to sell, rent, lease or otherwise hypothecate or dispose of the assets of the Receiver Estate;

6. to contact and negotiate with any creditors of Powder River for the purpose of compromising or settling any claim, including the surrender of assets to secured creditors;

7. to have control of, receive and collect any and all sums of money due or owing to Powder River whether the same are now due or shall hereafter become due and payable, and incur such expenses and make such disbursements as are necessary and proper for the collection, preservation, maintenance, administration and operation of the Receiver Estate;

8. to renew, cancel, terminate, or otherwise adjust any pending lease agreements to which Powder River is a party;

9. to institute, defend, compromise or adjust such actions or proceedings in state or federal courts now pending or hereinafter instituted, as may in his discretion be advisable or proper for the protection and administration of the Receivership Estate;

10. to institute such actions or proceedings to disgorge assets of the Receiver Estate held by third parties, impose a constructive trust, obtain possession and/or recover judgment with respect to persons or entities who received

assets or funds traceable to investor monies, with all such actions filed in this Court;

11. to open bank accounts or other depository accounts, in the name of the Receiver on behalf of the Receiver Estate;

12. to prepare any and all tax returns and related documents regarding the assets and operation of the Receiver Estate;

13. to prepare or have prepared and file any report or form necessary or appropriate with state or federal regulatory authorities or self regulatory organizations, including the Securities Exchange Commission, state securities departments, or the Financial Industry Regulatory Authority;

14. to take any action which could be taken by the officers, directors, managers, members, partners, trustees or other principals of the Receiver Estate;

15. to abandon any asset that, in the exercise of his reasonable business judgment, will not provide benefit or value to the Receiver Estate; and

16. to take such other action as may be approved by this Court.

IT IS FURTHER ORDERED that the Receiver shall not make any other disbursements or transfers from the Receiver Estate (except as otherwise allowed by this Order), without prior approval and/or permission of the Court.

IT IS FURTHER ORDERED that the Receiver shall be empowered, but is not required, to file a voluntary petition for relief under Title 11 of the United States Code (the "Bankruptcy Code") for the Receiver Estate or any portion thereof. If a bankruptcy petition is filed, the Receiver shall become, and shall be empowered to operate the Receiver

Estate as a debtor in possession, with all powers and duties provided to a debtor in possession under the Bankruptcy Code to the exclusion of any other person or entity. Without leave or further order of this Court, no person other than the Receiver is authorized to seek relief under the Bankruptcy Code for any person or entity included within the Receiver Estate

IT IS FURTHER ORDERED that with respect to the asset freeze set forth in _____ of this Order, the Receiver shall be authorized, but not required, to administer, manage, and direct the marshaling, disbursement and/or transfer of monies or other assets held by third parties that are subject to the freeze. The Receiver may, in the reasonable exercise of his discretion, authorize the release, use or segregation of proceeds held by third parties.

IT IS FURTHER ORDERED that the Receiver shall perform an accounting of the offering and sale of securities that is outlined in the Petition filed herein, including but not limited to, the Defendants' solicitation, receipt, disposition and use of the proceeds from such offering. This accounting shall include the names of all investors and/or lenders participating in Powder River's scheme as alleged and described in the Petition (collectively, the "Investors"), the principal amount invested with and/or loaned to Powder River by all Investors, and the amounts paid by Powder River to any Investors.

IT IS FURTHER ORDERED that the Receiver shall perform an accounting of all inventory, merchandise, products, assets or things of value in the possession, custody, or control of Powder River or other persons that were acquired with funds or proceeds received from the Investors (collectively, the "Inventory"), perform a valuation of the

Inventory, and ensure that any liquidation, sale or disposition of the Inventory takes place in a commercially reasonable manner so as to maximize the value of the Receiver Estate.

IT IS **FURTHER ORDERED** that the Defendants and their officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, who receive actual notice of this Order, shall cooperate with the Receiver and the other professionals working with him in the administration of the Receiver Estate, including, but not limited to, the immediate delivery to the Receiver of the following;

A. all assets and other materials of the Receiver Estate in the possession or under their control, as well as the name and contact information of any person who has knowledge of the nature or location of assets or other materials belonging to the Receiver Estate;

B. business records of any kind (including legal files), whether in hard copy or electronic format, including e-mail files and accounts, customer files, accounting and financial records, bank records, brokerage records, and other depository records;

C. insurance policies regarding any assets or persons that are in any way affiliated with the Receiver Estate, along with other information regarding insurance coverage or the absence thereof;

D. computers and computer files, including e-mail files, along with all passwords for such files, that belong to or are under the control of Powder River or that in any way relate to the assets or the operation of the Receiver Estate;

E. passwords and other identifying information regarding all computer or on-line files, websites, banking or brokerage accounts and/or any other assets of

Powder River or under the direct or indirect control, specifically including but not limited to, passwords for internet or electronic access banking, brokerage and other on-line accounts;

F. keys, security cards, parking cards and other access codes for premises, vehicles, safety deposit boxes or accounts or assets under the direct or indirect control of Powder River;

G. title documents for equipment, vehicles and boats, and

H. such other information related to the Receiver Estate as the Receiver and those working with him reasonably request.

IT IS FURTHER ORDERED that any bank, brokerage firm, mutual fund or other financial institution or any other person, partnership, corporation or other entity maintaining or having custody or control of any brokerage or depository accounts or other assets of the Receiver Estate and the Receivership Entities, accounts into which proceeds of the subject investment offerings have been deposited, or accounts or assets under the direct or indirect control of the Defendants, who receives actual notice of this Order shall:

1. freeze such accounts, funds or assets;

2. turn over to the Receiver control of all such accounts, funds, cash and securities;

3. within twenty-one (21) business days of receipt of such notice, file with the Court and serve on the Receiver a certified statement setting forth, with respect to each such account or other assets, the balance in the account or the description of the assets as of the close of business on the date of the receipt of the notice;

4. promptly cooperate with the Receiver to determine whether and to what extent any accounts, funds or other assets are actually assets or proceeds of assets of the Receiver Estate;

5. provide to the Receiver records of such funds, accounts and assets and tender said funds and/or the assets to the Receiver.

To the extent that there are assets or accounts about which a determination of ownership cannot be made, they shall be turned over to the Receiver to be held in escrow pending a determination of the ownership of such assets. The Receiver is authorized to provide notice of the entry of this Order to any governmental agency, person or other entity he deems appropriate. Actual notice may be accomplished by delivery of a copy of this Order by hand, U.S. mail, courier service, facsimile, by e-mail or by any other reasonable means of delivery.

IT IS FURTHER ORDERED that the Receiver is hereby authorized to make appropriate notification to the United States Postal Service to forward delivery of any mail addressed to any of the Receivership Entities, to any Post Office box or other mail depository, or to himself. Further, the Receiver is hereby authorized to open and inspect all such mail, to determine the location or identify of assets or the existence and amounts of claims.

IT IS FURTHER ORDERED that the Receiver may investigate any matters he deems appropriate in connection with discovering additional information as it relates to the activities of the Receiver Estate. In connection with any such investigation, the Receiver is authorized to:

A. compel, including by subpoena, the appearance and testimony of all persons, including the Defendants (prior to and/or after the filing of responsive pleadings in this action) and the production of the originals of any records and materials, of any sort whatsoever, within the possession, custody or control of any person, though the Receiver's authority under this paragraph shall not be construed to require the waiver by any person of any validly asserted privilege; and,

B. order consumer and credit reports that he deems necessary and appropriate as a part of his pursuit of additional Receiver Estate assets.

IT IS FURTHER ORDERED that the Receiver is hereby directed to file with this Court and serve upon the parties, within 45 days after entry of this Order, a preliminary report setting out the identity, location and value of the Receivership Estate, and any liabilities pertaining thereto.

IT IS FURTHER ORDERED that all persons having notice of this Order, including creditors and others seeking money damages or other relief from the Receiver Estate, and all others acting on behalf of any such creditors and other persons, including sheriffs, marshals, and all officers and deputies, and their respective attorneys, servants, agents and employees, are restrained from doing anything to interfere with the Receiver's performance of his duties and the administration of the Receiver Estate.

IT IS FURTHER ORDERED that the Receiver is authorized to communicate with all such persons as he deems appropriate to inform them of the status of this matter and the financial condition of the Receiver Estate. The Receiver is also hereby authorized to

employ such employees, accountants, consultants, attorneys and other professionals, including employees of his own professional firm, as are necessary and proper for the administration of the Receiver Estate and the performance of his duties as set forth herein. **The Receiver shall seek and obtain the approval of this Court prior to disbursement of professional fees and expenses to himself, his firm or his counsel, by presentation of a written application therefore, and after consultation with the Commission. All costs incurred by the Receiver shall be paid from the Receivership Estate. Upon notice to all parties in this case the Receiver may submit a proposed order regarding an administrative process for the approval and payment of professional fees and expenses consistent with this provision.**

IT IS FURTHER ORDERED that upon the request of the Receiver, law enforcement officers in any applicable judicial district, are hereby ordered and/or requested to assist the Receiver in carrying out his duties to take possession, custody or control of or identify the location of any assets, records or other materials belonging to the Receivership Estate.

IT IS FURTHER ORDERED that the Receiver is authorized to remove any person from any premises or real estate that is owned or controlled by one of the Receivership Entities or that is otherwise part of the Receiver Estate. The Receiver shall keep the Court; and counsel for Defendants apprised at reasonable intervals of developments concerning the operation of the receivership, and shall provide to the Court upon request any documents under the control of the Receiver.

IT IS FURTHER ORDERED that the Receiver shall promptly notify the Court and all parties of any failure or apparent failure of any Defendant to comply in any way with the terms of this Order.

IT IS FURTHER ORDERED that except for an act of gross negligence or intentional misconduct, the Receiver and all persons engaged or employed by him shall not be liable for any loss or damage incurred by any person or entity by reason of any act performed or omitted to be performed by the Receiver or those engaged or employed by him in connection with the discharge of their duties and responsibilities in connection with the receivership.

IT IS FURTHER ORDERED that the assets of Powder River, its affiliated entities, and Fox be, and hereby are, frozen. The freeze shall include but not be limited to those funds located in any bank accounts of said individuals and entities, including any offshore or overseas bank accounts. In addition, all funds or proceeds obtained or derived from investors and/or lenders participating in Powder River's scheme as alleged and described in the Petition remaining in the custody and control of said individuals and entities are hereby frozen, in whatever form now found, regardless of where said proceeds are located. This includes, but is not limited to, proceeds or assets that have been transferred to any account, corporation, partnership, or limited liability company controlled by Powder River, Fox or any combination of them. Until further order of this Court, Powder River, its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, except any trustee, receiver or special fiscal agent appointed by this Court; be, and hereby are, restrained from, directly and indirectly, transferring, setting off, receiving,

claiming, selling, pledging, assigning, liquidating or otherwise disposing of or withdrawing any assets and property owned by, controlled by, or in the possession of said individuals and entities. This court further enjoins any disbursement by the said individuals and entities, their agents, representatives, employees and officers and all persons acting in conceit or participation with them, whatever business names they may operate under, of any proceeds derived from the sales of securities described in the complaint. However, this asset freeze shall not extend to the following:

A. For Defendant Fox, the freeze shall not extend to any future income, as necessary for reasonable living expenses provided such income is derived in a manner consistent with the terms of this Order. Defendant Fox may establish a new bank account and thereafter deposit any future income in the same new bank account, which shall remain outside the terms of this asset freeze so long as the funds within it are not intermingled with those subject to the freeze.

IT IS FURTHER ORDERED that any notice, written or otherwise, to be provided by any party to the Receiver shall be effected and sent by electronic mail to bruceday@dayedwards.com.

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this action for all purposes. The Receiver *is* hereby authorized, empowered and directed to apply to this Court, with notice to the parties named in the first paragraph of this Order, above, for issuance of such other orders as may be necessary and appropriate in order to carry out the mandate of this Court

IT IS FURTHER ORDERED that the Receivership Entities shall pay the costs, fees and expenses of the Receiver in connection with the performance of his duties described in this Order, including the costs and expenses of those persons who may be engaged or employed by the Receiver to assist him in carrying out his duties and obligations. All applications for costs, fees and expenses, for services rendered in connection with the receivership other than routine and necessary business expenses in conducting the receivership, such as salaries, rent and any and all other reasonable operating expenses, shall be made *by* application setting forth in reasonable detail the nature of the services and shall be heard by the Court.

IT IS FURTHER ORDERED that this Order will remain in effect until modified by further order of this Court.

DATED this 14 day of July, 2008.

J. MICHAEL GASSETT

JUDGE OF THE DISTRICT COURT

Approved as to Form:
Cecil G. Drummond, Esq., OBA #2503
BOETTCHER & DRUMMOND, INC.
Attorneys at Law
5200 South Yale, Suite 507
Tulsa, Oklahoma 74135-7489
(918) 492-8448
Attorney for Plaintiffs

I, Sally Howe Smith, Court Clerk, for Tulsa County, Oklahoma, hereby certify that the foregoing is a true, correct and full copy of the instrument herewith set out as appears on record in the Court Clerk's Office of Tulsa County, Oklahoma, this

JUL 14 2008

By _____ Deputy

AFFIDAVIT OF BRUCE W. DAY

STATE OF OKLAHOMA)
) ss.
COUNTY OF OKLAHOMA)

The undersigned affiant, of lawful age, being first duly sworn upon oath deposes and states:

1. I, Bruce W. Day, am the Receiver for Powder River Petroleum International, Inc. ("Powder River"), pursuant to an Order Appointing Receiver entered by District Court Judge J. Michael Gassett in the District Court of Tulsa County in *Chang v. Powder River Petroleum Intl.*, CJ-2008-4855, on July 14, 2008.

2. I believe that pursuant to the Order Appointing Receiver, I have sole authority to act for or on behalf of Powder River in the matter of *Oklahoma Department of Securities ex rel. Irving L. Faught, Administrator v. Powder River Petroleum International, Inc., an Oklahoma corporation, and Brian Fox, an individual*, CJ-2008-9048 ("ODS case").

3. I authorized counsel from the law firm of Day, Edwards, Propester & Christensen, P.C., to provide legal representation to Powder River in the ODS case.

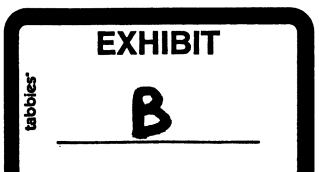
4. I have not retained or authorized the law firm of Edwards & Mailath, LLP, or Leslie Shelton, to provide legal representation to Powder River in the ODS case.

5. I have not authorized the law firm of Edwards & Mailath, LLP, or Leslie Shelton to contest venue on behalf of Powder River in the ODS case.

6. I am not contesting venue on behalf of Powder River in the ODS case and admit that venue as to Powder River is proper in Oklahoma County.

7. Subsequent to the Order Appointing Receiver entered on July 14, 2008, and prior to the commencement of the ODS case on October 8, 2008, Powder River's principal office and place of business was relocated to the offices of Day, Edwards, Propester & Christensen, P.C., 2900 Oklahoma Tower, 210 Park Avenue, Oklahoma City, Oklahoma ("Oklahoma City Office"). Powder River's principal office and place of business currently remains at the Oklahoma City Office. Powder River's website provides the Oklahoma City Office address for Powder River. Powder River has no other office leased or in operation and did not have any other such office on October 8, 2008.

8. Powder River's administrative offices were relocated to the Oklahoma City Office between July 14, 2008, and October 8, 2008, and remain there today.



9. Powder River's telephone calls and mail have been forwarded to the Oklahoma City Office since July 14, 2008, or soon thereafter.

10. Powder River's records, computers, and servers were relocated to the Oklahoma City Office between July 14, 2008, and October 8, 2008, and remain there today.

11. All business operations and activities of Powder River are directed by me from the Oklahoma City Office and have been since approximately July 14, 2008. I am in control of all of the assets of Powder River that I have been able to identify and locate.

12. Powder River has no employees and did not have any employees on October 8, 2008.

FURTHER AFFIANT SAYETH NOT.

BRUCE W. DAY, AFFIANT

Subscribed and sworn to before me this 18 day of December, 2008.

ALLISON DEWITT NOTARY # 08003696 EXP. 04/16/12 PUBLIC STATE OF OKLAHOMA

(SEAL)

NOTARY PUBLIC

My Commission Expires: 04/16/2012
My Commission No.: 08003696

Powder River Petroleum International Inc.

PWDR Contact Powder River

Powder River Petroleum International, Inc.
C/O Bruce W. Day, Receiver
Day, Edwards, Propester & Christensen, P.C.
210 Park Avenue
Suite 2900, Oklahoma Tower
Oklahoma City, OK 73102
Toll Free: 1.888.228.9222
Email: powderriver@dayedwards.com

Contact Investor Relations

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Website design by Media Eye

This website may contain "forward-looking statements" as that term is defined in the Private Securities Litigation Reform Act of 1995. Such statements are based on management's current expectations and are subject to a number of factors and uncertainties which could cause actual results to differ materially from those described herein. Although the Company believes that the expectations in such statements are reasonable, there can be no assurance that such expectations will prove to be correct.

EXHIBIT
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8-K 1 v121195_8k.htm

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of report (Date of earliest event reported): July 23, 2008

POWDER RIVER PETROLEUM INTERNATIONAL, INC.

(Exact Name of Registrant as Specified in Its Charter)

OKLAHOMA	**000-31945**	**84-1521645**
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)

210 Park Ave., Suite 2900, Oklahoma City, OK 73102 *
(Address of Principal Executive Offices) (Zip Code)

(405) 239-2121 *
(Registrant's Telephone Number, Including Area Code)

* Address and telephone number are those of the Registrant's Receiver, Bruce W. Day, Esq. See Form 8-K of Registrant, filed July 15, 2008, disclosing appointment of the Receiver.

Not Applicable
(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (*see* General Instruction A.2. below):

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

EXHIBIT
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Item 2.04. Triggering Events That Accelerate or Increase a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement..

As previously reported on the Form 8-K of Powder River Petroleum International, Inc. (the "Company") filed July 15, 2008, on July 14, 2008, the Company was served with a complaint (the "Complaint") alleging securities fraud and mismanagement by the Company and, individually, its President and Chief Executive Officer, Brian Fox. The Complaint was filed in the District Court of Tulsa County (the "Court"), case number CJ 2008-04855, by plaintiffs Mark Chang, Alan Kwok, and Lim Hong Beng, individuals, Huios Energy, LLC, an Oklahoma limited liability company, and OilPods Singapore Pte. Ltd., a Singapore private limited company ("Plaintiffs"). In connection with the Complaint, Plaintiffs requested, and were granted, a temporary restraining order ("TRO") freezing the assets of the Company, as well as the appointment of a receiver, Bruce W. Day (the "Receiver"). The TRO was granted effective July 14, 2008 with a hearing on Plaintiffs' request for a temporary injunction scheduled for July 23, 2008. On July 23, 2008, during the course of the hearing the Company's counsel withdrew the Company's objection to the appointment of a Receiver and the issuance of a temporary injunction. The Court, at the conclusion of the hearing, granted Plaintiffs' request for a temporary injunction enjoining the Company, its agents and affiliates from further securities law violations, freezing the assets of the Company and requiring an accounting.

On July 25, 2008, the Receiver received written notice from Varilease Finance, Inc. ("Varilease") that, due to the Company's "recent adverse change in its financial condition," Varilease was exercising its rights under that certain Master Lease Agreement dated March 14, 2008 between Varilease, as lessor, and the Company, as lessee (the "Lease"), and demanding repayment of an aggregate of $1,632,636.44, which Varilease stated had been progress funded to certain vendors on behalf of the Company for various oil rig-related equipment, plus taxes, fees, outstanding rentals and other amounts claimed by Varilease to be due in accordance with the terms of the Lease. The Company disputes that it is liable under the Lease for the return of the monies paid by Varilease, and intends to defend against any legal action taken by Varilease in connection with the Company's claimed obligations under the Lease.

Item 8.01. Other Events.

The disclosure set forth above in Item 2.04 regarding the issuance of a temporary injunction is hereby incorporated by reference.

Item 9.01. Financial Statements and Exhibits None.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Company has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Powder River Petroleum International, Inc.

Date: July 29, 2008

By: /s/ Bruce W. Day

Bruce W. Day
Receiver

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549
FORM 12b-25
NOTIFICATION OF LATE FILING

Commission File Number 000-31945

(Check one)

[_] Form 10-K and Form 10-KSB [_] Form 20-F [_] Form 11-K
[X] Form 10-Q and Form 10-QSB [_] Form 10-D [_] Form N-SAR [_] Form N-CSR

For Period Ended June 30, 2008

[_] Transition Report on Form 10-K and Form 10-KSB
[_] Transition Report on Form 20-F
[_] Transition Report on Form 11-K
[_] Transition Report on Form 10-Q and Form 10-QSB
[_] Transition Report on Form N-SAR

For the transition period ended

Read Attached Instruction Sheet Before Preparing Form. Please Print or Type.
Nothing in this form shall be construed to imply that the Commission
has verified any information contained herein.

If the notification relates to a portion of the filing checked above, identify the item(s) to which the notification relates:

PART I - REGISTRANT INFORMATION

Full Name of Registrant: POWDER RIVER PETROLEUM INTERNATIONAL, INC.

Former Name if applicable: POWDER RIVER BASIN GAS CORP.

Address of principal executive office
(Street and Number): 210 Park Ave., STE 2900
City, state and zip code: Oklahoma City, Oklahoma 73102

PART II - RULE 12b-25(b) AND (c)

If the subject report could not be filed without unreasonable effort or expense and the registrant seeks relief pursuant to Rule 12b-25(b), the following should be completed. (Check box if appropriate)

	(a)	The reasons described in reasonable detail in Part III of this form could not be eliminated without unreasonable effort or expense;
[X]	(b)	The subject annual report, semi-annual report, transition report on Form 10-K, 10-KSB, Form 20-F, Form 11-K, Form

EXHIBIT
E

N-SAR or Form N-CSR, or portion thereof, will be filed on or before the fifteenth calendar day following the prescribed due date; or the subject quarterly report or transition report on Form 10-Q or Form 10-QSB, or subject distribution report on Form 10-D, or portion thereof, will be filed on or before the fifth calendar day following the prescribed due date; and

(c) The accountant's statement or other exhibit required by Rule 12-b-25(c) has been attached if applicable.

<PAGE>
PART III - NARRATIVE

State below in reasonable detail the reasons why Form 10-K, 10-KSB, 11-K, 20-F, 10-Q, Form 10-QSB, N-SAR or the transition report portion thereof could not be filed within the prescribed period.

Powder River Petroleum International, Inc. (the "Company") is filing this Form 12b-25 because it needs additional time to file its Form 10-Q for the quarter ended June 30, 2008. The Form 10-Q was due on August 15, 2008. As previously reported, a Receiver for the Company has been appointed, in connection with a lawsuit filed in the District Court of Tulsa County, State of Oklahoma, Case No. CJ-2008-4855. The purpose of the receivership is to administer and manage the business affairs of the Company and to marshal and safeguard its assets.

The allegations in the lawsuit include, among other things, claims that Company's management has been grossly negligent and/or has acted in a fraudulent manner in conducting the Company's business. Specifically, the Company's President and Chief Executive Officer, Brian Fox, is alleged to have acted in a grossly negligent or fraudulent manner in his dealings with working interest investors (the "investors") in a number of respects, including but not limited to: (a) failing to drill or perform promised re-completion work on leases, (b) hiring an operator with a criminal and regulatory history of investor fraud, (c) failing to take steps to preserve company assets, (d) taking actions which caused the unreasonable loss of company assets, (e) withholding funds due to the Company from affiliated entities he controlled, (f) transferring company assets without an exchange of reasonably equivalent value, (g) filing misleading reports with regulators, and (h) paying himself an exorbitant salary and bonuses that were not justified under the circumstances.

The Receiver has been engaged in an ongoing investigation of these allegations. Based upon the review of an accounting schedule prepared by the Company's Chief Financial Officer, the Receiver has preliminarily determined that the Company engaged in a fraudulent "Ponzi" scheme with regard to its working interest investors during 2007. In this regard, the Company's President, Brian Fox, committed the Company to pay a minimum 9% return to numerous working interest investors. During 2007, a total of $4,413,406 in interest payments were made to those working interest investors, of which $3,263,004 came from funds received from subsequent working interest investors, not profits generated by the Company from oil and gas production. The scheme began to reveal itself when there were insufficient oil and gas production and funds from later investors to pay the promised returns to the earlier investors. Additionally, the Company has failed to pay various expenses for the past 3 to 6 months, which has resulted in the Company being in default on various obligations and some of the producing oil and gas properties of the Company being shut down. One of the most recent notices of default involves a purported Company obligation in excess of $1 million in connection with a lease of certain oil and gas equipment.

Since being appointed, the Receiver has attempted to assert control over

the various oil and gas producing properties of the Company. The Receiver has retained the services of an independent accountant who, with the assistance of the Company's CFO, is attempting to indentify the Company's oil and gas properties as well as its current and past due liabilities. Mr. Fox's lack of cooperation with the Receiver has caused additional disruptions in the Company's operations.

The Receiver has also retained an independent oil and gas engineering consulting firm to evaluate the known oil and gas properties of the Company and its working interest investors. The report, which is expected to be issued before the end of August, will provide the estimated oil and gas reserves for the known oil and gas properties of the Company, as well as a geological (prospective) evaluation of those properties. In this regard, one of the principal properties of the Company, the Weesatche lease in Goliad County, Texas, is the subject of pending litigation with the operator of the property. The operator is a company controlled by John Ehrman. Mr. Ehrman has been a subject of two prior SEC enforcement proceedings and has previously pled guilty to a federal criminal fraud charge. Mr. Ehrman is currently the subject of additional criminal fraud charges. Mr. Fox has been the subject of regulatory proceedings in an unrelated matter filed by the Calgary Securities Commission. None of the foregoing regulatory and criminal proceedings were disclosed by the Company in its prior SEC filings or its working interest investors.

The Company will be in a better position to evaluate its properties, its prospects, and the value of investors' potential future revenues when the engineering report is received and an accounting is completed. The Receiver believes, based upon his initial investigation, that the Company's financial statements will be materially restated.
<PAGE>

PART IV - OTHER INFORMATION

(1) Name and telephone number of person to contact in regard to this notification.

Bruce W. Day	(405) 228-1118
(Name)	(Area Code) (Telephone Number)

(2) Have all other periodic reports required under Section 13 or 15(d) of the Securities Exchange Act of 1934 or Section 30 of the Investment Company Act of 1940 during the preceding 12 months or for such shorter period that the registrant was required to file such report(s) been filed? If the answer is no, identify report(s).

[X] Yes [_] No

(3) Is it anticipated that any significant change in results of operations from the corresponding period for the last fiscal year will be reflected by the earnings statements to be included in the subject report or portion thereof?

[X] Yes [_] No

If so: attach an explanation of the anticipated change, both narratively and quantitatively, and, if appropriate, state the reasons why a reasonable estimate of the results cannot be made.

See response to Part III.

POWDER RIVER PETROLEUM INTERNATIONAL, INC.
(Name of Registrant as Specified in Charter)

Has caused this notification to be signed on its behalf by the undersigned thereunto duly authorized.

Date: August 18, 2008

By: /s/ Bruce W. Day

Bruce W. Day, Receiver

Instruction: The form may be signed by an executive officer of the registrant or by any other duly authorized representative. The name and title of the person signing the form shall be typed or printed beneath the signature. If the statement is signed on behalf of the registrant by an authorized representative (other than an executive officer), evidence of the representative's authority to sign on behalf of the registrant shall be filed with the form.

ATTENTION

Intentional misstatements or omissions of fact constitute Federal Criminal Violations (see 18 U.S.C. 1001).

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8-K 1 v125352_8k.htm

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of report (Date of earliest event reported): August 28, 2008

POWDER RIVER PETROLEUM INTERNATIONAL, INC.
(Exact Name of Registrant as Specified in Its Charter)

OKLAHOMA	**000-31945**	**84-1521645**
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)

210 Park Ave., Suite 2900, Oklahoma City, OK 73102 *
(Address of Principal Executive Offices) (Zip Code)

(405) 239-2121 *
(Registrant's Telephone Number, Including Area Code)

* Address and telephone number are those of the Registrant's Receiver, Bruce W. Day, Esq. See Form 8-K of Registrant, filed July 15, 2008, disclosing appointment of the Receiver.

Not Applicable
(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (*see* General Instruction A.2. below):

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

EXHIBIT
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Item 8.01. Other Events.

As previously reported on Form 8-K dated July 15, 2008, the District Court of Tulsa County (the "Court"), case number CJ 2008-04855, by order dated July 14, 2008 (the "Order") appointed Bruce W. Day as receiver (the "Receiver") over the Company. Subsequent to such appointment, the Receiver, pursuant to the Court's Order, has assumed all of the day-to-day administration and management of the Company and its assets. On August 28, 2008, as required by the Order, the Receiver filed his initial report to the Court to inform the Court of the progress of the receivership (the "Receivership") to date, and the Receiver's plans for the Company for the immediate future. Among other things, the Receiver's report to the Court disclosed that the Receiver had taken custody or effective control of all the Company's funds and property that he had been able to initially identify, and was continuing his diligence investigation to determine whether additional assets (and/or claims) could be identified and marshaled. The Receiver's report included, among other things, a segment discussing the Company's oil and gas properties, and an outline on the Receiver's near term plan to bring value to the Receivership estate by identifying oil and gas properties from which production can be obtained, collecting receivables, recovering lost or converted assets, identifying legal causes of action, and promoting the business interests of the Company.

The Receiver reported that he had retained the services of an independent accountant who, with the assistance of the Company's CFO, Jeff Johnson, is attempting to indentify the Company's oil and gas properties as well as its current and past due liabilities. In addition, the Receiver has also retained an independent oil and gas engineering consulting firm to evaluate the known oil and gas properties of the Company and its working interest investors. The report will provide the estimated oil and gas reserves for the known oil and gas properties of the Company, as well as a geological (prospective) evaluation of those properties. The Receiver will be in a better position to evaluate the Company's properties, its prospects, and the value of investors' potential future revenues when the engineering report is received and an accounting is completed. Until then, the Company will not be able to complete the preparation of the financial statements for the quarter ended June 30, 2008. As a result, and as previously reported on Form 12b-25 filed August 19, 2008, the Company has been, and continues to be unable to file its Form 10-Q for such period. Until such time as the Company is able to complete the preparation of interim financial statements, the Company will remain in non-compliance with its reporting obligations under the Securities Exchange Act of 1934 (the "Exchange Act"). While the Company intends to diligently work to finalize its financial statements as soon as reasonably practicable, given its current financial and other constraints, combined with the inability to predict the results of the Receiver's on-going diligence investigation, the Company is unable at this time to determine with any degree of certainty when it expects to be in full compliance with its reporting obligations under the Exchange Act. The Receiver believes, however, based upon his initial investigation, that the Company's financial statements will be materially restated.

A copy of the Receiver's report is attached to this Report as Exhibit 99.1.

Item 9.01. Financial Statements and Exhibits.

(d) The following exhibits are filed herewith:

99.1 Receiver's Report.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Company has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Powder River Petroleum International, Inc.

Date: August 29, 2008

By: /s/ Bruce W. Day

Bruce W. Day
Receiver

EXHIBIT INDEX

Exhibit No.	Description
99.1*	Receiver's Report.

* Filed herewith.

8-K 1 v126681_8k.htm

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of report (Date of earliest event reported): September 11, 2008

POWDER RIVER PETROLEUM INTERNATIONAL, INC.
(Exact Name of Registrant as Specified in Its Charter)

OKLAHOMA	**000-31945**	**84-1521645**
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)

210 Park Ave., Suite 2900, Oklahoma City, OK 73102 *
(Address of Principal Executive Offices) (Zip Code)

(405) 239-2121 *
(Registrant's Telephone Number, Including Area Code)

* Address and telephone number are those of the Registrant's Receiver, Bruce W. Day, Esq. See Form 8-K of Registrant, filed July 15, 2008, disclosing appointment of the Receiver.

Not Applicable
(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (*see* General Instruction A.2. below):

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

EXHIBIT
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☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

On September 11, 2008, the Company's court-appointed receiver, Bruce W. Day (the "Receiver"), received a copy of a letter dated September 11, 2008, written by Jeff Johnson, the Company's Chief Financial Officer, to Brian Fox, President and CEO of the Company, pursuant to which Mr. Johnson tendered his resignation as Chief Financial Officer of the Company, effective immediately. No reason was given for Mr. Johnson's resignation. No replacement has been named at the date of this Report.

Item 8.01. Other Events.

On September 12, 2008, the Receiver received a Subpoena Duces Tecum issued by the Oklahoma Department of Securities (the "Department") in connection with an investigation of the Company being conducted by the Department. The subpoena requires production, by September 19, 2008, of financial records of the Company, as well as documents relating to the Company's sales of working interests in oil and gas leases.

Item 9.01. Financial Statements and Exhibits None.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Company has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Powder River Petroleum International, Inc.

Date: September 17, 2008

By: /s/ Bruce W. Day

Bruce W. Day
Receiver

COPY

IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA

MARK CHANG, an Individual; ALAN KWOK WAI WONG, an Individual; LIM HONG BENG, an Individual; HUIOS ENERGY, LLC. an Oklahoma limited liability company; and OILPODS SINGAPORE PTE LTD., a Singapore private limited company, Plaintiffs, vs. POWDER RIVER PETROLEUM INTERNATIONAL, INC., an Oklahoma corporation; and BRIAN FOX, an Individual, Defendants.	Case No. CJ-2008-04855 Judge J. Michael Gassett

DISTRICT COURT
FILED
AUG 15 2008
SALLY HOWE SMITH, COURT CLERK
STATE OF OKLA. TULSA COUNTY

DEFENDANTS' COMBINED MOTIONS
(I) TO VACATE TEMPORARY RESTRAINING ORDER, ORDER FOR TEMPORARY INJUNCTION, AND ORDER APPOINTING RECEIVER;
(ii) TO DISCHARGE RECEIVER, OR IN THE ALTERNATIVE, TO MODIFY OR SUSPEND RECEIVER'S POWERS;
(iii) FOR TURNOVER OF DEFENDANTS' PROPERTY AND RECORDS;
(iv) TO INCREASE RECEIVER'S BOND;
(v) TO DISMISS FOR LACK OF PERSONAL JURISDICTION;
(vi) REQUEST FOR HEARING,
AND BRIEF IN SUPPORT THEREOF

COME NOW the Defendants Powder River Petroleum International, Inc. ("Powder River") and Brian Fox and in support of their combined Motions would state to the Court as follows:

INTRODUCTION

On July 14, 2008, Plaintiffs filed their Petition seeking monetary relief on nine (9) separate counts including fraud, Oklahoma securities fraud, breach of fiduciary duty, breach of contract, negligence and for declaratory judgment. Plaintiffs further sued Brian

EXHIBIT
H

Fox, one of the principals of Defendant Powder River, as an officer and director of the company. At approximately 12:00 p.m., without notice to the Defendants, before service of process upon Defendants, and despite knowledge that Defendants were then represented by local attorney Frederick Slicker, the Plaintiffs obtained an ***ex parte*** *Order Appointing Receiver* and a *Temporary Restraining Order.* The *Temporary Restraining Order* and *Order Appointing Receiver* granted the Receiver powers which go far beyond keeping the status quo and which allowed the Receiver to effectively seize and shut down Defendant Powder River's business, discharge auditors, employees, and contractors, seize bank accounts of not only Powder River, but non-parties to this litigation thought by the Receiver to be affiliates, as well as individual bank accounts of Defendant Brian Fox, who was not served with process until August 6, 2008.

STATEMENT OF FACTS

1. Plaintiff Mark Chang is a resident of Singapore.

2. Plaintiff Oilpods Singapore PTE Ltd. ("OilPods") is a Singapore corporation which is not authorized to conduct business within the State of Oklahoma.

3. Plaintiff OilPods and OilPods.com claim to be wholly owned subsidiaries of OL&M, Business International Pte Ltd. ("OL&M"), another Singapore corporation.

4. Plaintiff Huios Energy, LLC is an Oklahoma corporation, has no involvement in this case and was apparently added by Plaintiffs to destroy diversity jurisdiction should there be an attempt to remove the case to federal court.

5. Plaintiff Lim Hong Beng is a resident of Singapore and has provided an affidavit stating that he never consented to being a named plaintiff in this cause of action. (See Affidavit of Lim Hong Beng attached hereto as Exhibit A).

6. Defendant Brian Fox is a Canadian citizen who resides in Calgary, Alberta, Canada.

7. Defendant Powder River is an Oklahoma corporation which is publicly traded

on the OTCBB Exchange and maintains its principal place of business in Calgary, Alberta, Canada.

8. Defendant Brian Fox purchased Powder River Basin Gas Corp., a Colorado corporation, in 2003. The marketing agreements with Plaintiffs Mark Chang and OilPods were executed and in affect primarily from 2004 through 2006. Defendant Powder River is a successor in interest by merger with Powder River Basin Gas Corp., which merger took place in 2007. The merger and subsequent Oklahoma incorporation of Defendant Powder River occurred upon advice of counsel to minimize corporate franchise taxes but did not change the corporation's principal place of business. (See Affidavit of Brian Fox attached as Exhibit B hereto).

9. Neither Defendant Powder River nor Defendant Brian Fox have solicited the residents or corporate citizens of Oklahoma to engage in business activities with Powder River. (See Exhibit B attached hereto).

10. Defendant Powder River has never advertised or promoted its business activities within the State of Oklahoma or attempted to conduct business with the residents or corporate citizens of Oklahoma. (See Exhibit B attached hereto).

11. Defendant Powder River maintains one bank account within the State of Oklahoma for the limited purpose of paying United States oil and gas operators, contractors, suppliers, and related United States operating expenses since the payments cannot be made from Canada without difficulty and since most operators require payment issued on United States' banks due to exchange rate fluctuations. (See Exhibit B attached hereto).

12. Defendant Brian Fox first met Plaintiff Mark Chang in 2002 when Mark Chang traveled to Calgary, Alberta, Canada to work on an unrelated business transaction which did not involve Brian Fox or Defendant Powder River. At that time, Plaintiff Mark Chang was promoting real estate investments. (See Exhibit B attached hereto).

13. In 2004, Plaintiff Mark Chang approached Defendant Brian Fox regarding Mark Chang's "Working Interest (WI) Ownership Program" whereby Mark Chang would acquire exclusive rights to a large working interest in oil and gas leases to be acquired either through Plaintiff Mark Chang or Plaintiff OilPods. Plaintiff Mark Chang and/or Plaintiff OilPods would thereafter sell working interests of the oil and gas leases solely to residents of Asia. (See Exhibit B attached hereto).

14. Defendant Brian Fox at that time indicated to Plaintiff Mark Chang that he would agree to allow Mark Chang and/or OilPods to work on an exclusive basis to sell working interests in oil and gas leases owned by Defendant Powder River, but that Plaintiff Mark Chang would need to consult with his own attorneys regarding Mark Chang's WI Ownership Program of selling working interests in oil and gas leases. (See Exhibit B attached hereto).

15. Plaintiff Mark Chang and Defendant Brian Fox met with Mark Chang's Singapore attorney who advised them that Mark Chang's WI Ownership Program of marketing and selling working interests in oil and gas leases was legal and did not violate the laws of Singapore. (See Exhibit B attached hereto).

16. Thereafter, Plaintiff Mark Chang and Defendant Brian Fox met with Defendant Powder River's attorney, Frederick Slicker, who advised them that such a program was legal if subscription agreements were provided to the Asian investors to execute. Frederick Slicker prepared the required subscription agreement forms for use by Plaintiff Mark Chang. (See Exhibit B attached hereto).

17. In 2004, Defendant Brian Fox attended a seminar in Houston, Texas in which Plaintiff Mark Chang and OilPods' representatives also attended which instructed OilPods' employees and contractors regarding the proper and lawful way to market and sell Mark Chang's WI Ownership Program. (See Exhibit B attached hereto).

18. Defendants relied upon Plaintiffs Mark Chang and OilPods to obtain the subscription agreements and observe securities laws since Mark Chang and OilPods were personally meeting with Asian investors to sell their WI Ownership Program and because all statements and representations to the Asian investors were made by Plaintiffs Mark Chang and OilPods. (See Exhibit B attached hereto).

19. Information contained on OilPods' website indicates that it began its operations in 2002 and promotes its "Working Interest (WI) Ownership Program" as a non-traditional investment whereby the investor "co-owns the entire Working Interest" with an annual return of 9% to 12% and a return of capital within three to five years. (See copies of website pages attached hereto as Exhibit C).

20. According to information contained on OilPods' website, the principals of the company hold themselves out to be business and investment professionals with expertise in the oil and gas field. (See Exhibit C attached hereto).

21. According to information contained on OilPods' website, the company conducts seminars in Singapore and other Asian countries in order to solicit Asian investors to invest in their WI Ownership Program. (See Exhibit C attached hereto).

22. Powder River Basin Gas Corp. did grant Plaintiffs Mark Chang and OilPods the exclusive right to sell several large working interests owned by it in oil and gas leases located in Oklahoma, Texas and Louisiana in 2004 with the majority of interests located in Texas. There was a separate marketing agreement between Plaintiffs Mark Chang and/or OilPods and Powder River Basin Gas Corp. for each lease. (See Memorandum of Understanding dated November 15, 2005 attached as Exhibit D hereto and Agreement for Marketing of Weesatche Lease, Goliad County, Texas attached as Exhibit E hereto as examples of such agreements).

23. Prior to and upon obtaining the contract right to sell working interests in oil and gas leases owned by Powder River Basin Gas Corp., Plaintiff Mark Chang personally reviewed Powder River's independent engineering and reserve analysis reports for the individual leases, physically inspected the well sites, conducted his own independent research into the wells as a sophisticated oil and gas buyer, and consulted with his own counsel prior to any sales being made to his Asian investors. (See Exhibit B attached hereto).

24. Plaintiff Mark Chang , Plaintiff OilPods and/or OL&M drafted all assignments, contracts, and documents relative to the purchase of the working interests and all documents relative to the sale and assignment of these interests to Asian residents, as is evident from the copyrighted documents owned by Plaintiff OilPods. (See Sales and Purchase Agreement, Subscription and Appointment Agreement, and Assignment of Oil and Gas Lease attached as Exhibit F hereto).

25. Powder River Basin Gas Corp. executed all documents relative to the contracts with Plaintiffs Mark Chang and OilPods in Canada. (See Exhibit B attached hereto).

26. Thereafter, as Plaintiffs Mark Chang and OilPods sold the working interests in oil and gas leases to Asian citizens, they would collect the money from the Asian investors, retain twenty percent (20%) of all monies collected as a sales commission and send the remaining monies to Powder River in Calgary, Alberta, Canada. Plaintiffs Mark Chang and OilPods would then mail Assignments to Powder River to be executed and filed in the appropriate recording office. (See Exhibit B attached hereto).

27. Powder River Basin Gas Corp., Plaintiff Mark Chang, and Plaintiff OilPods never sold any oil and gas interests within the State of Oklahoma or within the United States or to individuals or residents of the State of Oklahoma. (See Exhibit B attached hereto).

28. Plaintiff Mark Chang has continued to promote his WI Ownership Program and to sell working interests in United States oil and gas leases through his newly formed company, Plaintiff HUIOS Energy, LLC ("HUIOS") after this suit was filed. (See Exhibit B attached hereto).

29. At one time, Plaintiff Mark Chang was a shareholder of Defendant Powder River, and he may even currently be purchasing the corporation's stock. (See Exhibit B attached hereto).

30. Plaintiff Mark Chang was a director of Defendant Powder River until March, 2008 when he resigned to focus more attention on the newly formed corporation, HUIOS and to initiate this litigation. (See Exhibit B attached hereto).

31. As a director of Defendant Powder River, Plaintiff Mark Chang approved the

salary of Defendant Brian Fox and all bonuses paid to Defendant Brian Fox by Powder River, which he now complains in his Petition and First Amended Petition to be exorbitant. As a director attending director's meetings, Mark Chang ratified the acts, conduct, decisions, and judgement of the officers of Defendant Powder River in conducting Powder River's business. (See Exhibit B attached hereto).

32. As a director of Defendant Powder River, Plaintiff Mark Chang approved a salary to himself of $3,000.00 per month. (See Exhibit B attached hereto).

33. Plaintiff Mark Chang was well aware of the terms and conditions of the expired cease and desist order issued by the Calgary Securities Commission which prohibited Defendant Brian Fox from selling unregistered securities in *Canada* which order had terminated in August, 2001. (See Exhibit B attached hereto).

34. Plaintiff Mark Chang and Defendant Brian Fox both learned of the felony conviction and of the reputation of John Ehrman, the Texas operator of the Weesatche Lease located in Goliad County, Texas at the same time. Defendant Brian Fox had no prior knowledge of the felony conviction or of the operator's reputation. Proceedings to remove John Ehrman as operator of the lease are pending in the State of Texas. (See Exhibit B attached hereto).

35. The deterioration of the relationship between Plaintiffs Mark Chang, OilPods and Defendants Powder River and Brian Fox began when the Goliad County, Texas lease was unable to pay Mark Chang's Asian working interest investors the rate of return promised by Mark Chang and OilPods due to a dispute with the Texas operator over the operating charges which caused the operator to cease production payments and revenue from the lease. (See Exhibit B attached hereto).

36. Defendant Powder River discovered that the Texas operator had grossly over billed Defendant Powder River for its operating costs. A dispute arose between these parties which resulted in the Texas operator withholding all production payments to Powder River and which by law were to be held in suspense. (See Exhibit B attached hereto).

37. The Texas operator then filed an oil and gas lien against the Goliad County, Texas lease and subsequently instituted a lawsuit against Defendant Powder River for the foreclosure of its oil and gas lien and the payment of its exaggerated operating costs, facts which were all known to Mark Chang. (See Exhibit B attached hereto).

38. Defendant Powder River retained Texas counsel who successfully obtained a dismissal of the foreclosure action. Thereafter, Defendant Powder River commenced a lawsuit against the Texas operator to have the operator terminated from the lease. Defendant Powder River does not currently know the status of this lawsuit as the Receiver has ordered the Texas counsel not to communicate with Defendant Powder River. (See Exhibit B attached hereto).

39. Defendant Powder River has vigorously defended all working interests in this lawsuit. Such disputes and related lawsuits are commonplace in the oil and gas industry. (See Exhibit B attached hereto).

40. It is believed that Plaintiff Mark Chang received increasing pressure from his Asian investors regarding the failure to receive their monthly payments promised by Mark Chang and OilPods in their WI Ownership Program such that Mark Chang instituted this action against the Defendants to blame Defendants Powder River and Brian Fox. (See Exhibit B attached hereto).

41. Plaintiffs filed their *Petition*, *Request for Appointment of Receiver*, and *Request for Temporary Restraining Order* on July 14, 2008 and received all requested relief in the form of an ex parte *Temporary Restraining Order* and an ex parte *Order Appointing Receiver* on said date. (See pleadings).

42. Plaintiffs, by their own admission, made no attempts to give notice to Defendants of the requested relief despite the fact that Plaintiff Mark Chang was well aware that attorney Frederick Slicker represented Defendant Powder River and that Mark Chang had visited attorney Frederick Slicker at his office numerous times. (See pleadings and Exhibit B attached hereto).

43. At no time was Defendant Brian Fox a flight risk and at no time was there ever a risk that Brian Fox or the officers or directors of Powder River would attempt to conceal, liquidate or abscond with Powder River's assets. (See Exhibit B attached hereto).

44. Due to the Receiver's actions and conduct described below, Defendant Brian Fox was forced to loan funds to Defendant Powder River so that it could continue to temporarily operate and so that Powder River's employees could be paid, so that Powder River would remain in compliance with Alberta, Canada law. (See Exhibit B attached hereto).

45. The appointed Receiver did not post a Receiver's Bond until July 21, 2008. (See Pleadings).

46. On July 15, 2008, the Receiver appeared in person at the offices of Defendant Powder River in Calgary, Canada, unannounced, took pictures, and assured Powder River that he would not interfere with operations of the company, a promise that he has failed to keep. (See Exhibit B attached hereto).

47. Between July 14, 2008 and July 16, 2008, the Receiver froze the bank accounts of Defendant Powder River and transferred all monies to the Receiver. (See Exhibit B attached hereto).

48. Between July 14, 2008 and July 16, 2008, the Receiver froze the personal bank accounts of Defendant Brian Fox, even though he had not been served with process

or been served notice of the appointment of the receiver or the temporary restraining order, and transferred all monies to the Receiver. (See Exhibit B attached hereto).

49. Between July 14, 2008 and July 16, 2008, the Receiver froze the bank accounts of Renco Energy, Inc. ("Renco"), a non-party to this lawsuit, because the Receiver believed that Renco was an "affiliate" of Defendant Powder River, and transferred all monies to the Receiver. (See Exhibit B attached hereto).

50. Between July 14, 2008 and July 16, 2008, the Receiver ordered the firing of the following employees of Defendant Powder River: a) Pam Moon, office manager; b) Diana Fox, communications manager, c) Shelly Balla, records administrator, d) Hong Phan, accounting, and e) Yue (Yoyo) Zhou, corporate finance. The Receiver took such actions without paying the current payroll or paying severance pay as required by Alberta, Canada law when terminated without notice. (See Exhibit B attached hereto).

51. On or about July 16, 2008, the Receiver confiscated all files and records of attorney Frederick Slicker, Defendant Powder River's attorney. (See Exhibit B attached hereto).

52. As a result of the Receiver's actions between July 14, 2008 and July 16, 2008, Defendant Powder River was unable to pay its bills as all bank accounts had been frozen and/or seized, resulting in the shut down of the company and the shut down of all oil and gas production. (See Exhibit B attached hereto).

53. Prior to the appointment of the Receiver, Defendant Powder River was able to pay its bills as they became due and in the usual course of business. (See Exhibit B attached hereto).

54. On or about July 29, 2008, the Receiver sent two of his employees to Calgary, Canada in order to change the locks on the offices of Defendant Powder River. Upon advice of Defendant Powder River's Canadian counsel, the Receiver's employees were asked to leave the premises since they had no jurisdiction in Canada. The Receiver's employees refused to leave, closed themselves in the file room, and began reviewing Powder River's files and documents. (See Exhibit B attached hereto).

55. On or about July 29, 2008, the Receiver blocked all toll free telephone calls to Defendant Powder River's offices in Calgary, Canada and had the phone forwarded to the Receiver's office in Oklahoma City. (See Exhibit B attached hereto).

56. On or about August 1, 2008, the Receiver's employees again traveled to Calgary, Canada in order to ransack Defendant Powder River's offices and remove all records, computers, lap tops, and servers in the middle of the night despite the fact that the Receiver was aware that Defendant Powder River had Canadian counsel who questioned the validity, authority, and jurisdiction of the Oklahoma orders. (See Exhibit B attached hereto).

57. Currently, the Receiver is cancelling all contracts with outside vendors, such as Princeton Research (market analysis), Eric David (public relations and investor relations), and Renco (Oklahoma operator). (See Exhibit B attached hereto).

58. Since the Receiver has taken control and ceased all operations of Powder River, its stock has plummeted from three cents per share to three-tenths of a cent per share.

59. At no time, did attorney Patrick Waddell have any authority from Defendant Powder River, its officers, directors or shareholder, to consent to the Temporary Injunction or the continuation of the Order Appointing Receiver. It was Defendant Powder River's explicit instruction and intention to vigorously object to all such orders. (See Exhibit B attached hereto).

MOTION TO VACATE TEMPORARY RESTRAINING ORDER, ORDER FOR TEMPORARY INJUNCTION, AND ORDER APPOINTING RECEIVER

COME NOW the Defendants and move the Court to vacate the *Temporary Restraining Order*, the *Order Appointing Receiver*, and the Temporary Injunction, entered herein orally on July 23, 2008, for the reason that the same has been entered by the Court without notice to Defendants and upon information which is misleading or untrue. A temporary restraining order or a temporary injunction is not necessary in order to maintain the status quo of Defendant Powder River pending further hearings by the Court and is detrimental to the business of Powder River thereby causing damages to stockholders, investors and employees not parties to this action.

Lack of Notice

Despite the Plaintiffs' knowledge that Frederick Slicker[1], a long time local attorney, was the registered service agent and attorney for Powder River, the Plaintiffs obtained ***ex parte*** relief four (4) hours before Frederick Slicker was served with process while sitting in

[1] Plaintiff Mark Chang had been to the office of Mr. Slicker to work on legal matters on numerous occasions prior to the filing of this action.

his office in south Tulsa. Despite the lapse of four (4) hours between the ex parte hearing on the motions and the entry of the Court's orders, Frederick Slicker never received a telephone call, facsimile message, or email advising of the hearing before the Court on July 14, 2008. The court file and docket sheet does not reflect that the Court was advised as to whether Frederick Slicker was unavailable to attend either in person or by telephone. In its *Motion for Appointment of Receiver*, contrary to statutory law and contrary to local rules, Plaintiffs admit that they had no intention of notifying Defendants of the pending motions due to the emergent situation and they cited a little known Texas case as authority that the District Court of Tulsa County need not require that Plaintiffs give notice to Defendants of their ex parte requests for relief.[2]

Temporary Restraining Order

A restraining order is designed to preserve the status quo in order to prevent irreparable injury until such time as the Court may determine the necessity of a temporary injunction, and ultimately, a permanent injunction. *Morse v. Earners, 547 P.2d 955, 1976 OK 31 (Okla. 1976).* 12 O.S. § 1384.1(B) states as follows:

> "A temporary restraining order may be granted without written or oral notice to the adverse party or the attorney for the adverse party only if:
>
> 1. it clearly appears from specific facts shown by affidavit or by the verified petition that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or the attorney for the adverse party can be heard in opposition; or
>
> 2. the attorney for the applicant certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting

[2] Of interest is that Plaintiffs had been working on this planned action for weeks as evidenced by their own submission that they had even interviewed potential receivers.

> the claim that notice should not be required; and the court determines that the efforts of the applicant to give notice, if any, were reasonable under the circumstances."

Since a Temporary Injunction has yet to be entered in this case, the Plaintiffs and Receiver are continuing to act under the *Temporary Restraining Order* currently in place. It is Defendants' contention that Plaintiffs failed to meet their burden of proof as to the issuance of an ex parte temporary restraining order due to Plaintiffs' failure to prove an immediate or irreparable injury or loss to Plaintiffs prior to giving notice to the Defendants as is set forth below.

Order Appointing Receiver

Oklahoma law clearly states that notice must be given to a party before a receiver is appointed. In *Pyeatt v. Prudential Ins. Co., 131 P. 914, 1913 OK 250, ¶ 4 (Okla. 1913)* the Oklahoma Supreme Court stated as follows:

> "There is no principle of the law of receiverships of greater wisdom and more firmly established than that requiring notice to be given to the defendant of the application for the appointment of a receiver to wrest from him the possession of his property."

(quoting *Alderson on Receivers*). The Court went on to opine that:

> "The court will not appoint a receiver until the defendant, or party in possession of the property, has been heard, or has had an opportunity to be heard in response to the application. It is a well-established principle in equity jurisprudence that the court will not encourage ex parte proceedings, and a departure from this principle requires a state of facts showing the greatest emergency."

(quoting *Smith on Receiverships*) *Id.* See also *Oklahoma Cotton Growers Ass'n v. Whitener, 8 P.2d 1106, 1932 OK 194 (Okla. 1932).* The case of *Eason Oil Co. v. Oklahoma City Petroleum Corporation, 94 P.2d 222, 1939 OK 318 (Okla. 1939)* discussed

the evidence that a Plaintiff must produce prior to the appointment of a receiver and held as follows:

> "Before the trial court has any discretion to appoint a receiver of the property of a solvent going concern there must be a showing of a state of facts justifying the appointment on some theory recognized by courts of equity or authorized by statute. It was incumbent on plaintiff, at the hearing, to produce evidence establishing: (a) A strong probability that it would prevail on the merits in the main action; (b) that it would suffer irreparable loss and injury if the appointment were not made; and ©) that it had no other plain, speedy, or adequate remedy. Only upon such showing could the judicial discretion be called into operation, and failure to establish these three essential elements would be fatal to the application, and the appointment made thereon an abuse of discretion."

See also Healey v. Steele, *13 P.2d 140, 1932 OK 538 (Okla. 1932) ("The power to appoint a receiver is a delicate one, and should be exercised with extreme caution and only under circumstances requiring summary relief, or where the court is satisfied that there is imminent danger of loss, lest the injury thereby caused be far greater than the injury sought to be averted.")*. The Defendants were not given notice of the hearing on the appointment of the Receiver and do not know what evidence was presented to the trial court in this regard, hence the rejection by Oklahoma courts to appoint a receiver ex parte. Defendants must therefore presume that the evidence presented to the Court was consistent with the filed *Application to Appoint Receiver*, and if so, the allegations contained therein are false and misleading. It is Defendants' contention that Plaintiffs failed to meet their burden of proof outlined in the Eason Oil Co. case for the appointment of a receiver due to Plaintiffs' failure to prove that they will more than likely prevail on the merits of the case, failure to prove imminent danger of loss, and failure to prove that no other adequate remedies were available, all as set forth below.

Temporary Injunction

A temporary injunction should only be granted in the Court's sound discretion based upon the following four factors:

1. Whether the Plaintiffs are likely to prevail upon the merits of the action;
2. Whether the Plaintiffs will suffer irreparable harm in the absence of injunctive relief;
3. Whether the irreparable harm which would be suffered by Plaintiffs if injunctive relief is withheld outweighs irreparable harm which would be suffered by Defendant if injunctive relief is granted; and
4. The public interest.

43 C.J.S. Injunctions § 17. The Plaintiffs did not meet their burden of proof in this regard at the temporary injunction hearing. Plaintiffs merely offered the testimony of David Newsome, a former employee of the Receiver's law firm, who testified that he believed Defendant Powder River was insolvent and was mismanaged. In order to induce the Court to enter the *Temporary Restraining Order*, *Order Appointing Receiver*, and the Temporary Injunction, which has yet to be filed with this Court, the Plaintiffs presented the Court with the following facts and allegations which Plaintiffs knew were untrue or were unsubstantiated:

1. Plaintiffs Were Purchasers of Unregistered Securities and Would Suffer Immediate and Irreparable Harm If Not Protected by a Receiver and a Temporary Restraining Order.

The truth about the named Plaintiffs in this case is as follows:

(a) Plaintiff Lim Hong Beng never consented to being a named Plaintiff in this litigation and never authorized that suit be initiated in his name (See Affidavit of Lim Hong Beng attached as Exhibit A hereto);

(b) Plaintiff Huios Energy LLC ("Huios") never purchased an interest in any oil

and gas leases from the Defendants and was apparently fraudulently to destroy diversity of citizenship and to prevent the potential removal to federal court (See Affidavit of Brian Fox attached as Exhibit B hereto);

(c) Plaintiffs Mark Chang and OilPods were brokers under exclusive contract with Powder River Basin Gas Corp. who actually sold the alleged securities, made all representations to induce citizens of Singapore, Indonesia and other Asian countries, to purchase the oil and gas working interests, and despite this litigation continue to sell working interests to investors; (See Exhibit attached hereto);

(d) Defendants are unaware of the relationship between Plaintiff OilPods and the companies OilPods.com and OL&M, Business International Pte Ltd ("OL&M"). The latter two companies are companies who presumably entered into the marketing agreements, who presumably sold the oil and gas working interests to Asian investors and who prepared the Sales and Purchase Agreements and Subscription Agreements for execution by the Asian investors. Plaintiff OilPods and OilPods.com claim that they are "wholly owned subsidiaries of OL&M, Business International Pte Ltd." which make Defendants question which company is truly the party in interest in this litigation. (See Memorandum of Understanding attached as Exhibit D hereto and Agreement for Marketing of Weesatche Lease, Goliad County, Texas attached as Exhibit E hereto.).

Defendant Brian Fox first met Plaintiff Mark Chang in 2002 when Mark Chang traveled to Calgary, Alberta, Canada to work on a business deal that did not involve Defendant Brian Fox. The two men did not engage in any business activities at that time. Plaintiff Mark Chang approached Defendant Brian Fox in 2004 about Chang's existing "Working Interest WI Ownership Program" of selling working interests in oil and gas wells

located in Texas and Louisiana, through himself and his company, Plaintiff OilPods, or OilPods.com or OL&M, and sought to obtain large working interests in oil and gas properties from Powder River Basin Gas Corp. for Mark Chang to sell to investors in Asia. Plaintiff Mark Chang sought to obtain exclusive rights to market Powder River's working interests to Asian investors. At no time were shares of stock in Powder River Basin Gas Corp. or Defendant Powder River ever sold, rather Plaintiffs Mark Chang and OilPods marketed and sold working interests in oil and gas leases, evidenced by filed assignments, originally owned by Powder River Basin Gas Corp. to Asian investors. Despite this litigation, it is believed that even now Plaintiff Mark Chang continues to sell oil and gas interests through his newly formed corporation, Plaintiff Huios. Defendants never sold any working interests to any of the Asian investors, but did sell or reserve working interests to Plaintiff Chang, a sophisticated investor in oil and gas matters, as is evidenced from the OilPods website, and who had access to engineering reports and reserve analyses, who had his own research performed on the oil and gas wells, and who had actually inspected the leases in Texas. Plaintiff Chang collected all monies for the sales from the Asian investors, retained a twenty percent (20%) commission and remitted the remainder to Powder River Basin Gas Corp.

Of note is that Defendant Brian Fox purchased Powder River Basin Gas Corp., a Colorado corporation, in 2003. The marketing agreements and the sales of working interests all involved Powder River Basin Gas Corp. In 2007, Defendant Powder River was formed as an Oklahoma corporation and Powder River Basin Gas Corp. was merged into Defendant Powder River upon advice of counsel in order to minimize corporate franchise taxes. All actions of which Plaintiffs complain of in their Petition involve Powder River

Basin Gas Corp., a Colorado corporation.

Plaintiffs' failed to inform the Court that the working interests were actually sold by Plaintiff Mark Chang to investors in Singapore, Indonesia, and other Asian countries, during seminars and other meetings sponsored by Plaintiff Mark Chang and Plaintiff OilPods designed to induce potential investors to purchase the interests. The Asian investors acquired actual assigned percentages of working interests in their own names in oil and gas leases located in Oklahoma, Texas and Louisiana and held ownership rights to the working interests in the oil and gas properties through assignments. The monetary obligations due the Plaintiffs' Asian investors were to be paid from the production of the oil and gas leases of which the Asian investors held an ownership interest. Powder River Basin Gas Corp. and/or Defendant Powder River's only obligation was its limited guaranty of the return of the investment and payment of the carried working interests, all as set forth in the Subscription Agreements.

Those oil and gas interests became the subject of a dispute with the contract operator in the State of Texas whereby Powder River discovered that the charges for operating expenses were exorbitant and unwarranted. Attorneys had been hired in the State of Texas and were working in obtaining a new operator and resuming production and payment from the lease and were vigorously defending the interests of the working interest owners in the lawsuit filed in the District Court of Goliad County, State of Texas. Plaintiff Mark Chang was well aware of the lawsuit and of the actions of Defendant Powder River in the State of Texas as it pertained to the contract operator since assignments of the entire working interests had been made to Mark Chang and Plaintiff Huios as a settlement for their involvement in the dispute since production payments had ceased. Thereafter,

Plaintiff Huios reassigned the working interests dating back to the date of the original assignment so that the various lawsuit could be maintained. Defendant Powder River was actively defending the interest of the working owners and pursuing all legal remedies which is evidence that Plaintiffs did have alternate remedies available to them much less onerous than the appointment of a receiver. There was no immediate and irreparable injury as to the lease or the working interest owners given the fact that the dispute between Defendant Powder River and the Texas operator was being pursued and litigated in the Texas court system. The Receiver's actions have jeopardized the pending litigation, caused unnecessary confusion, and caused delay in the dispute with the operator.

Defendant Brian Fox, the president of Defendant Powder River and a majority shareholder in the corporation, has indicated in his Affidavit attached hereto that he was not able to be present at the hearing held on July 23, 2008, but that he never gave attorney Patrick Waddell authority to consent to a temporary injunction being entered against Defendant Powder River and never consented to the continuation of the appointment of the receiver, and in fact instructed attorney Pat Waddell to vigorously object to such actions. Defendant Brian Fox was completely surprised at being informed of the results of the hearing as it was his instruction and intention, and that of the directors and stockholders of the corporation, to vigorously defend any attempt to enter a temporary injunction and any attempt to keep the receiver in place.

Upon full disclosure of the facts to this Court, it is evident that Plaintiffs failed to prove they were likely to prevail upon the merits of the underlying lawsuit, that Plaintiffs would suffer irreparable harm in the absence of the issuance of a temporary injunction, that the irreparable harm suffered by Plaintiffs outweighs the irreparable harm to Defendants

by the granting of injunctive relief, and that the public had any interest whatsoever in this dispute originating in the State of Texas and involving Texas oil and gas interests. The effect of the *Temporary Restraining Order*, the *Order Appointing Receiver*, and the yet to be filed Temporary Injunction, has not been to keep the status quo and preserve assets, but has been to liquidate Defendant Powder River, to prevent Defendant Powder River from having funds to defend itself, to seize, without due process, accounts of Defendant Brian Fox, who was only recently served with process in this case, and the accounts of its believed affiliates, and to destroy the value of Defendant Powder River's stock being traded on the OTCBB Exchange, all simply to protect the claims of Plaintiffs to speculative future damages.

2. Plaintiffs Are Only a Few of Some of 2,000 Investors Defrauded into Buying Unregistered Securities.

In truth and in fact, Plaintiff Mark Chang and Plaintiff OilPods have sold working interests to approximately 640 Asian investors. As of October, 2007, the date of Defendant Powder River's last shareholders' meeting, it had approximately 2,200 shareholders. Plaintiffs unsubstantiated allegations and unwarranted actions have caused irreparable damage to Powder River's stockholders by causing the stock to plummet, as well as irreparable damage to Powder River's employees and vendors terminated by the Receiver, all of whom are innocent parties. The number of Asian investors who purchased working interests through Plaintiffs' program is much less than the number proposed by Plaintiffs and it is believed that Plaintiffs were using the number of Asian investors that they were potentially targeting through their marketing efforts in order to exaggerate facts to show the greatest emergency.

None of the Asian investors were defrauded by the Defendants. Any misrepresentations, omissions, or falsehoods would have been perpetrated by Plaintiffs Mark Chang and/or OilPods as they were the ones marketing the working interests and targeting Asian investors. The Defendants had no involvement in the marketing of working interests to potential Asian investors. The Plaintiffs' Asian investors acquired actual assigned percentages of working interests in their own names in an oil and gas lease located in the State of Texas and held ownership rights to the working interests in the oil and gas properties through filed assignments. Plaintiffs' Asian investors never purchased shares of stock in Defendant Powder River, rather they owned a tangible interest in a Texas oil and gas lease through Plaintiffs' WI Ownership Program.

Of note is that Plaintiff Mark Chang at one time owned stock in Defendant Powder River. He was also a director of Defendant Powder River for a period of time and approved a salary to himself of $3,000.00 per month while sitting as a director.

Defendant Powder River is traded on the OTCBB Exchange and is a Bulletin Board stock (penny stock) and is heavily regulated. In addition to retaining its own accountants to document all monies earned and spent, Defendant Powder River must retain an independent accountant for oversight pursuant to SEC rules. Futhermore, the company has auditors which conduct an audit review of the company every three months pursuant to SEC regulations in addition to annual audits required of the corporation. Defendant Powder River has always complied with SEC regulations and filed all required and necessary reports and documents with the SEC.

Therefore, contrary to Plaintiffs' allegations, Plaintiffs' investors were intended to be paid through production payments against their working interests and only suffered delays

in payment caused by the Texas litigation involving the contract operator. Because of the pending Texas litigation, no irreparable harm or damage was or would be suffered by the Plaintiffs or other Asian investors, and certainly due to the pending litigation, no emergency ever existed. The Plaintiffs, as well as the Receiver, should have been focused and should be focused on the proceeds of production and the Texas litigation and not on Defendant Powder River's business or on shutting down Powder River.

3. The Allegations of Fraud Were Based upon (a) Brian Fox's Expired Canadian Cease and Desist Order; (b) the Texas Operator's Former Felony Conviction; ©) Defendant Powder River's Alleged Failure to File Reports with the Securities and Exchange Commission; and (d) Defendant Powder River's Alleged Failure to Register the Securities.

Plaintiffs further failed to advise the Court that Plaintiffs Mark Chang and OilPods had been compensated and paid almost $7,000,000 within the past two years alone for production payments, which sums were to be remitted to its Asian investors by Plaintiffs. This amount is in addition to all commissions received by Plaintiffs Mark Chang and OilPods for the sale of the working interests to its Asian investors through its WI Ownership Program.

The Court was not advised that Defendant Brian Fox did not sell any securities while he was under a cease and desist order issued by the Calgary Securities Commission for a minor infraction which had been lifted and fulfilled in 2001 in its entirety and that Plaintiff Mark Chang knew and was well aware of the cease and desist order. Similarly, the Court was not advised that the contract operator in the State of Texas was bonded with the State of Texas and had fulfilled all of his obligations under his felony conviction and that Plaintiffs and Defendants Brian Fox and Powder River learned of the Texas operator's felony conviction at the same time. The Defendants had no prior knowledge of the Texas

operator's conduct.

Plaintiffs again failed to provide the Court with any information or evidence that SEC reports had not been filed, although all such reports had been filed, with the appropriate reporting agencies, and in fact could have obtained this information from attorney Frederick Slicker, had he been contacted with respect to the pending *Application for Appointment of Receiver* and *Temporary Restraining Order*. In addition, Plaintiff Mark Chang failed to tell the Court that he was a director of Defendant Powder River until March, 2008, when he resigned presumably in anticipation of filing this lawsuit. All of this information combined support Defendant Powder River's argument that there was and is no irreparable harm to Plaintiffs and that the likelihood of Plaintiffs prevailing on the merits of their case was and is questionable.

4. Powder River Was Mismanaged, Insolvent and in Danger of Collapse.

To support the allegations for the appointment of a Receiver, Plaintiffs filed an Affidavit of attorney David Newsome. Mr. Newsome states in his own Affidavit that he has reviewed only limited information. The information that he reviewed is listed in his Affidavit but does not include audit reports and schedules of payments showing that the company was in full operation and paying its bills as they became due. Mr. Newsome testified at the hearing held on July 23, 2008 that he believed Powder River was insolvent. "'Insolvency' when applied to a person, firm, or corporation engaged in trade, means inability to pay debts as they become due in the usual course of business." *State ex rel. Barnett v. Creek Realty Co., 30 P.2d 160, 1933 OK 500 (Okla. 1933)*. The obligations due the Plaintiffs were obligations from a specific project located in Texas which were in the midst of litigation and of which Plaintiffs were fully apprised. Additionally, David Newsome was

required to recalculate and recast the financial statements in order to provide testimony that the company was erroneously insolvent. The Barnett court held that:

> "Insolvency is, however, most frequently one of several reasons for the appointment of a receiver, but insolvency as a ground for the appointment of a receiver is predicated upon the general doctrine of probable loss. Hence, there must be coupled with an allegation of insolvency additional allegations showing the plaintiff's right of recovery or probability of recovery, and that such recovery will be wholly or substantially lost or impaired by reason of insolvency."

Id. The court in the case of *Panama Timber Company, Inc. v. Barsanti, 633 P.2d 1258, 1980 OK CIV APP 18 (Okla.Civ.App. 1980)* reasoned as follows:

> "Moreover, insolvency of a mortgagor alone is not a ground for appointment of a receiver - insolvency must be coupled with evidence that the security is insufficient to satisfy the debt. And ultimately, before the court appoints a receiver he must be able to determine from the information before him that (1) plaintiff appears to have a valid interest in the property involved, and (2) the property is being used in such a way as to probably result in irreparable loss to plaintiff, should he prevail in his lawsuit."

The Plaintiffs had specific ownership interests in oil and gas wells located in Texas and this property is the only property which the Receiver had any possible authority over to which to exercise his dominion and control. The Receiver cannot prove Plaintiffs' interest in any of the other property confiscated by the Receiver. Plaintiffs have offered no credible proof of loss of the working interests or the Texas lease. Although the Plaintiffs claim that Defendant Powder River is insolvent, the Receiver is spending thousands of dollars, if not more, not only on his hourly fee, but also on paying attorneys in his firm to handle menial matters, on paying for several international flights, on Canadian attorneys, and on hiring consultants, all of which are unnecessary. Plaintiffs have only offered evidence of believed insolvency, coupled with nothing more, thereby adding to the mounting evidence presented by Defendants that the *Temporary Restraining Order*, the *Order Appointing Receiver*, and

the Temporary Injunction should be vacated and the receiver be discharged of his duties.

WHEREFORE, Defendants pray that the Court vacate the *Temporary Restraining Order*, the *Order Appointing Receiver*, and Temporary Injunction entered in this matter.

MOTION TO DISCHARGE RECEIVER OR, IN THE ALTERNATIVE, TO MODIFY OR SUSPEND RECEIVER'S POWERS

COME NOW the Defendants and respectfully move the Court to discharge the Receiver appointed for the Defendant Power River for the reason and upon the grounds that the Receiver is not a disinterested party, that the Receiver has not exercised the Receiver's powers in order to maintain the status quo and preserve assets as required by law, and that the Receiver has performed official acts without posting the required bond.

The Receiver did little to preserve the status quo from the time that he was appointed by this Court on July 14, 2008 until the hearing on the temporary injunction was held on July 23, 2008. In fact, the Receiver did not file his Receiver's Bond with the Court until July 21, 2008, seven days after his appointment. 12 O.S. § 1553 states as follows:

> "Before entering upon his duties, the receiver must be sworn to perform them faithfully, and with one or more sureties, approved by the court or judge; execute an undertaking to such person and in such sum as the court or judge shall direct, to the effect that he will faithfully discharge the duties of receiver in the action, and obey the orders of the court therein."

In contravention of Oklahoma law, the Receiver performed and committed the following acts between July 14, 2008 and July 21, 2008:

a. On July 15, 2008, the Receiver appeared in person at the offices of Defendant Powder River in Calgary, Canada, unannounced, and took pictures.

b. Between July 14, 2008 and July 16, 2008, the Receiver froze the bank accounts of Defendant Powder River and transferred all monies to the Receiver.

c. Between July 14, 2008 and July 16, 2008, the Receiver froze the personal bank accounts of Defendant Brian Fox, even though he had not been served with process, been served with the *Order Appointing Receiver* or the *Temporary Restraining Order*, and transferred all monies to the Receiver.

d. Between July 14, 2008 and July 16, 2008, the Receiver froze the bank accounts of Renco Energy, Inc. ("Renco"), a non-party to this lawsuit, because the Receiver believed that Renco was an "affiliate" of Defendant Powder River, and transferred all monies to the Receiver.

e. Between July 14, 2008 and July 16, 2008, the Receiver fired the following employees of Defendant Powder River: a) Pam Moon, office manager; b) Diana Fox, communications manager, c) Shelly Balla, records administrator, d) Hong Phan, accounting, and e) Yue (Yoyo) Zhou, corporate finance. The Receiver took such actions without paying the current payroll or paying severance pay as required by Alberta, Canada law when terminated without notice.

f. On or about July 16, 2008, the Receiver confiscated all files and records of attorney Frederick Slicker, Defendant Powder River's attorney.

g. As a result of the Receiver's actions between July 14, 2008 and July 16, 2008, Defendant Powder River was unable to pay its bills as all bank accounts had been frozen and/or seized, resulting in the shut down of the company and the shut down of all oil and gas production.

The execution of a bond is "a mandatory prerequisite to the valid appointment of a receiver." *Panama Timber Co., Inc. v. Barsanti, 633 P.2d 1258, 1980 OK CIV APP 18 (Okla.Civ.App. 1980)*. The *Panama Timber* court held that even though a surety bond was executed following a later hearing, such action "did not operate to breathe legal life" into the earlier appointment of the receiver. *Id.* The Receiver's actions during this time period were illegal, were over reaching, were not validated by the subsequent execution of a bond after the fact, and such actions should be voided immediately and all property returned to the Defendants and all non-parties.

The Receiver has caused substantial damage to Defendant Powder River by seizing assets, preventing Defendant Powder River from acquiring income or paying its obligations,

creating undue expense to Defendant Powder River and has caused damage to numerous investors, stockholders and employees. Moreover, the Receiver has generally exercised the powers of the Receiver in such a manner so as to destroy the business of the Defendant Powder River, has frozen accounts and assets of the Company and the individual Defendant Brian Fox without due process of law, and has terminated employees and contractual relationships which are absolutely necessary for the continued operation of the business.

Plaintiffs admit in their *Motion for Appointment of Receiver* that they interviewed and shopped around for a receiver in which to have appointed in this case, which obviously indicates that there was little if no emergency involved in the underlying matter., Since Defendants had no notice prior to the issuance of the *Temporary Restraining Order* and the *Order Appointing Receiver*, Defendants were not able to defend themselves, and at the very least, to recommend to or advise the Court of possible candidates acceptable to act as Receiver should the Court find that the appointment of a Receiver was necessary. The *Order Appointing Receiver* is an onerous order, most likely drafted by the Receiver himself, which grants the Receiver broad and sweeping powers, limits the Defendants' ability to defend themselves in this pending litigation, the Texas litigation, and litigation underway in Calgary, Alberta, Canada regarding the Receiver and Powder River.

A Receiver acts in a fiduciary capacity and must act in good faith in the preservation, protection, and care of the property under his control. *Witt v. Jones, 233 P. 722, 1925 OK 149 (Okla. 1925).* A Receiver must not favor one party over that of another in the pending litigation. *Id.* Plaintiffs in their *Motion for Appointment of Receiver* admit that prior to the

appointment of Mr. Day, the Plaintiffs were "coordinating" with Mr. Day so that the Receiver "and his team" could begin work immediately. It would appear that the Receiver has not adequately preserved the property which he has seized and it would appear that the Receiver has favored the rights and interests of the Plaintiffs over that of the Defendants in the instant case.

WHEREFORE, Defendants pray the Court discharge the Receiver, or in the alternative, modify or suspend the Receiver's powers in order that the Receiver's exercise of Receivership authority is consistent with Oklahoma law and the facts of this case, or appoint a new Receiver in this case.

MOTION FOR TURN OVER OF
DEFENDANTS' PROPERTY AND RECORDS

COME NOW the Defendants and move the Court to issue its order requiring that the Receiver turn over all records and property of Defendant Powder River, Defendant Brian Fox, and all alleged affiliates and non-parties, of which the Receiver has taken control, has removed from the offices of Defendant Powder River, has frozen, or has prevented Defendant Powder River from using or operating in the usual course of its business. In support hereof, Defendants would show the Court that the books and records of the corporation, particularly those contained within the Calgary, Alberta, Canada office, and the use of the money seized by the Receiver, are absolutely necessary for the continued operation of the Company and to prevent damage and injury to many stockholders and investors not parties to this action. Moreover, all such documents, property and records are necessary for Defendant Powder River to defend itself in this pending litigation as well as pending litigation in Canada regarding the Receiver and the

Texas litigation.

WHEREFORE, Defendants pray that the Court issue its order requiring the turn over of Defendants' property, records, accounts, and monies.

MOTION TO INCREASE RECEIVER'S BOND

COME NOW the Defendants and move the Court to increase the Receiver's bond from $100,000 to $5,000,000 in the event that this Court does not discharge the Receiver and opts to modify the Receiver's powers. In support hereof, Defendants would show the Court that the Court properly assessed the possible damage to Defendant Powder River, who had not yet even been served with process and did not receive notice concerning the ex parte hearing, by requiring an original Receiver's Bond of $5,000,000. A $5,000,000 bond was never obtained by the Plaintiffs. In fact, while Plaintiffs were allegedly seeking to obtain a bond, the Receiver, was already in Calgary, Alberta, Canada firing employees, attempting to take control of the company and records, seizing bank accounts of not only the company, but alleged affiliates and individual Defendant Brian Fox, and ceasing the operations of the company. Two days later, after substantial activity by the Receiver, the Plaintiffs approached the Court regarding a reduced bond and requesting a bond of $50,000. The Court agreed to a $100,000 bond, again ***ex parte***, without Mr. Slicker or any representative of Powder River being advised of the pendency of the application. The $100,000 bond is totally inadequate to protect the rights of the Defendant Powder River, Defendant Brian Fox, or the stockholders of Power River. The Receiver has in his possession monies and property well exceeding $100,000 and has already caused extensive damage to Defendant Powder River and its operations by reason of the Receiver's acts and conduct in seizing assets, terminating employees, and generally

attempting to liquidate the assets of Defendant Powder River. Upon further investigation and discovery, counterclaims by Defendant Powder River, Defendant Brian Fox, and other investors against the Receiver are likely.

WHEREFORE, Defendants pray that the Court increase the Receiver's Bond from $100,000 to $5,000,000 and suspend the Receiver's powers until such bond is posted.

MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION

COME NOW the Defendants and move the Court to dismiss the above styled and numbered cause for lack of personal jurisdiction over the Defendants. In support hereof the Defendants would show the Court that notwithstanding the allegations filed by the Plaintiffs, no transactions relevant to the claims of the Plaintiffs occurred in the State of Oklahoma.

The sales of working interests in Texas oil and gas properties were sold by Plaintiff Mark Chang in Singapore, Indonesia, and other Asian countries, and consummated outside of the United States of America. The assignments were prepared by Plaintiff Mark Chang and forwarded to the Defendants in Calgary, Alberta, Canada for signature. The majority of the working interests were assigned to Plaintiffs' Asian investors by Powder River Basin Gas Corp., a Colorado corporation, outside of the United States, and all such documents pertaining to the sale of the working interests were executed outside of the United States. No contacts exist which provide a basis for personal jurisdiction over the Defendants, and therefore, Plaintiffs' Petition must be dismissed.

Oklahoma's long-arm statute is codified under 12 O.S. § 2004 (F) which states that "A court of this state may exercise jurisdiction on any basis consistent with the Constitution of this state and the Constitution of the United States." In *International Shoe Co. v.*

Washington, 36 U.S. 310, 316, 66 S.Ct. 154 (1945), the United States Supreme Court held that due process allows a state to exercise jurisdiction over a defendant who is not present within the state if the defendant has certain minimum contacts with the state "such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" (quoting *Milliken v. Meyer, 311 U.S. 457, 463 (1940)*). This test is fulfilled when a defendant has purposefully directed his activities at residents of the forum state and the litigation arises from activities that arise out of or relate to those activities. *Burger King Corp. v. Rudzewikcz, 471 U.S. 462, 472 (1985)*.

In personam jurisdiction may be general or specific. General in personam jurisdiction may be exercised when a non-resident defendant has maintained "continuous and systematic contacts" with the forum state. *Helicopteros Nationales de Columbia, S.A. v. Hall, 466 U.S. 408, 415-416, 104 S.Ct. 1868, 1872-1873 (1984)*. The burden of proving general in personam jurisdiction is upon the party asserting that the state has jurisdiction. *Roberts v. Jack Richards Aircraft Co., 1975 OK 72, ¶ 6, 536 P. 2d 353, 354 (Okla. 1975)*. General in personam jurisdiction will not be inferred but must affirmatively appear from the record. Id. In the case at bar, Defendants never transacted business within the State of Oklahoma prior to, during, or following its business transactions with Plaintiffs. It therefore cannot be considered to have "continuous and systematic contacts" with the state.

Specific in personam jurisdiction involves a two-tiered test whereby 1) the defendant has the requisite minimum contacts with the forum such that the defendant should have reasonably anticipated being haled into court there, (*World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297, 100 S.Ct. 559, 567 (1980)*) and 2) once minimum contacts

have been established, the assertion of personal jurisdiction must comport with notions of fair play and substantial justice. Burger King Corp., *U.S. at 476, S.Ct. at 2184.* The requirement of minimum contacts is fulfilled when the cause of action relates to or arises out of the defendant's forum-related activities. Bearry v. Beach Aircraft Corp., *818 F.2d 370, 374 (5th Cir. 1987).* Defendants do not have the requisite minimum contacts with the State of Oklahoma to satisfy either prong of the test.

As evidenced in the attached Affidavit of Brian Fox, Defendant Powder River is an Oklahoma corporation, surviving from a merger with a Colorado corporation, with its principal place of business in Calgary, Alberta, Canada. The predecessor in interest, Powder River Basin Gas Corp., was the corporation who assigned the purchased working interests to the Asian investors and was the company whose working interests were being marketed by Plaintiffs Mark Chang and OilPods. Powder River Basin Gas Corp. and Defendant Powder River have never placed local television advertisements, mass mailings, newspaper advertisements, or otherwise specifically solicited business from the residents of Oklahoma. Defendant Powder River's predecessor was originally solicited by Plaintiff Mark Chang, a resident of Singapore, regarding Mark Chang's WI Ownership Program of selling working interests through himself and Plaintiff OilPods, and sought to obtain a large working interest in Texas properties from Defendant Powder River's predecessor to sell to investors in Asian countries. Plaintiff Mark Chang traveled to Calgary, Alberta, Canada to solicit Defendants' business, and made trips to Texas to finalize the transaction. Plaintiff Mark Chang is often present in the State of Oklahoma working on other interests which have nothing to do with the Defendants.

In Roberts v. Jack Richards Aircraft Co., *1975 OK 72, 536 P.2d 353 (Okla. 1975),*

the Oklahoma Supreme Court decided a wrongful death action involving a nondomesticated foreign corporation. Plaintiff attempted to establish in personam jurisdiction by asserting that Defendants aired nationally televised commercials in Oklahoma City, that the Defendants were listed in the Oklahoma City telephone directory, and that travel agencies in Oklahoma City could possibly sell tickets to flights on Defendants' airlines. The court opined that these activities were merely a "suggestion of contacts rather than compliance with the test of 'minimum contacts'" and further held:

> " . . . the record should show a voluntarily committed act of the defendant by which the defendant purposefully availed itself of the privilege of conducting activities within the State so as to invoke the benefits and protections of the laws of Oklahoma. National televised commercials viewed within Oklahoma fall short . . . The possibility of a travel agency selling tickets to flights on Eastern and Mohawk is not a 'committed act.'" (Citations omitted.) *Id. at ¶ 7 and 8, P.2d at 355.*

Similarly, Defendant Powder River's maintenance of a bank account for the limited purpose of paying United States oil and gas operators and contractors due to international exchange issues cannot be considered a committed act nor can it be considered a committed and sufficient act.

The Oklahoma Supreme Court dealt with the issue of whether advertising by an Arkansas corporation in an Arkansas newspaper which was circulated in Oklahoma constituted doing business or soliciting business within the State of Oklahoma in *Glidewell Motors, Inc. v. Pate, 1978 OK 46, 577 P.2d 1290 (Okla. 1978).* The court held that Plaintiff's injury did not arise out of advertising in Oklahoma therefore the trial court could not assume personal jurisdiction in the matter. *Id. at ¶ 15.* In the instant case, Defendant Powder River has no sufficient contacts with the State of Oklahoma. The residents of the State of Oklahoma were never targeted by Defendant Powder River for any investment

purpose. Plaintiffs' injuries did not arise out of any activities conducted by Defendant Powder River in Oklahoma because Defendant Powder River had no activities in Oklahoma.

In the case of Deerinwater v. Circus Circus Enterprises, *2001 OK CIV APP 37, 21 P.3d 646 (Okla.Civ.App. 2001)*, Plaintiff was injured at a Tunica, Mississippi casino while a guest. Plaintiff sued Defendant and argued that the trial court could assert personal jurisdiction over the Defendant because Defendant advertised in Oklahoma via flyers, pamphlets, and commercials. Plaintiff also argued that she and several other residents of Oklahoma had received targeted mailings from Defendant advertising special promotions at the casino. The court held that Plaintiff's alleged injuries did not arise out of Defendant's activities in Oklahoma. The court further stated that:

> "Even if Circus Circus's advertising 'caused' her to visit Casino in Mississippi, it cannot be said that her purported injuries were 'caused by' the advertising. Her injuries are simply too attenuated from Circus Circus's activities in Oklahoma to establish in personam jurisdiction. We conclude that Circus Circus's contacts with Oklahoma are not of a quality and nature such that it should have reasonably anticipated having to defend a suit here."

Likewise, Plaintiff's alleged injuries in the case at bar do not arise from any activity by Defendant within the State of Oklahoma nor were any Oklahoma residents targeted or injured by and of Defendant Powder River's non-forum activities. Oklahoma cannot assert personal jurisdiction over the Defendants given the facts of this case.

WHEREFORE, Defendants pray the Court dismiss the above styled cause for lack of personal jurisdiction.

REQUEST FOR HEARING

COME NOW Defendant Powder River and Defendant Brian Fox and request this

Court to set the above motions for hearing before this Court.

CONCLUSION

The Defendants respectfully request this Court (1) to vacate the vacate the *Temporary Restraining Order*, (2) to vacate the *Order Appointing Receiver*, (3) to vacate the Temporary Injunction, (4) to discharge the Receiver, or in the alternative to modify or suspend the Receiver's powers, (5) to have the Receiver turn over Defendants' property, records and documents, (6) to increase the Receiver's Bond from $100,000 to $5,000,000, (7) to dismiss this case for lack of personal jurisdiction against the Defendants, and (8) to set these matters for hearing before the Court.

Respectfully Submitted,

EDWARDS & MAILATH, L.L.P.

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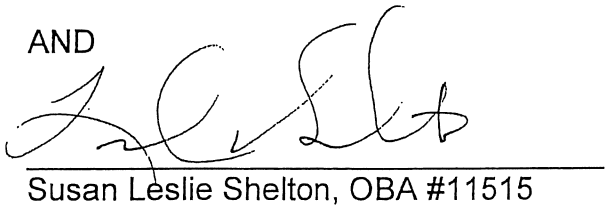
AND



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CERTIFICATE OF SERVICE

I hereby certify that on the 15 day of August, 2008, I caused a true and correct copy of the above and foregoing instrument to be mailed with proper postage thereon prepaid to:

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Boettcher & Drummond
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Bruce W. Day, Receiver
Day, Edwards, Propester & Christiansen, PC
210 Park Avenue, Suite 2900
Oklahoma City, OK 73102-5605

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