

No. 98,854

FILED
SUPREME COURT
STATE OF OKLAHOMA

OCT 11 2004

MICHAEL S. RICHIE
CLERK

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

OKLAHOMA DEPARTMENT OF SECURITIES *ex rel.*,
IRVING L. FAUGHT, ADMINISTRATOR,
Plaintiff/Appellee,

v.

ACCELERATED BENEFITS CORPORATION and
AMERICAN TITLE COMPANY OF ORLANDO,
Defendants/Appellants,

v.

TOM MORAN,
Court-Appointed Conservator/Appellee.

**DEFENDANTS/APPELLANTS'
PETITION FOR CERTIORARI**

APPEAL FROM THE DISTRICT COURT OF OKLAHOMA COUNTY
THE HONORABLE DANIEL L. OWENS, JUDGE OF THE DISTRICT COURT
CASE NO. CJ-99-2500-66
ACTION FOR VIOLATIONS OF THE OKLAHOMA SECURITIES ACT

October 11, 2004.

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Pursuant to Okla. Sup. Ct. R. 1.178, Defendants/Appellants, Accelerated Benefits Corporation (“ABC”) and American Title Company of Orlando (“ATCO”; collectively “Defendants”), hereby apply for a writ of certiorari and request that the opinion of the Court of Civil Appeals (“COCA”), rendered on July 20, 2004 (the “Opinion”), be vacated on the grounds that it has decided a question of substance not in accord with the applicable decisions of this Court and the United States Supreme Court.¹ The Opinion violates settled due process principles of federal and state law, and abrogates the law of the case established by this Court’s Writ issued in the Original Proceedings.²

I. INTRODUCTION

A. **Reasons For Granting Certiorari.**

Defendants seek to overturn a final order of the district court designated: “Order Approving Sale of Conservatorship Assets” (hereafter the “Sale Order”) rendered on January 16, 2003, and a subsequent modification of the Sale Order rendered on January 24, 2003. COCA affirmed the Sale Order even though virtually the same issue had been decided by this Court in an original proceeding brought in this case at least *three months* before the district court issued the Sale Order. Nothing of substance is different between the two issues; and COCA should have adhered to the Supreme Court’s Writ and vacated the district court’s Sale Order.

¹Defendants’ application for rehearing was denied by COCA on September 20, 2004.

² The Supreme Court’s Writ of Mandamus (hereafter the “Writ”) was entered on October 3, 2002, in an original proceeding, styled: *Accelerated Benefits Corporation and American Title Company of Orlando, Petitioners v. The Honorable Daniel L. Owens, District Court of Oklahoma County, Oklahoma, Respondent*, No. 98,083 (hereafter the “Original Proceedings”).

B. Synopsis of The Original Proceedings.³

On August 7, 2002, ABC and ATCO filed the Original Proceedings. Defendants requested this Court issue a writ of mandamus directing the district court to vacate an order rendered without personal jurisdiction over thousands of individuals residing throughout the United States. Defendants argued successfully that the subject order improperly modified the terms of hundreds of "Purchase Request Agreements" entered into between Defendants and the various investors. This Court held, *inter alia*, that the order was jurisdictionally flawed and of no effect for lack of personal jurisdiction. The same principles which led this Court to issue its ruling in the Original Proceedings apply with equal force here.

C. Subject Matter of the District Court Proceedings.

This case was originally filed by the Oklahoma Department of Securities (the "Department") on April 8, 1999, against ABC, ATCO and several other defendants. The Department successfully alleged that Defendants violated various provisions of the Oklahoma Securities Act. ABC arranged for the purchase of life insurance policies through a viatical broker who represented terminally ill persons insured under various life insurance policies. A "viatical settlement" generally provides that, in return for a sum of money in advance of death, the insured, or "viator," agrees to change the beneficiary of the policy in favor of a trustee who holds nominal title to the policy for the benefit of persons who have agreed to purchase an interest in the policy (hereafter the "Purchasers"). Upon the death of the viator, the proceeds of the policy are distributed to the Purchasers according to their quantum of interest in the policy.

³"Although the record in a prior cause is not a part of the appeal in a subsequent action, [the Supreme Court] take[s] judicial notice of [its] former opinions to determine the binding nature of the cause in a subsequent action." *Cinco Enterprises, Inc. v. Benso*, 1999 OK 80, ¶ 10, 995 P.2d 1080, 1084.

ABC matched Purchasers with policies and received a fee for arranging the viatical transactions. ATCO, a bonded title company, acted as the trustee. Its duties included documenting the transaction to carry out the purchase of the policies, including changing the beneficiary of the policies. In some cases, the Purchasers became direct beneficiaries of the policies; however, in most cases, ATCO became the nominal beneficiary of the policies for the benefit of the Purchasers. ATCO held nominal title to approximately 1,400 policies for the benefit of nearly 4,500 Purchasers. Each of the Purchasers executed a "Purchase Request Agreement," which in tandem with various other documents, effected the viatical transaction. A reserve account was established to pay premiums, and keep the policies in force over the estimated life expectancy of the viator.

II. ARGUMENT AND AUTHORITIES

COCA erred in two respects. First, the court incorrectly found that the Sale Order did not violate the Purchasers' federal and state due process rights. Second, COCA improperly found, in violation of the law of the case, that this Court's Writ did not obligate COCA to find that the Sale Order was invalid.

A. Issuance Of The Sale Order Violated The Purchasers' Due Process Rights.

It is well-settled that the "jurisdiction necessary to empower a court to render a valid judgment is of three types: (1) jurisdiction of the parties; (2) jurisdiction of the general subject matter; and (3) jurisdiction of the particular matter which the judgment professes to decide." *Read v. Read*, 2001 OK 87, ¶ 8, n.6, 57 P.3d 561, quoting *La Bellman v. Gleason & Sanders, Inc.*, 1966 OK 183, ¶ 8, 418 P.2d 949, 953. A judgment is effective only if the defendant has had a full and fair opportunity to litigate the claim or critical issue. *Read*, ¶ 15, n.17, citing *Nealis*

v. Baird, 1999 OK 98, ¶ 51, 996 P.2d 438, 458. **“That opportunity must be afforded in order to meet the minimum standards of due process, both state and federal.”** (Emphasis supplied.) *Id.*, citing *Patel v. OMH Med. Ctr., Inc.*, 1999 OK 33, ¶ 41, 987 P.2d 1185, 1201.

The valid exercise of personal jurisdiction, based on the existence of *minimum contacts* with a foreign state, “protects the defendant against the burdens of litigating at a distant or inconvenient forum[,] [a]nd it acts to ensure that the states through their courts, do not reach out beyond limits imposed on them by their status as co-equal sovereigns in a federal system.” *Basham v. Hendee*, 1980 OK CIV APP 10, ¶ 9, 614 P.2d 87, 89. These principles of United States constitutional law were adopted by Oklahoma in *Fields v. Volkswagen of America, Inc.*, 1976 OK 106, 555 P.2d 48. “The Oklahoma statute gives the courts of Oklahoma personal jurisdiction over any non-domiciliary who can be reached constitutionally as having had sufficient state contacts measured by the jurisdictional yardstick established by the United States Supreme Court in *International Shoe Co. v. Washington*, 326 U.S. 310 (1945).” *Id.* A cursory review of these decisions shows that COCA’s Opinion is contrary to these well established principles. Indeed, COCA never once even discussed the issue of minimum contacts.

Reaching “out beyond the limits imposed on [Oklahoma courts] by their status as co-equal sovereigns in a federal system” is the gist of this appeal. *Basham v. Hendee*, 1980 OK CIV APP 10, ¶ 9, 614 P.2d 87, 89. COCA effectively held that giving the Purchasers 45 days’ notice to appear and defend themselves in an abbreviated hearing was sufficient under Oklahoma law. This conclusion was patently incorrect. Oklahoma courts do not have the power to adjudicate extra-territorial claims within such a short time period without ever giving the defendant the time to even file an answer, let alone assert the myriad of other procedural rights and defenses

accorded under Oklahoma law. The Purchasers were never served with summons pursuant to Okla. Stat. tit. 12, § 2004; they were never given an opportunity to file an answer or raise various affirmative defenses; and they were never afforded the chance to develop any of the affirmative defenses unique to their respective situations, including *forum non conveniens*, lack of minimum contacts, and a whole host of other defenses. At a minimum, the Purchasers should have been allowed the normal procedural due process accorded to any Oklahoma litigant, including the opportunity to litigate the case to a full, fair and final conclusion.

The only so-called “notice” of impending judicial action given to the Purchasers was an incomprehensible questionnaire which asked them to choose among various options regarding the liquidation of their investments. The form, which is of record in this appeal, did not state anything further of substance and nothing regarding their legal rights.⁴ The form did not even state that the failure to submit a completed form might result in a judgment against it, as all Oklahoma summons are required to state. This is the essence of legal notice that is embodied by a summons and petition, both of which were non-existent in this case. It is beyond comprehension that COCA could find that a person living outside the borders of Oklahoma was accorded due process. In the space of just 45 days, each purchaser lost tens or hundreds of thousands of dollars based on the district court’s adoption of the Conservator’s sale recommendation. Most of the Purchasers never even responded to the questionnaire and some where never even served. Yet, in the space of two abbreviated hearings, the Purchasers collectively lost over \$70 million, or half of their original investments.

⁴The form is attached as Ex. “C” to the Conservator's Motion For Order Approving Sale of Conservatorship Assets, filed October 25, 2002.

At a minimum, the Purchasers should have been served with summons and a petition, along with a reasonable opportunity to conduct a defense in accordance with Oklahoma procedure. The idea that the Purchasers were properly accorded due process is rendered inconceivable by a simple example. John Doe, who resides in Anchorage, Alaska, and who was contractually entitled to receive \$100,000 according to the terms of his Purchase Request Agreement, will now receive only \$50,000, when the policy in which he invested matures. He was given roughly 45 days' notice to hire counsel, or appear *pro se* in Oklahoma, and mount a defense. He would have been entitled to assert numerous defenses, including availing himself of the right to transfer the case to a more convenient forum, seeking removal of the case to federal court, and a host of other procedural and substantive defenses. Clearly, Mr. Doe had no chance of doing any of these things, and no doubt there are other Purchasers, with *more and less* at stake, that also did not have a meaningful opportunity to take such actions.

COCA obviously overlooked the Department's and the Conservator's tacit admissions that *they could not find a jurisdictional basis for the district court's use of nonexistent extra-territorial jurisdictional powers*. Both the Department and the Conservator asked this Court, in the Original proceedings (in their respective petitions for rehearing), just how the district court could enter the Sale Order without violating the Purchasers' due process rights. Defendants argued the Supreme Court was not in the business of issuing advisory opinions, and also suggested that even if the Court were inclined to suggest the proper vehicle by which a court may resolve numerous contractual claims among citizens of different states, it need only point to the vast body of federal law that provides a forum for litigation of nationwide disputes that cross state lines.

A good example is the *In re "Agent Orange" Prod. Liab. Litig.*, 818 F.2d 145 (2d Cir. 1987). The Second Circuit faced many of the same procedural issues that this Court faces. The Second Circuit concluded, however, that Congress provided a specific means by which to adjudicate thousands of claims that transcend state lines. Despite the strong emotions involved in the *Agent Orange* litigation case, the Second Circuit precisely identified the one and only obligation which this Court has: "We are a court of law, and we must address and decide the issues raised as legal issues." *Id.*

Among the various issues which the Second Circuit confronted was whether "the district court was barred by the due process clause of the Fifth Amendment from exercising personal jurisdiction over class members who lack sufficient contacts with New York as defined in *International Shoe Co. v. Washington*, 326 U.S. 310 (1945) . . . and its progeny." *Id.* at 163. The Second Circuit held that it did. It pointed out that "*Congress may, consistent with the due process clause, enact legislation authorizing the federal courts to exercise nationwide personal jurisdiction.*" (Emphasis supplied.) *Id.* at 163, citing, *Mississippi Publ'g Corp. v. Murphree*, 326 U.S. 438, 442 (1946) ("Congress could provide for service of process anywhere in the United States."). The court also noted that "[o]ne such piece of legislation is 28 U.S.C. § 1407, the multi-district litigation statute." *Id.* And it was upon *this* authority that the *Agent Orange* federal court was enabled to adjudicate the tort claims of persons living in numerous states.

There is obviously no such Congressional authority that has been conferred on an Oklahoma district court, *and this was no doubt why this Court rejected the Department's invitation in the Original Proceedings.* State courts simply do not have the power to do what the district court did through the Sale Order despite the Department's (and the district court's)

extraterritorial desire to “protect,” or in the minds of some, “destroy” the rights of out-of-state investors.

What COCA essentially sanctioned is the non-existent ability of an Oklahoma district court to act as a federal court, with nationwide jurisdictional powers endowed only by federal law for exclusive exercise by federal courts. Apparently, COCA lost sight of the fact that what was at issue here is a conservatorship that assumed control over various contracts between a company and various parties, and altered them in a way the district court saw fit. That is not the function of an Oklahoma district court when it comes to out-of-state residents. Only a federal court, acting under the auspices of federal law, can exercise such broad jurisdiction in keeping with the mandates of federal jurisdictional principles. There is no case in the United States that holds that a state court may, in effect, (a) act as a nationwide court of general jurisdiction, (b) collect the assets of a corporation, and (c) distribute them in accordance with its views on what is just and equitable. In fact, one need only look at the multi-jurisdictional powers conferred on federal district courts and those conferred on an Oklahoma district court – there is no comparison because no statute grants Oklahoma courts the ability to adjudicate the rights of non-residents absent compliance with the federal and state due process limitations. Even federal courts must follow the dictates of due process and accord the defendant all of the procedural safeguards set forth under the United States Constitution.

The statement on page 8 of COCA’s opinion graphically reveals the impropriety of its conclusion: “Here, notice was made by certified mail, return receipt requested; it included detailed information regarding various options; it gave the investors a *considerable amount of time to respond*. (Emphasis supplied.)

Giving the Purchasers just 45 days to defend the loss of huge sums of money is farcical on its face. Yet, in the space of one sentence, COCA held it was satisfactory. True, notice was made by certified mail, return receipt requested; however, simply sending the Purchasers a questionnaire detailing their "options" (which did not include the right to raise any defenses) does not substitute for the issuance of a formal summons and the opportunity to mount a defense. At a minimum, any out of state defendant is provided 20 days (or 40 if an entry of appearance is filed) to *simply to file an answer to the petition*. After that, the defendant is supposed to receive all of the other protections provided by Oklahoma's Code of Civil Procedure, designed specifically to afford the defendant federal and state due process. There is no provision in Oklahoma's Code that permits full blown adjudication of the merits at the expiration of that period. Further, to say that the investors had a "considerable amount of time to respond" is, under the circumstances of this case, egregiously incorrect. Nowhere in the COCA's opinion does it address the simple, basic fact that of the 4,500 investors, only approximately 30 of them were able to hire counsel to attend the hearing. Even at the hearing, they were not provided any meaningful opportunity to press the defenses normally accorded to a defendant.

In short, this case represents a travesty of justice. COCA sanctioned the denial of due process to thousands of persons across the United States seemingly for the only reason it wants this case to "go away." The COCA was duty bound to follow the law, and it failed to do so in this case.

B. COCA Failed To Follow the Law of the Case Set Down By This Court In The Original Proceedings.

COCA correctly noted on page 8 of its Opinion that "the law of the case bars re-litigation of the same issue, including those that appear to be resolved by implication." However, in order

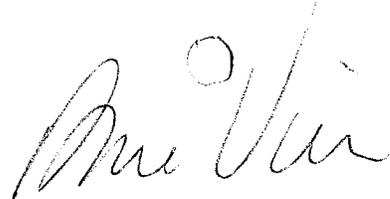
to avoid what would otherwise have been a simple application of the doctrine, COCA found that this Court's decision was "*different* and unlike the issue in the instant case, because the facts are different." (*Id.*; Court's emphasis.) The only factual difference which COCA referenced in its Opinion was that "[t]he notice given in the instant case" is different than the notice given in the Original Proceedings. It should be obvious, however, that immaterial differences in the facts will not operate to render inapplicable the doctrine of the law of the case; only substantial differences render the doctrine inapplicable.

The only factual difference between the Original Proceedings and this case was that the Conservator sent out the questionnaire certified mail, return receipt requested whereas in the Original Proceedings the Conservator simply mailed the notice of hearing. COCA even acknowledged that several Purchasers never received notice at all and that nearly 40% of the investors never responded to the questionnaire, yet it still found due process was given. (Op. at 5.) Even the fact that some of the Purchasers were served with the questionnaire does nothing to take this case outside of the precedent established by this Court in the Original Proceedings.

In short, the Purchasers were never granted meaningful opportunity to litigate against the district court's Sale Order, and because the Writ issued by this Court listed the very same deficiencies equally applicable to the Sale Order the law of the case required COCA to vacate the Order.

III. CONCLUSION

For the reasons set forth above, Defendants/Appellants' Petition for Certiorari should be granted, COCA's Opinion should be vacated, and the district court's Sale Order should be reversed.



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CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the above and foregoing
Defendants/Appellants' Petition for Rehearing was mailed, U.S. Mail, postage prepaid, this 11th
day of October, 2004, to:

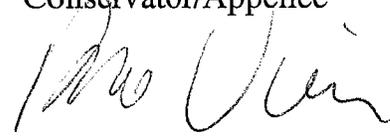
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ORIGINAL

NOT FOR OFFICIAL PUBLICATION



IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION IV

OKLAHOMA DEPARTMENT OF)
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CORPORATION; and AMERICAN)
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APPEAL FROM THE DISTRICT COURT OF
OKLAHOMA COUNTY, OKLAHOMA

HONORABLE DANIEL L. OWENS, TRIAL JUDGE

AFFIRMED

Rec'd (date)	7-20-04
Posted	msm
Mailed	msm
Distrib	msm
Publish	yes <input type="checkbox"/> no <input checked="" type="checkbox"/>

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OPINION BY JERRY L. GOODMAN, JUDGE:

Defendants, Accelerated Benefits Corporation (ABC) and American Title Company of Orlando (collectively, Defendants), appeal the trial court's order approving the sale by a court-appointed conservator of life insurance policies. Defendants assert the law of the case doctrine requires this court to reverse the trial court's order. Based on the facts and applicable law, we affirm.

FACTS

This appeal involves a court-appointed Conservator's proposed sale of life insurance policies known as "viaticals." A viatical contract reflects a transaction in which a terminally-ill policyholder (known as the viator) sells the right to receive the proceeds of his or her life insurance policy to an investor, usually through a viatical settlement provider. The viator receives an amount equal to the discounted value of the death benefit; the investor pays the policy's premiums and, upon the death of the viator, receives the death benefits paid under the policy. The investor's profit or loss is the discounted amount paid to the viator, less the costs of the premiums and administrative fees. *Seidman v. State*, 847 So. 2d 1144, 1145 (Fla. Dist. Ct. App. 2003). There are no reported Oklahoma cases involving viaticals.

In the instant case, ABC, a viatical settlement provider, purchased approximately 1,500 life insurance policies from viators.¹ ABC funded the purchases by selling interests in the viaticals to over 5,000 investors nationwide, who invested their money in exchange for a portion of the death benefit proceeds payable upon the deaths of the viators. ABC also received a fee for arranging the transactions. The other defendant in this case, American Title Company of

¹ The record does not reflect the exact number.

Orlando, is a bonded title company and trustee which held nominal title of the policies for the benefit of the investors.

In 1999, the Oklahoma Department of Securities filed a securities fraud action against ABC. The trial court found ABC had made misstatements and omissions of fact to its investors and had committed fraud. The trial court entered an agreed order finding that ABC had sold unregistered securities in Oklahoma and therefore violated the Oklahoma Securities Act. This order was not appealed.

In 2002, the trial court entered another agreed order appointing a conservator (Tom Moran, hereinafter Conservator) and transferring assets, which included the 1,500 life insurance policies owned or held by American Title Company for the benefit of the investors. Conservator later estimated the policies had a face value of \$141,000,000, with investors having paid \$107,541,742 for their right to receive a percentage of the death benefits. The trial order authorized Conservator to take necessary steps to protect the investors' interests, including liquidating or selling the policies. This order was not appealed, and no investor sought to intervene.

In October 2002, Conservator filed a motion for an order approving the sale of the policies. Conservator asserted it was costing over \$2,000,000 a year to pay the premiums on the policies, and because some investors were unwilling or unable

to pay their share, there was only enough cash and expected premium receipts to pay another six months of premiums.

After contacting possible buyers, Conservator sent notice to investors of his application to sell the policies. Notice was sent by certified mail, return receipt requested, and consisted of a seven-page letter summarizing the offers Conservator had received, including information on what percent return each investor would receive under each offer. A form was included for the investors to express their preference for any offer or for none of the offers. The notice also included a statement explaining investors had the right to object in writing or by appearing at a hearing.

According to return receipts from the post office, virtually all of the 4,477 notices sent to investors were delivered. Conservator later informed the court that 2,480 investors – about 55 percent of those notified – returned their preference forms. Eighty-seven percent of those returning preferences favored the sale to one buyer or another. The record also includes letters from over 50 investors objecting to the sale.

The form and content of this notice to the investors was drafted by Conservator in response to an October 3, 2002, order of the Oklahoma Supreme Court. The trial court had authorized Conservator to retain six percent of each

matured insurance policy to pay fees and expenses. Conservator had requested such an order and had sent notice of his request by regular mail to all the investors. In case number 98,083, the Court issued a writ of mandamus vacating the trial court's order, holding the order directly affected the investors and was void because they had not received any legal notice or meaningful opportunity to be heard.

Defendants filed an objection to Conservator's motion to sell the policies. Defendants asserted that an order approving the sale would be jurisdictionally void for the same reasons as the order in the previous Supreme Court decision.

The trial court granted Conservator's motion and approved the sale of the policies under one of the offers submitted to investors. Conservator estimated this offer would eventually result in the investors receiving \$58,000,000.²

Defendants appeal.³

² According to Conservator's brief, Defendants did not file a supersedeas bond and did not receive a stay of the trial court's order. The sale closed in March 2003 without objection from any investor. As of October 2003, the buyer had paid all premiums and costs and had disbursed \$9,700,000 in proceeds to the investors, all of whom had accepted the money.

³ After this appeal began, approximately two dozen investors filed special appearances, stating without further explanation or argument that they were adopting Defendants' arguments and were in support of the appeal. Both the Oklahoma Department of Securities and Conservator filed motions to strike or disregard the special appearances.

These investors are not parties to this action. The Oklahoma Supreme Court Rules do not provide for a special appearance by a non-party, and there is authority for sustaining a motion to strike an entry of appearance by a non-party. See *Ray v. Am. Nat'l Bank and Trust Co. of Sapulpa*, 1997 OK CIV APP 66, 948 P.2d 1235. Also, the special appearances do not make any

ANALYSIS

The issue on appeal concerns the trial court's decision approving the sale of the viaticals, specifically whether the law of the case prevents the trial court from doing so. For the following reasons, we affirm.

Decisions of the appellate court on an issue of law become the law of the case at all subsequent stages. *Matter of Severns' Estate*, 1982 OK 64, ¶ 5, 650 P.2d 854, 856. The doctrine bars relitigation in the same case of issues once decided by the appellate decision, and settles not only all questions actually decided but also those which on the record appear to have been resolved by implication. *Fent v. Okla. Natural Gas Co.*, 1994 OK 108, ¶ 14 and n.17, 898 P.2d 126, 134.

The Supreme Court's decision of October 3, 2002, ordered the trial court to vacate the order authorizing the Conservator to retain a percent of the matured insurance policies. The Court gave two reasons for its decision:

(1) the order was void "for lack of due process and the court's lack of jurisdiction," given that the order directly affected the investors "who are not made

additional argument beyond what Defendants have made. Accordingly, we grant the motions to strike, recognizing that while the investors are not parties, they have standing, as explained in the October 3, 2002, Supreme Court decision.

parties to this action, who were not given legal notice and a meaningful opportunity to appear and be heard"; and

(2) the investors had standing, given their personal stake in the outcome of the litigation.

The law of the case bars relitigation of the same issue, including those that appear to be resolved by implication. However, the issue resolved by the Supreme Court in the October 2002 decision is *different* and unlike the issue in the instant case, because the facts are different. The Court did not conclude that any court order affecting the investors would be void. Instead, it resolved the issue of whether the order under review was void. It concluded the order was void because it affected investors who were not made parties to the action and who had not received legal notice and a meaningful opportunity to be heard.

However, the notice given in that appeal is different than the notice given in the instant case. Here, notice was made by certified mail, return receipt requested; it included detailed information regarding various options; it gave the investors a considerable amount of time to respond. Basically, Defendants argue that because notice was not sufficient in the earlier case, it was not sufficient here. This argument ignores the factual differences between the two cases. The earlier

opinion does not bar the trial court from confirming the sale of the viaticals, given the notice made here.

Beyond the Court's result, the October 2002 opinion relied on several different principles, and we have considered whether any of them apply here to require reversal. First, the Court held the investors had standing to challenge the trial court's order because they had a personal stake in the outcome. Certainly, the investors also had a personal stake in the ultimate disposition of their investments. But, again, the Court did not conclude the trial court could make no order affecting the investors. Instead, the Court quoted *Matter of Estate of Doan*, 1986 OK 15, 727 P.2d 574, for the principle that standing determined whether a person is a proper party to request adjudication. In the instant case, the record reveals that some investors did in fact obtain counsel who took part at the hearing on the issue of the sale. We cannot conclude the trial court's order was made contrary to the principles of standing.

Second, the Court held the order was void "for lack of due process and the court's lack of jurisdiction to affect the interests of these persons." Regarding due process, Defendants have not shown that the notice sent by the Conservator in the case under review failed to meet the Court's due process concerns. Instead, Defendants have simply made a conclusory argument that notice did not meet the

Court's requirements of "legal notice and a meaningful opportunity to appear and be heard." We therefore reject this argument as well.

Finally, as quoted in the preceding paragraph, the Court held the order was void due to the trial court's "lack of jurisdiction." Given the context of this phrase in the Court's order, we reject Defendants' suggestion that the trial court could not acquire jurisdiction over the investors. The Court used this phrase in terms of the due process violation. This is apparent from the Court's reliance on *Cate v. Archon Oil Co.*, 1985 OK 15, 695 P.2d 1352. The portion of that case quoted in the order begins with this language: "*Notice* is a jurisdictional requirement," and ends with this language: "*lack of notice* constitutes a jurisdictional infirmity." (Emphasis added). This indicates the Court was pointing out that it was lack of notice that raised the jurisdictional issue. There is no indication the Court was making a broader statement that the trial court could not acquire personal jurisdiction over the investors.

We raise this matter because the parties seek a determination of the Department of Securities' powers under 71 O.S. Supp. 2003 § 406.1 of the Oklahoma Securities Act. Because it is not necessary to do so, we decline to broaden our decision to include this matter. Instead, we base our decision on the

issue before us, and hold that the law of the case doctrine does not require a reversal of the trial court's decision.

CONCLUSION

The trial court's decision is AFFIRMED.

TAYLOR, P.J., and STUBBLEFIELD, J., concur.

July 20, 2004