

STATE OF OKLAHOMA
LOGAN COUNTY
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**DISTRICT COURT OF LOGAN COUNTY
STATE OF OKLAHOMA**

OKLAHOMA DEPARTMENT OF)
SECURITIES, *ex rel.* Irving Faught,)
Administrator)

Plaintiff,)

v.)

Case No. CJ 2004-256

MARSHA SCHUBERT, an)
Individual, and *dba* SCHUBERT AND)
ASSOCIATES, *et al.*)

Defendants.)

**MOTION TO INTERVENE AND
SET ASIDE ORDER APPOINTING RECEIVER, AND TO
TRANSFER AND CONSOLIDATE THIS CASE,
WITH BRIEF IN SUPPORT**

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**DISTRICT COURT OF LOGAN COUNTY
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COMES NOW Richard LeBoeuf, Plaintiff in Oklahoma County case against the same parties as this case, involving the same nucleus of operative fact (improper acts by Marsha Schubert and collection attempts by receiver) and pursuant to 12 Okla. Stat. Ann. § 2024 requests that this Court: (i) allow him to intervene in this matter; and (ii) set aside its prior Orders Appointing Receivership due to existing conflicting fiduciary obligations, improper acts by the receiver, and existing administrative remedies that negate any need for a receiver. In support thereof, Richard LeBoeuf the following arguments:

INTRODUCTION AND PRELIMINARY FACTS SUPPORTING MOTION

1. Richard LeBoeuf, after having received several threatening letters from Douglas Jackson and his law firm, has filed a declaratory judgment action in Oklahoma County (case CJ-2005-3299), asking that Court to determine what powers, if any, Douglas Jackson, the Receiver appointed in this Logan County case, has to threaten and collect

funds from LeBoeuf. The central issue in that case is the extent of the Securities Department's organic statute, and the breadth of the Order appointing Douglas Jackson Receiver.

2. Mr. LeBoeuf included the Oklahoma Department of Securities ("ODS") as a defendant in his declaratory action, and was required to file in Oklahoma County for purposes of venue, as he and ODS are residents of Oklahoma County.

3. In conjunction with that case, Mr. LeBoeuf has procured a letter from the Department of Securities stating that he had not violated the Oklahoma Securities Act, and that the Department would not "plan to take any actions against him for violations of the Act." As such, Mr. LeBoeuf is innocent of any securities violations. EXHIBIT A.

4. The Receiver Douglas Jackson and the Department of Securities have nevertheless filed a lawsuit against LeBoeuf and 158 others in Oklahoma County (CJ-2005-3796), pointing to the Logan County Order Appointing Receiver as granting them the authority to do so. EXHIBIT B. In that case, the Receiver and the Department are claiming primarily a common law theory of unjust enrichment for purposes of standing, as opposed to a violation of the Securities laws of the state of Oklahoma. That case has been consolidated into Mr. LeBoeuf's case, under cause number CJ-2005-3299 in Oklahoma County, in order to reduce costs and delay. EXHIBIT C. The ODS and Receiver have argued to the judge in Oklahoma County that they would prefer to keep the case there, and not to have it transferred to Logan County. EXHIBITS D, E.

5. In Oklahoma County, Mr. LeBoeuf questions the ability of the ODS and the receiver to act beyond the legislature's statutory scheme for the ODS.

6. Marsha Schubert is a necessary and integral party in the consolidated Oklahoma County case, as she is the only party that is able to explain person by person the 158 defendants' culpability in her alleged scheme.

7. Expert witnesses have drafted affidavits and are currently prepared to testify in the Oklahoma County case.

8. Thus, Mr. LeBoeuf should be granted the ability to intervene in this matter under equitable principles and law, and request that his rights be protected. Furthermore, this matter should be transferred and consolidated in Oklahoma County, under cause number CJ-2005-3299, where the same issues are being litigated.

PROPOSITION I: RICHARD LEBOEUF SHOULD BE GRANTED THE RIGHT TO INTERVENE IN THIS MATTER

A. As a Matter of Right, Mr. LeBoeuf May Intervene to Protect his Interest

Oklahoma statutes say that a party "shall be permitted to intervene in an action...when [he] claims an interest to the property or transaction which is the subject" of a case. 12 Okla. Stat. Ann. § 2024(A).

The Order Appointing Receiver Jackson stems from this Court. EXHIBIT B. Marsha Schubert is a party in this matter who has settled with original plaintiffs, but is integral to the Oklahoma County case. The Receiver Jackson claims in Oklahoma County consolidated case CJ-2005-3299 that Mr. LeBoeuf somehow owes Marsha Schubert's estate approximately \$4,800.00. Mr. LeBoeuf therefore has a direct interest in the transaction (receivership) which is the subject of this action, and is so situated that the disposition of this receivership may "*impair or impede*" his ability to protect his hard-

earned money. He therefore should be allowed to intervene in this case as a matter of right. 12 Okla. Stat. Ann. § 2024(A)(2).

B. Under this Court's Permissive Standard, Mr. LeBoeuf May Intervene Because His Claim and this Case Share a Common Question of Law and Fact

The statute further states that anyone may be “permitted to intervene in an action” when “an applicant’s claim or defense and the main action have a question of law or fact in common.” 12 Okla. Stat. Ann. § 2024(B)(2).

Mr. LeBoeuf asserts that the following issues are common: (i) whether proper notice was sent to either Mr. LeBoeuf or any other interested party regarding the appointment of a receiver for Marsha Schubert, and the receiver’s collection of funds that may belong to third parties; (ii) the propriety of appointment of the receiver and the limits of his powers under the Department of Securities’ appointment statute; (iii) Marsha Schubert’s activities, and her personal account of Mr. LeBoeuf’s involvement with her business; and (iv) the receiver’s collection attempts on Mr. LeBoeuf, apparently stemming from an Order of this Court.

Because of these common ties between Mr. LeBoeuf and this matter, he should be granted permissive intervention. 12 Okla. Stat. Ann. § 2024(B)(2).

No undue delay or prejudice will affect the rights of the original parties in this matter, as a consensual injunction was entered on November 15, 2004 between Marsha Schubert and the Department of Securities.

Receiver Jackson’s continued threats and attacks against innocent parties, such as Mr. LeBoeuf, may continue unless this Court allows for intervention and an examination

of this receivership, and a consolidation of this case with its larger counterpart in Oklahoma County. Mr. LeBoeuf and other claimants have the right to intervene and request this Court set aside the receivership. *Fleet v. Hooker*, 63 P.2d 988 (1936).

PROPOSITION II: THIS COURT SHOULD IMMEDIATELY SET ASIDE RECEIVERSHIP

A. Statement of Jurisdiction: Setting aside Receivership Is within the Sound Discretion of the Trial Court

The appointment and removal of a receiver remains at the “sound discretion of the trial court.” See *Eason Oil Co. v. Oklahoma City Petroleum Corp.*, 94 P.2d 222 (Okla. 1939), at ¶ 5; *Healy v. Steele*, 13 P. 140 (Okla. 1932), at ¶¶ 6,7,8.

A District Court must look to the particular facts of each case to determine if a receiver should be discharged. *Waggoner Oil & Gas Co. v. Marlow*, 278 P. 294 (Okla. 1929) at ¶ 86. When the need for a receiver ceases, the property in receivership should be discharged to the Court, *in custodia legis*. *Id.* at ¶ 94.

B. Receiver has Conflicting Fiduciary Obligations And Should be Removed

- 1. Receiver’s Conflicting duties are to: (i) the Schubert Estate, (ii) the Investors Suing the Estate, and (iii) his Law Firm, which is Collecting Against Marsha Schubert’s Estate**

The Receiver, Douglas Jackson, has three conflicting fiduciary obligations in this case. These obligations are mutually exclusive. First, he is a partner in the law firm that is actively suing third parties on behalf of the receivership (Gungoll, Jackson P.C.), and profiting from liquidation of the receivership assets. Second, he has a contradictory fiduciary obligation to Marsha Schubert’s estate (under receivership), which under

judicial Order he is to protect and “freeze.” Third, under the November 10, 2005 Order Amending Receivership, he now represents the “investors and creditors” of Schubert, which he has *sued* in Oklahoma County. All three fiduciary obligations overlap and contradict one another. As such, Mr. Jackson has compromised his ability to be impartial and must be removed under equitable principles.

2. Because the Receiver’s Firm is Litigating this Matter the Receiver is No Longer Neutral

Douglas Jackson owes a duty of loyalty and obedience to his law firm, which has a financial interest in liquidating the Schubert estate. This firm has a pecuniary interest in drafting as many pleadings as possible and billing the receivership trust. Unfortunately, the financial interests of the law firm contradict Mr. Jackson’s duty to “*preserve*” receivership assets under his trust. *See State ex rel. Okl. Bar Ass’n v. Wallace*, 1998 OK 65, ¶ 22. The general rule is that a receiver acts in a fiduciary capacity, and may not favor one party to litigation. *See Witt v. Jones*, 223 P. 722 (Okla. 1925). Because Receiver Jackson has an interest in his firm’s financial solvency, and because his firm is zealously suing investors, he is improperly opposing Marsha Schubert, whose estate he is supposed to protect, and favoring some investors over others. He should be removed.

In fact, his firm has currently billed the receivership estate more than one hundred thousand dollars, without notifying this Court of his contradicting fiduciary obligations that have arisen in this matter. *See* EXHIBIT G.

In its most recent hearing, the Oklahoma County Court raised concerns over this Receiver’s ability to represent conflicting parties. *See* EXHIBIT F at p. 40, ln 2-12, and p. 41, ln. 13-24. Because Douglas Jackson cannot maintain neutrality with conflicting fiduciary duties, he must be removed as receiver.

C. Receiver has Violated Oklahoma Rules of Professional Conduct for Attorneys, and Should be Removed from his Position

1. Violation of Rule 1.15: Failure to Promptly Notice Third Parties of Property held in Trust

An attorney charged with property of a client or third party becomes a constructive trustee. *See State ex. rel. Oklahoma Bar Ass'n v. Taylor*, 2000 OK 35, 4 P.3d 1242, at FN 39.

Receiver Jackson, an attorney, and his law firm representing the receivership, both have a statutory duty to send prompt notice to all third parties that may claim an interest in property secured for the receivership estate in trust. *See Id.* at 16, citing ORPC Rule 1.15 (“Upon receiving funds in which a client (or third party) has an interest, a lawyer is required by ORPC Rule 1.15(b) to notify promptly the interested party”).

Although a December 10, 2004 Order from this Court designates Jackson as receiver over creditors and investors (EXHIBIT B), neither Douglas Jackson nor his firm have ever sent legal notice to the third parties they identified in the Oklahoma County case, prior to liquidating receivership assets. For example, Jackson failed to notify third party claimants prior to his request that this Court authorize approximately \$100,000.00 in payment to his law firm. *See* EXHIBIT H, Certificate of Service, and Entire Record.

Douglas Jackson’s failure to notify third parties prior to paying himself and his law firm deprived third parties of their right to dispute the receivership’s interest over assets, in violation of ORPC Rule 1.15 and fiduciary law. *See State ex. rel. Oklahoma Bar Ass'n v. Taylor*, 2000 OK 35, 4 P.3d 1242, ¶ 16; *see also* 5 Okla. Stat. Ann. App. 3-A § Rule 1.15.

In Receiver Jackson's most recent filing in Logan County, he is asking that the Court again authorize payment to the Baird Kurtz accounting firm. *See* EXHIBIT I. Although Receiver Jackson has noticed over 150 investors in Oklahoma County, he has neglected to notice any such parties in this recent Logan County filing. *See* EXHIBIT J, and compare with EXHIBIT I. Thus, his request for approval of fees should be denied.

Upon information and belief, based upon conversations with ODS attorneys and third parties by undersigned counsel, Marsha Schubert herself, over the course of one month, while at home, identified all accounting regarding investors. It appears that Receiver's accounting firm may have plagiarized Marsha Schubert's work. Therefore, no more payments from the receivership trust should be allowed until investigation into possible fraud is completed, through discovery.

Furthermore, under information and belief,¹ the ODS has crafted an agreement for leniency with Marsha Schubert wherein Ms. Schubert was asked by ODS not to contest any actions by the receiver as he liquidated her property. The ODS should not have created a "gag order" for Ms. Schubert, in order to take her real and personal property, without notifying third parties with claims to such property. Such agreement must be produced, to see if the ODS and Receiver may have unclean hands in their collaborative efforts in this matter.

As such, Mr. LeBoeuf plans on filing a Motion to Compel Discovery and request all communications between Receiver, his law firm, the accounting firm, Marsha Schubert, and the Department of Securities. Due process requires notice, and Receiver Jackson has essentially deprived the class of investors from any voice regarding his appointment, his handling of property, and the payments to himself and his firm.

¹ Based upon conversations with counsel Amanda Cornmesser of the Department of Securities.

**2. Receiver Failed to Immediately Notify this Court
of His Conflict of Interest Under Rule 3.3**

A lawyer has a duty of candor to a tribunal, and must disclose adverse matters that would allow the Court to make a more informed decision. *See* ORPC Rule 3.3; *see also* 5 Okla. Stat. Ann. App. 3-A § Rule 3.3 and Comments thereto. Likewise, if a lawyer learns that a matter he has submitted to the Court is false, he “shall promptly reveal its false character to the tribunal.” 5 Okla. Stat. Ann. App. 3-A § Rule 3.3(a)(4)(B). These rules apply particularly in *ex parte* proceedings, where the attorney “*shall inform*” the Court of material facts, even if adverse. 5 Okla. Stat. Ann. App. 3-A § Rule 3.3(d).

Once Douglas Jackson, as Receiver, began representing conflicting entities (estate of Marsha Schubert and “investors and creditors” of Marsha Schubert), as well as his law firm, he was impressed with a duty to inform Judge Worthington of such conflict, in the numerous proceedings (*ex parte* and otherwise) wherein Jackson participated.

For example, on October 25, 2004, Jackson submitted a request for Appointment of Legal Counsel to this Court, wherein he recommended his own law firm. EXHIBIT K. On page 2, paragraph 6 of that application, Jackson swore to this Court that he was unaware of his firm representing any of the “investor” clients of Marsha Schubert. EXHIBIT K ¶ 6. However, on December 10, 2004, the Court entered an Order amending Jackson’s receivership to include representation of “investors and creditors,” thus directly contradicting the prior promise to this Court in the October 25 Application in ¶ 6. EXHIBIT B (Dec. 10, 2004 Order, at p. 2).

On November 15, 2004, this Court approved Receiver Jackson’s Application for Approval of Employment of Legal Counsel, but limited the Order “*to the terms set out in the Application*” of October 25, 2004. *See* EXHIBIT L. Because Douglas Jackson

himself guaranteed in the October 25 Application that legal counsel did not represent “**known investor clients**” of Marsha Schubert, Mr. Jackson had a duty to apprise this Court of his and his law firm’s representation of investors of Marsha Schubert. It appears that Jackson and his firm, Gungoll, Jackson P.C., have been operating outside the scope of the Order approval legal counsel since December 2004, and that a Motion setting aside their appointment is proper.

Receiver Jackson’s failure to candidly advise this tribunal of his patent legal conflicts reflects negatively on his ability to proceed ethically in this matter. An Oklahoma attorney should not file a lawsuit based upon motive of interest. *See* 5 Okla. Stat. Ann. §3. Because Jackson as Receiver is utilizing his law firm to sue 158 investors prematurely, and billing the estate of Marsha Schubert for such legal work, he has improper motive of interest. Jackson and his firm should be removed from this case.

D. Administrative Remedies Exist; Receivership is Unnecessary

The Oklahoma legislature drafted the organic statute that created the ODS. That statute allows extreme leeway for the ODS to conduct administrative hearings over the very issues that Receiver Jackson has expensively overseen. *See* 71 Okla. Stat. Ann. § 1-601 *et seq.*

1. Department of Securities has initiated an Investigation That Should be Completed Prior to Receivership

ODS has numerous administrative capabilities to accomplish the same results as Receiver Jackson has performed and billed through his law firm. For example, the ODS can initiate an investigation, through its Administrator, prior to a lawsuit, and serve subpoenas and interview witnesses, compel testimony, and issue cease and desist orders. 71 Okla. Stat. Ann. §§ 1-602, 1-603, and 1-604. Pursuant to 71 Okla. Stat. Ann. §1-

603(B)(2)(a), the Administrator may freeze assets, and act as a receiver. Because Receiver Jackson has virtually filed every pleading in this matter in tandem with the ODS, no genuine need for him as a receiver exists. *See* Entire Records for Oklahoma and Logan County cases.

Furthermore, undersigned counsel has discovered that ODS has in fact commenced an administrative investigation into Marsha Schubert on December 10, 2004, at the request of its Administrator. EXHIBIT M. Thus, the ODS has called upon its administrative protocol, and any receivership activity should be stayed until completion of such investigation. Oklahoma case law has determined that a party should exhaust administrative remedies before resorting to this Court, not only to prevent judicial waste, but also to encourage citizens to utilize free statutory resources.

ODS appears to have created unnecessary hype regarding the fear of Ms. Schubert's estate somehow being depleted, since administrative solutions existed at the start of this suit (such as administrative subpoenas, questioning of witnesses, administrative investigations etc) and are still available, per EXHIBIT M. Since the filing of this suit and the one in Oklahoma County, the ODS cannot demonstrate that it has been able to protect estate property better through the court system.

An analysis of the mass action in Oklahoma County demonstrates that the ODS and receiver will have to adjudicate each matter on a person-by-person basis, with proper input from Marsha Schubert during such meetings. Such individualized, piecemeal approach to investigating securities fraud is currently available under the administrative scheme of the ODS organic statute. It is therefore more logical that Receiver Jackson's current legal investigations, primarily consisting of collection work and joint filings with

the ODS, be performed for free at the administrative level, by ODS rather, thus saving the receivership estate from further unnecessary legal and accounting fees.

2. Investors have Administrative Remedy against Marsha Schubert, so that Receivership is Unnecessary

Under the organic statute (Oklahoma Uniform Securities Act of 2004), an individual who has been financially harmed by a broker-dealer or investment advisor has a private cause of action, per statute. *See* 71 Okla. Stat. Ann. § 1-509. Receiver Jackson is thus unnecessarily asserting investors' rights. Oklahoma courts have upheld administrative remedy at law, and have removed receivers when unnecessary. *See e.g. Panama Timber Co. v. Barsanti*, 619 P.2d 872 (Okla. 1980); *Skirvin v. Coyle*, 94 P.2d 234 (Okla. 1939); *Fleet v. Hooker*, 63 P.2d 988 (Okla. 1936); *see also Scott v. Price*, 229 P. 618 (Okla. 1924). Lastly, the *Johnson* case from the Tenth Circuit forbids a receiver from also stepping into the shoes of investors with claims against the very estate he has been appointed to protect. *See Johnson v. Studholme*, 619 F. Supp. 1347 (D. Colo. 1985); *aff'd on appeal*, 833 F.2d 908 (10th Cir. 1987). Investors should be allowed to assert their own rights, under due process of law, and this Receiver has no authority to deprive them of such constitutional due process. Douglas Jackson and his law firm should be removed from further unnecessary involvement in this matter.

E. Receiver Committed Misconduct and Overreaching

The Oklahoma Supreme Court has stated that it will not allow an attorney to misuse funds entrusted to him, especially when misuse is to detriment of client or third person...as means of gain for such attorney. *State ex rel. Oklahoma Bar Ass'n v. Lavelle*, Okla., 904 P.2d 78 (1995). In fact, a lawyer found guilty of intentionally inflicting grave economic harm in mishandling clients' funds is deemed to have committed most grievous

degree of offense, "misappropriation." *State ex rel. Oklahoma Bar Ass'n v. Dunlap*, Okla., 880 P.2d 364 (1994). Receiver Jackson appears to have misappropriated estate funds, and may have committed a serious offense.

1. Receiver Jackson and his Law Firm Have Improperly Liquidated Property that Was Not at Risk of Loss, and some of which was Outside the State of Oklahoma Beyond their Jurisdiction

A receiver appointed by an Oklahoma District Court may not liquidate an estate for his own benefit. *See generally State ex. rel. Oklahoma Bar Ass'n v. Taylor*, 2000 OK 35, 4 P.3d 1242 (Okla. 2000). Furthermore, he only has jurisdiction over property in Oklahoma. *See Anglo-American Royalties Corp. v. Brentnall*, 29 P.2d 120 (Okla. 1934) at ¶¶ 0 and 8.

Under information and belief, Receiver Jackson and his law firm have profited greatly from the receivership, and have converted large amounts of property they were asked to protect into money, paying themselves through this Court without sending notice to proper third parties, essentially commingling third party funds with their personal funds.

Also under information and belief, Douglas Jackson and his law firm have liquidated real estate in Missouri belonging to Marsha Schubert, without first procuring a lien, without petitioning this Court, and without sending notice to interested parties. This improper sale of real property in Missouri is referenced in the Oklahoma County consolidated case (EXHIBIT F at p. 42 ln 20, p. 43 ln. 20-21) but has not been approved here in Logan County or set for hearing with proper notice to interested parties. Apparently, the property was sold at below market value, to the detriment of the estate.

As such, Receiver Jackson has acted outside the scope of his Oklahoma jurisdiction, and contrary to fiduciary duty.

Under information, Receiver Jackson has also sought to determine the fate of other estate property beyond the borders of Oklahoma, in Wisconsin. EXHIBIT N. This remote property includes an antique car titled in a third party's name. Jackson petitioned this court to abandon such property, again acting beyond the scope of his powers, which should be limited to property in Oklahoma.

Under information and belief, Receiver Jackson sold below fair market value, a great majority of estate property, including real estate, and has therefore subjected himself to liability from third parties for lack of notice and breach of fiduciary duty.

Apart from setting aside Jackson's status as receiver, this Court should consider a complete investigation into the activities of Jackson and his firm in the rapid and surprising liquidation of property belonging to Marsha Schubert.

In Oklahoma County, Plaintiff LeBoeuf (intervenor in this action) plans on seeking extensive discovery of communications between Jackson, the ODS, and Jackson's firm, to determine whether unclean hands have played a role in Jackson's profitable exercise of receivership. LeBoeuf suspects that ODS has misguided Jackson in believing he could operate outside the confines of statutory protocol, as evidenced by the ODS's *ex parte* procurement of temporary and final orders without third parties receiving notice and opportunity to be heard.

2. Under Oklahoma Law, ODS May not Appoint a Receiver until a Court Adjudicates its Right or Interest in Marsha Schubert's Family's Estate, with Proper Notice to Relevant Parties

As a general rule and a matter of law, a receiver may only be appointed to protect property that is "in danger of "being lost, removed, or materially" injured. *See* 12 Okla. Stat. Ann. § 1551; *see Healy v. Steele*, 13 P.2d 140 (Okla. 1932). An appointment of receiver should be denied when the applicant has no right to, interest in, or lien upon, property in question. *See Fleet v. Hooker*, 63 P.2d 988 (Okla. 1936). Copies of a check from Marsha Schubert to Mr. LeBoeuf from her private account, which contained money received from valid commissions, and written eight months prior to appointment of a receiver, do not fall under the statutory definition of "assets" this receiver may protect at law. *See Id.*; *see also* 71 Okla. Stat. Ann. § 1-102 (omitting definition of "asset").

Furthermore, Receiver Jackson has actively sold real property that belonged to the Schubert family. Besides filing a *lis pendens* on such property, which the ODS Administrator could have accomplished, Receiver cannot possibly demonstrate to this Court how such real property was "in danger of being removed," and why he felt he must sell all of it. This very issue is before Judge Parrish in Oklahoma County. Due to impulsive negligence and failure to meet the statutory requirement of a hearing on merits, the receivership should be set aside, and this case transferred to Oklahoma County.

The ODS does not meet the second statutory requirement to appointing a receiver: that it demonstrate a probable cause of winning. Its argument in Oklahoma County that it has jurisdiction over property of persons who are not broker-dealers in Oklahoma is a matter of first impression in Oklahoma state court, yet contradicted by existing law in the Tenth Circuit. The organic statute that directs its actions does not speak to their ability to

claim an interest in such property. *See generally* Title 71 of Oklahoma Statutes. In Oklahoma County, in the matter currently being litigated, the ODS has resorted to federal law, outside the Tenth Circuit, as granting them standing to file their unique lawsuit.

Controlling case law in the Tenth Circuit states that a receiver cannot be appointed to represent both the estate of a person who runs a "Ponzi scheme" at the same time that he represents the interests of investors. *See Johnson v. Studholme, supra*. That case, not overruled in the Tenth Circuit, articulates that a receiver cannot have such competing fiduciary interests. *Id.* Also, the receiver may not assert common law (equitable) unjust enrichment causes of actions in such a scenario against investors, because the receiver is not functioning equitably. Under that case, the ODS and its appointed Receiver do not have a likelihood of winning their common law cause of action against individuals not licensed as broker-dealers.

The Receiver and ODS has filed an unjust enrichment cause of action in Oklahoma county against investors, thus asserting rights of other investors, contrary to the controlling law in the Tenth Circuit, and contrary to Oklahoma case law. See Petition in case CJ-2005-3796. Therefore, ODS cannot meet the basic preliminary test that it has a likelihood of succeeding in this matter. In fact, the Oklahoma County court has stayed any further action pending transfer of this case from Logan County, and has called into question whether ODS has standing in the first place to file a non-securities-law cause of action. EXHIBIT F.

In order to properly request a receiver, the ODS was required to show that it prove possessory interest in the property that it requested Douglas Jackson to protect. ODS's simple assertion of such rights, *ex parte*, without a hearing on the merits and notice to

adverse claimants results in deficient application for receivership. *See Panama Timber Co., Inc. v. Barsanti*, 619 P.2d 872 (Okla. 1980) (stating that the trial court abused its discretion in failing to vacate a deficient order appointing receiver). This Court has sufficient reason to set aside its prior Order Appointing Receiver and transfer this case.

Furthermore, the ODS may only assign a receiver to protect current, existing “assets” of an entity involved in securities. 71 Okla. Stat. Ann. § 1-603 et seq.; see generally Oklahoma Securities Act. The ODS has asserted that Marsha Schubert was selling unregistered securities to investors; however, no administrative investigation has identified the *mens rea* of all 158 defendants in Oklahoma County. Until that *mens rea* is determined, through administrative proceeding or otherwise, ODS may not claim any sort of lien over Marsha Schubert’s property. Thus the Jackson Receivership was premature.

In fact, parties like Mr. LeBoeuf, not having violated the Securities Act, do not have any identifiable debt to the receivership estate, and the ODS should have resolved LeBoeuf’s culpability (as well as all other 158 individuals) before seeking a receiver, converting property, and asserting control over estate property, and filing its lawsuit.

Before the Oklahoma County Court is the question as to whether the Receiver and the ODS could even claim possessory interest over money paid to Mr. LeBoeuf (possibly as a personal gift) over a year prior to the *ex parte* establishment of the Receiver. *See* Petition for Declaratory Judgment by Richard LeBoeuf, case CJ-2005-3299 in Oklahoma County. This Court should vacate the prior Order appointing Receiver and transfer this case to Oklahoma County.

3. Jackson has either negligently or purposefully failed to send notice out to parties interested in the estate property

Until the issue of culpability is resolved as to Mr. LeBoeuf and all 158 individuals, the ODS had no right to conclude their fate, and appoint a receiver without giving all relevant third parties notice in Logan County. Appointment of a receiver should not occur without proper notice. *State ex rel Com'rs of the Land Office v. Terry*, 192 P.2d 1000 (Okla. 1948), at ¶4. Secondly, a judicial inquiry and hearing should occur prior to the appointment of a receiver. *See McGrath v. Clift*, 181 P.2d 555 (Okla. 1947); *see also Eason Oil Co. v. Oklahoma City Petroleum Corp*, 94 P.2d 222 (Okla. 1939)(during inquiry, plaintiff [ODS] must show no other adequate remedy). At such mandatory hearing, presumption is in favor of property owner. *See Scott v. Price*, 229 P. 618 (1924). The Oklahoma County Court has questioned whether statutory notice was given to all investors in Logan County. EXHIBIT F p. 44, ln 20-22. Since no inquiry or hearing was held, with notice to parties interested in Marsha Schubert's property, the receivership should be set aside.

The record in this case is void of any proof of legal notice sent to any investors (winners or losers) or other third parties whom the Receiver knew existed. Therefore, no third parties have had an opportunity to contest this receivership, the selling of assets, and the doling out of money in trust.

The Oklahoma County Court has stated to the receiver that it has no right to assert a lien over any estate property, until its right to properly function as a receiver is first adjudicated. EXHIBIT F at p. 44, ln. 3-10.

However, under information and belief, based upon the filings in Logan County, Receiver Jackson has “jumped the gun” and has improperly sold hundreds of thousands of dollars of Schubert family property, including real estate, before his right to do so has been adjudicated in court here or in Oklahoma County. *See* entire Docket Sheet.

Jackson must be removed immediately in order to protect further premature liquidation of Marsha Schubert’s estate.

4. Because ODS Appointed Receiver Jackson, it is liable for all the Costs Associated with the Receivership

A party who improperly requests the appointment of a receiver is liable for all of the expenses of the receivership, under principles of equity, and is considered a trespasser *ab initio*, also liable for damages to the property. *See Johnson & Ashe Inc. et al v. Kennedy et al.*, 3 P.2d 668 (Okla. 1931), at ¶ 5-7; *Wagoner Oil & Gas Co. v. Marlow*, 278 P. 294 (Okla. 1927); *K.C. Oil Co. v. Harvest Oil & Gas Co.*, 194 P. 228 (Okla. 1921) (to recover for damages for wrongfully procuring the appointment of a receiver, it need not be shown that the appointment of the receiver was procured maliciously and without probable cause).

Because the Oklahoma Department of Securities (“ODS”) sought the appointment of Douglas Jackson as receiver, and because Jackson has become an improper receiver under the facts of this particular case, ODS is liable for the receivership’s costs taxed to the Schubert estate, as well as other damages flowing from the receivership. *Id.*; *see also Bellamy v. Washita Valley Tel. Co.*, 105 P. 340 (Okla. 1909). Under equitable principles, this Court may charge Receiver Douglas Jackson the amount of the money paid out to his law firm, for the work it has performed outside the scope of its October 25, 2004

Application. See *McGrath v. Clift*, 181 P.2d.555 (1947)(when trial Court improperly appointed attorney of receiver, receiver was surcharged with all funds paid out by him).

The Order Appointing Receiver should thus be set aside under principles of equity; the funds in Receiver's care should entirely be remitted to the Oklahoma County Court *per* 12 Okla. Stat. Ann. §§ 1556; and this matter set for transfer to Oklahoma County, so that a full determination of the ODS' ultimate liability expenses may be calculated in one convenient forum.

**PROPOSITION III: THIS COURT SHOULD TRANSFER AND CONSOLIDATE
THIS CASE WITH ACTIVE OKLAHOMA COUNTY CASE
CJ-2005-3299**

Intervening party Richard LeBoeuf incorporates by reference the above analysis, and ODS' and Receiver's specific arguments preferring venue in Oklahoma County (found in EXHIBITS D, E), as well as previously filed Intervention of Party and Motion to Transfer and Consolidate this Matter (filed July 8, 2005 in Logan County).

Oklahoma law allows District Courts to consolidate matters, join parties, and transfer cases to more convenient or proper forums upon motion and proper showing. With respect to the arguments at hand, Richard LeBoeuf is involved in arguing the same points of law, against the same parties, and revolving around the same nucleus of operative fact (Marsha Schubert's action).

The majority of parties and all designated expert witnesses as of this point have made statements in the Oklahoma County case. The Oklahoma County District Court has already consolidated two matters in cause CJ-2005-3299. Furthermore, the Oklahoma County Court has stayed all actions pending this Court's decision to transfer this case to

Oklahoma County. It is therefore fitting and proper that this entire case be transferred and consolidated in Oklahoma County case CJ-2005-3299, for purposes of efficiency.

CONCLUSION AND PRAYER

WHEREFORE, based upon the above arguments, Richard LeBoeuf respectfully requests that he be allowed to intervene in this cause of action for the above reasons; that the Order Appointing Receiver be Set Aside; and that this case be transferred and consolidated with Oklahoma County Case CJ-2005-3299.

Respectfully Submitted,



Alexander L. Bednar, Esq., OBA # 19635
3030 Bank One Center
100 N. Broadway
Oklahoma City, OK 73102
Telephone: (405) 239-3300
Facsimile: (405) 235-3352
COUNSEL FOR PLAINTIFF
RICHARD LEBOEUF

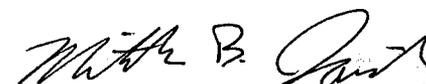
VERIFICATION

STATE OF OKLAHOMA)
)
COUNTY OF OKLAHOMA) SS.

I, Alexander Bednar, state that I am the lawfully appointed counsel for Richard LeBoeuf (Intervenor) and that I have met with my client and other third parties regarding this matter and have read the foregoing and believe the contents thereof to be accurate to the best of my knowledge, and that such information will be made available to this Court at the upcoming hearing.


Alexander L. Bednar, Esq.

Subscribed and sworn to before me this 28th day of July, 2005


NOTARY PUBLIC

My commission expires: 4-15-07



CERTIFICATE OF SERVICE

On this 28th day of July, 2005, a true and correct copy of the foregoing pleadings was properly served upon:

Douglas Jackson
323 West Broadway
Post Office Box 1549
Enid, OK 73702

Mack Martin
Suite 360
119 N. Robinson Ave.
Oklahoma City, OK 73102

Bradley Davenport
323 West Broadway
Post Office Box 1549
Enid, OK 73702

Gerri Stuckey
120 N. Robinson
Suite 860
Oklahoma City, OK 73102

Dept of Securities
C% Irving Faught
Administrator
120 N. Robinson
Suite 860
Oklahoma City, OK 73102



Alexander Bednar



STATE OF OKLAHOMA
DEPARTMENT OF SECURITIES

April 22, 2005

Hand Delivered

Alex Bednar
Kirschner Law Firm
100 North Broadway, Suite 3030
Oklahoma City, Oklahoma 73102

Re: Richard LeBoeuf

Dear Mr. Bednar:

As you know, the Oklahoma Department of Securities has sued Marsha Schubert and Schubert and Associates, Inc. in Logan County District Court for violations of the Oklahoma Securities Act (Act). In connection with that case, a number of individuals were unjustly enriched through the receipt of funds derived from Mrs. Schubert's illegal activities. The Department does not have any information indicating that your client, Mr. Richard LeBoeuf, violated the Act and does not plan to take any action against him for violations of the Act. Nevertheless, the Department does believe that Mr. LeBoeuf received funds from Mrs. Schubert to which he has no legitimate claim and will continue to pursue recovery of those funds.

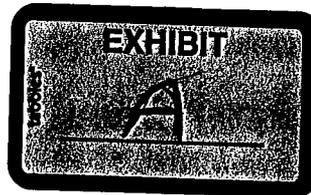
If you have any questions, do not hesitate to contact me at (405) 280-7721 or glis@securities.ok.gov.

Sincerely,

A handwritten signature in cursive script that reads "Gerri Stuckey".

Gerri Stuckey
Enforcement Attorney

cc: Brad Davenport



IN THE DISTRICT COURT OF LOGAN COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA
LOGAN COUNTY SS:
FILED FOR RECORD ON
OCT 19 PM 2:14



Oklahoma Department of Securities
ex rel. Irving L. Faught,
Administrator,

Plaintiff,

v.

Marsha Schubert, an individual and
dba Schubert and Associates;
Richard L. Schubert, an individual and
dba Schubert and Associates; and
Schubert and Associates,
an unincorporated association,

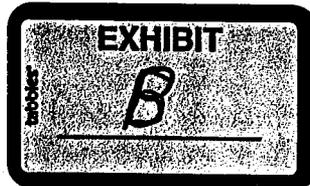
Defendants.

Case No. CJ-2004-256

ORDER AMENDING AUTHORITY OF RECEIVER

This matter came on for hearing this 10th day of December, 2004, before the undersigned Judge of the District Court in and for Logan County, State of Oklahoma, upon the Plaintiff's Motion to Amend Order Appointing Receiver for modification of the Temporary Restraining Order, Order Appointing Receiver, Order Freezing Assets and Order for Accounting (Temporary Restraining Order) entered in this matter on October 14, 2004.

The Oklahoma Department of Securities appears through its attorneys Amanda Cornmesser and Gerri Stuckey. Defendants Marsha Schubert, individually and *dba* Schubert and Associates (Marsha Schubert), and Schubert and Associates appear through their attorney, Mack Martin. Defendant Richard L. Schubert (Richard Schubert) appears through his attorney William J. Baker. The Receiver, Douglas L. Jackson, appears through his attorney, Brad Davenport.



On October 14, 2004, upon Plaintiff's verified Petition for Permanent Injunction and Other Equitable Relief (Petition), this Court issued the Temporary Restraining Order pursuant to Section 1-603 of the Oklahoma Uniform Securities Act of 2004 (Act), Okla. Stat. tit. 71, §§ 1-101 through 1-701 (Supp. 2003).

On November 15, 2004, a permanent injunction was entered against Defendant Marsha Schubert and Schubert and Associates. The permanent injunction enjoins Marsha Schubert and Schubert and Associates from offering and selling securities and transacting business as a broker-dealer or agent in and/or from Oklahoma and provides for the continuation of the asset freeze and the receivership pending determination of the amount of restitution owed.

On December 10, 2004, a Temporary Order was entered modifying the Temporary Restraining Order with respect to Richard Schubert.

The Court, having been advised that the Receiver requires the additional authority requested to ensure the effective and equitable administration of the receivership, finds that granting that authority is in the public interest.

The Court, having reviewed all pleadings and submissions of the parties, finds that this Order Amending Authority of Receiver be issued in this matter by agreement of the parties.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Order Appointing Receiver should be modified as provided herein, and, therefore, Douglas L. Jackson ("Receiver"), be appointed receiver for the investors and creditors of Schubert and Associates; continue to serve as Receiver for the assets of Defendants as provided for in the Temporary Restraining Order as modified in the Temporary Order dated December 10, 2004, with respect to Richard Schubert, and as modified herein with respect to Marsha Schubert and Schubert and Associates, including, but not limited to, the Schubert and Associates investment program

described in the Petition (Schubert and Associates Investment Program). The Receiver is authorized to accomplish the following with regard to Marsha Schubert, Schubert and Associates, Kattails, LLC, and The End Zone:

1. to assume full control of the businesses known as Schubert and Associates, Kattails, LLC, and The End Zone, by removing, as the Receiver deems necessary or advisable, any director, officer, independent contractor, employee, or agent of those entities, including any Defendant, from control of, management of, participation in the affairs of, or from the premises of those entities;
2. to take immediate and exclusive custody, control and possession of all assets and the documents of, or in the possession or custody, or under the control of Defendants, of whatever kind and description, and wherever situated. The Receiver shall have full power to divert mail and to sue for, collect, receive, take possession of, hold, and manage all assets and documents of the Defendants;
3. to conserve, hold and manage all assets of Defendants and the businesses known as Schubert and Associates, Kattails, LLC and The End Zone pending further action by this Court in order to prevent any irreparable loss, damage or injury to investors; to conserve and prevent the withdrawal or misapplication of funds entrusted to Defendants, their agents, employees, officers, directors, principals, distributors, sales representatives and/or attorneys; to take the necessary steps to protect the interests of Investors, including the liquidation or sale of assets of Defendants; and to prevent violations of the Act by Defendants;

4. to make such payments and disbursements as may be necessary and advisable for the preservation of the assets of Defendants and as may be necessary and advisable in discharging his duties as Receiver;

5. to retain and employ attorneys, accountants, computer consultants and other persons as the Receiver deems advisable or necessary in the management, conduct, control or custody of the affairs of Defendants and of the assets thereof and otherwise generally to assist in the affairs of Defendants. Receiver may immediately retain or employ such persons, and compensate such persons, all subject to filing as soon as practicable with this Court, an application seeking approval of the employment;

6. to institute, prosecute and defend, compromise, adjust, intervene in or become party to such actions or proceedings in any state court, federal court or United States bankruptcy court as may in Receiver's opinion be necessary or proper for the protection, maintenance and preservation of the assets of Defendants, or the carrying out of the terms of this Order, and likewise to defend, compromise, adjust or otherwise dispose of any or all actions or proceedings now pending in any court by or against Defendants where such prosecution, defense or other disposition of such actions or proceedings will, in the judgment of the Receiver, be advisable or proper for the protection of the Assets of Defendants;

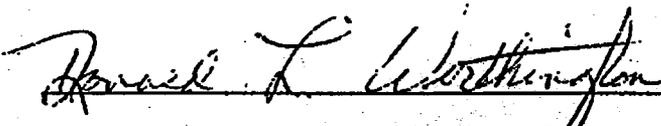
7. to institute actions on behalf of the Schubert and Associates Investment Program, its investors and creditors, including any actions against paid investors, brokerage firms, and/or third parties that the Receiver deems necessary to recover assets and to protect the interests of and promote equity among the investors.

8. to issue subpoenas ad testificandum and subpoenas duces tecum, take depositions, and issue written discovery requests to the parties, investors, family members of Defendants, business associates of Defendants, and other witnesses in and through the pending case of *Oklahoma Department of Securities v. Marsha Schubert, et. al.*, Logan County District Court, Case No. CJ-2004-256; and

9. to take all steps necessary to secure the business premises of the businesses known as Schubert and Associates, Kattails, LLC and The End Zone and to exercise those powers necessary to implement his conclusions with regard to disposition of this receivership pursuant to the orders and directives of this Court.

IT IS FURTHER ORDERED that in agreeing to the entry of this Order, Defendants waive no defenses to this case or the allegations made herein.

THIS ORDER IS ENTERED this 10 day of December, 2004, at 2:00 P.m.



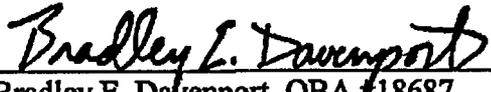
DISTRICT COURT JUDGE

Approved as to Form and Substance:

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Amanda Cornmesser, OBA #20044
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(405) 280-7700
Attorneys for Plaintiffs

Mack Martin
Martin Law Office
119 N. Robinson, Suite 360
Oklahoma City, OK 73102
Attorney for Defendants Marsha Schubert,
individually and *dba* Schubert and Associates,
and Schubert and Associates

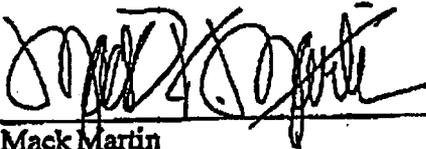
William J. Baker
Hert, Baker & Koemel, P.C.
P.O. Box 668
Stillwater, OK 74076
Attorney for Defendant Richard Schubert


Bradley E. Davenport, OBA #18687
Gungoll, Jackson, Collins, Box & Devoll, P.C.
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(580) 234-1284
Attorney for Receiver, Douglas L. Jackson

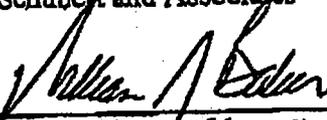
Approved as to Form and Substance:



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Attorneys for Plaintiffs



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and Schubert and Associates



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323 W. Broadway
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(580) 234-1284
Attorney for Receiver, Douglas L. Jackson



IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

FILED IN THE DISTRICT C
OKLAHOMA COUNTY, OF

MAY 20 2005
PATRICIA PRESLEY, COURT CLE.
by [Signature] Deputy

Richard LeBoeuf)
)
 Plaintiff,)
)
 v.)
)
 Gungoll, Jackson, Collins,)
 Box & Devoll, P.C., et. al.)
)
 Defendants.)

Case No. CJ 2005-3299

and

Oklahoma Department of Securities)
 ex rel. Irving L. Faught,)
 Administrator; et.al.,)
)
 Plaintiffs,)
)
 v.)
)
 Robert W. Mathews, et. al.)
)
 Defendants.)

Case No. CJ-2005-3796

ORDER OF CONSOLIDATION

It appears that the actions involve common questions of law and fact, and that consolidation for trial will reduce costs and delay.

IT IS THEREFORE ORDERED that the above entitled actions be and hereby are consolidated pursuant to Oklahoma Seventh Judicial District Court Rule 9.

Dated this 18th day of May, 2005.

[Signature]
Judge of the District Court



IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

JUN 20 2005

Richard LeBoeuf,)
)
 Plaintiff,)
)
 v.)
)
 Gungoll, Jackson, Collins,)
 Box & Devoll, P.C., *et al.*,)
)
 Defendants.)
)
 and)
)
 Oklahoma Department of Securities)
 ex rel. Irving L. Faight,)
 Administrator, *et al.*,)
)
 Plaintiffs,)
)
 v.)
)
 Robert W. Mathews, *et al.*,)
)
 Defendants.)

PATRICIA PRESLEY, COURT CLERK
by _____
Deputy

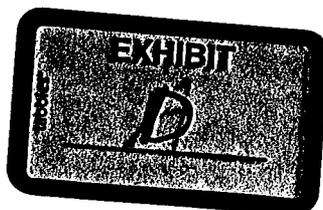
Case No. CJ 2005-3299

Consolidated with

Case No. CJ-2005-3796

**PLAINTIFF DEPARTMENT OF SECURITIES' MEMORANDUM IN OPPOSITION TO
MOTION TO DISMISS AND CHANGE OF VENUE**

Amanda Cornmesser, OBA #20044
Gerri Stuckey, OBA #16732
Melanie Hall, OBA #1209
Oklahoma Department of Securities
120 North Robinson, Suite 860
Oklahoma City, Oklahoma 73102
Telephone: (405) 280-7700
Facsimile: (405) 280-7742
Attorneys for Oklahoma Department of Securities



constitutes reasonably equivalent value and whether a transfer was made with intent to defraud. *Id.* at 2. Therefore, bankruptcy court cases that hold an investor receives a fraudulent conveyance, if he is in receipt of monies greater than his original investment, are convincing. In *Sender*, the more generally accepted position since *Johnson*, the Court found that any amounts received in excess of an original investment in a "Ponzi" scheme, were fraudulent transfers under the Bankruptcy Code. *Sender* at 1290. In *Merrill*, the bankruptcy court found: "To allow an [investor] to enforce his contract to recover promised returns in excess of his [investment] would be to further the debtors' fraudulent scheme at the expense of other [investors]." *Merrill* at. 857.

II. Venue in Oklahoma County is proper and convenient.

Movants ask to transfer this case from the District Court of Oklahoma County to the District Court of Logan County under the doctrine of *forum non conveniens*. The facts in this case and Oklahoma statutes and case law support venue as proper and convenient in Oklahoma County.

Movants cite *Gulf Oil Company v. Woodson*, 505 P.2d 484, 490, 1972 OK 164, for the proposition that when there is more than one county where venue is proper, a court may refuse to exercise its jurisdiction when the case could be more appropriately and justly tried in another location. Legislative enactments since 1972, and more recent case law, weaken the ruling in *Gulf Oil Company*.

Venue statutes allow a plaintiff a choice of forums to bring an action. 12 O.S. 2001 §§ 134, *et seq.* A plaintiff's choice of forum should be disturbed only in exceptional cases. *Conoco Inc. v. Agrico Chemical Company*, 2004 WL 2522726 (Okla. 2004).

The *Conoco* court in determining whether to transfer venue, considered whether transfer of venue would make the trial of the case less burdensome, more convenient, and nearer the

sources of proof. *Id.* at 3. Unless the balance of interests tilts heavily in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed. *Id.*

Movants argue that the issues in this case would be more appropriately and justly decided in the District Court of Logan County, Oklahoma.² Using the *Conoco* criteria and the venue statutes, in Oklahoma County is proper and convenient.

Defendants are centrally located to Oklahoma County as opposed to Logan County making the forum more convenient for them as witnesses. One hundred fifty-eight (158) Defendants were named in the Petition. Only 27% of those Defendants reside in Logan County. The remaining 73% of the Defendants reside throughout the states of Oklahoma and Texas. More specifically, only 38% of the Movants reside in Logan County. The remaining 62% live in Oklahoma County or a surrounding county thereto. The attorneys for the 61 movants are located in Oklahoma County. The Oklahoma County District Court is therefore centrally located to the Defendants and is more convenient to the Department, the Defendants and the Defendant's counsel. Venue is clearly convenient in Oklahoma County.

According to the office of the Honorable Donald Worthington, District Court Judge in and for Logan County, Oklahoma, the earliest trial date before Judge Worthington would be March of 2006. However, this date is unrealistic if the case is first set on a civil pretrial docket. Conversely, the office of the Honorable Patricia Parrish, District Court Judge in and for Oklahoma County, Oklahoma, stated that trials before Judge Parrish were being set as early as October of 2005. All parties would benefit from an expeditious process and the Department believes the possibility of delay is great if the case is transferred to Logan County.

² Movants incorrectly argue that the equitable lien claims filed by the Receiver against real estate are in various counties other than Oklahoma County. As described in the Petition ¶ 23 (a), Defendants Ben and Sharon Allen purchased property in Oklahoma County, in whole or in part, with unearned investor assets. Therefore, pursuant to 12 O.S. § 131, venue is appropriate.

In *Conoco*, the interest of being near the source of proof occurs when a site must be visited during trial making it more convenient for the jury. *Id* at 3. In this case, the primary sources of proof are bank records that can easily be made available in Oklahoma County. Therefore, this element of *Conoco* is irrelevant to this case. Trying this case in Oklahoma County would be less burdensome and more convenient for all the parties.

III. Plaintiffs have standing to bring this lawsuit.

Standing is the judicial doctrine that determines whether the plaintiff is the proper party to invoke the Court's jurisdiction. *Shourek v. Stirling*, 621 N.E.2d 1107 (Ind. 1993). To have standing, the plaintiffs must demonstrate a personal stake in the outcome of the lawsuit and must show that he or she sustained or was in immediate danger of sustaining some direct injury as a result of the conduct at issue. *Toxic Waste Impact Group, Inc. v. Leavitt*, 890 P.2d 906, 911 (OK 1994). To have standing, a plaintiff must have suffered an injury in fact, there must be a causal connection between the injury and the conduct complained of, and it must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision." *Id.* Here, the Petition alleges that the Defendants are in possession of assets that belong to other individuals who were Schubert and Associates investors. As stated in the Petition, it would be inequitable for such persons to retain the benefit of the monies or other assets received in excess of the amount of funds they transferred to Schubert and Associates.

In filing the Petition, the Department is acting as a public agency enforcing public policy. For a governmental agency to bring suit under its statutes, that it has a duty to enforce, a regulatory agency need not be itself the victim. *State ex rel. Goettsch v. Diacide Distributors, Inc.*, 561 N.W.2d 369, 375 (1997) (a case brought by the Iowa Superintendent of Securities under the Iowa Uniform Securities Act). The State sued on behalf and for the benefit of

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

RICHARD LEBOEUF,
An Individual,

Plaintiff,

v.

GUNGOLL, JACKSON, COLLINS,
BOX & DEVOLL, P.C., et al.

Defendants.

Case No. CJ-2005-3299

Consolidated with

OKLAHOMA DEPARTMENT OF SECURITIES
ex rel. IRVING L. FAUGHT,
Administrator;

Plaintiffs,

v.

ROBERT W. MATHEWS, et al,

Defendants.

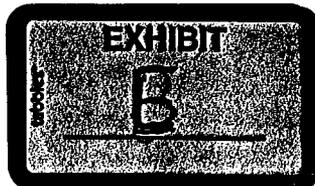
Case No. CJ-2005-3796

PLAINTIFF RECEIVER'S RESPONSE TO MOTION TO DISMISS

COMES NOW Plaintiff, Douglas L. Jackson in his capacity as Receiver for the investors and creditors of Schubert and Associates ("Plaintiff Receiver"), and submits the following Brief to the Court as his response and objection to Defendants' Motion to Dismiss.

INTRODUCTION

Plaintiff Receiver was duly appointed as receiver for the investors and creditors of Schubert and Associates by Order of the District Court of Logan County dated December 10, 2004. In his capacity as receiver for the investors and creditors of Schubert and Associates, Plaintiff Receiver filed the instant lawsuit to recover funds on behalf of defrauded investors and creditors. Plaintiff Receiver seeks to have the Relief Defendants disgorge or repay the



Plaintiff Receiver is expressly authorized by 12 O.S. §1554 to bring suit on behalf of the defrauded investors in his own name. Therefore, Plaintiff Receiver has sufficiently established, at the pleading stage, his standing as a plaintiff in this case.

IV. The wrongful acts of Marsha Schubert are not imputed to the Receiver.

The Defendants' assertions in their Motion/Brief that Plaintiff Receiver's causes of action are barred and he lacks standing because the wrongdoing or inequitable conduct of Marsha Schubert is imputed to him, as her receiver, must fail. In Federal Deposit Insurance Corporation v. O'Melveny & Myers, the Ninth Circuit Court of Appeals held that generally any defense good against the "original" party is generally good against that party's receiver. 61 F.3d 17, 19 (9th Cir. 1995). The Court went on to state, however, that "this rule is subject to exceptions; defenses based on a party's unclean hands or inequitable conduct do not generally apply against that party's receiver." Id. The Court reasoned that "while a party may itself be denied a right or defense on account of its misdeeds, there is little reason to impose the same punishment on a trustee, receiver or similar innocent entity that steps into the party's shoes pursuant to court order or operation of law." Id.; Accord Scholes v. Lehmann, 56 F.3d 750, 754-55 (7th Cir. 1995). Based on the above case law and the fact that such a defense does not directly relate to the legal sufficiency of Plaintiffs' Petition, the court should not take it into account when deciding the Motion to Dismiss.

V. Oklahoma County is a Proper Venue for this Case.

A significant number of the Relief Defendants are residents of Oklahoma County. See Petition at ¶5. One of the tracts of real property against which Plaintiff Receiver asserts an equitable lien is located in Oklahoma County. See Petition at ¶23. Under Oklahoma law, a party is required to bring an action for the recovery of real property, or the determination of

a right or interest therein, in the county where the property is located. See 12 O.S. §131. However, the Oklahoma legislature also provided for instances in which one tract of land is situated in two or more counties, or where several tracts of property located in more than one county are at issue. See 12 O.S. §132. Specifically, 12 O.S. §132 provides in pertinent part as follows:

If real property, the subject of an action, be an entire tract, and situated in two or more counties, or if it consists of separate tracts, situated in two or more counties, the action may be brought in any county in which any tract, or part thereof, is situated, unless it be an action to recover possession thereof....

Here, Plaintiff Receiver has not asserted an action to recover physical possession of any real property, but is seeking an equitable lien against the identified property. Therefore, because one of the tracts of real property at issue in this case is situated in Oklahoma County, it is a proper venue for this case pursuant to 12 O.S. §132.

Based on the venue statutes concerning real property addressed immediately above, Defendants' request that the case be transferred to Logan County must fail. None of the real property at issue in this case is situated in Logan County. As such, Logan County would not be a proper venue in which to try this case under either §131 or §132 of Title 12. Therefore, the cases cited by Defendants for the proposition that a court can refuse to exercise its jurisdiction when the case could more appropriately and justly be tried at another location is of no avail to them.

Finally, the Plaintiffs filed the instant case in Oklahoma County both because of the venue statutes concerning real property and because of its central location, not to vex or harass the Defendants as they assert. Regarding the Plaintiff Security Department's case pending in Logan County and through which the Plaintiff Receiver was appointed, nothing has prevented or now prevents the Defendants from entering an appearance in that case as

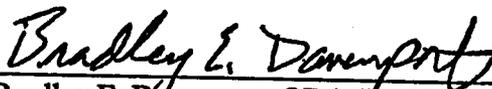
interested parties and/or creditors for the purpose of challenging that court's orders. Therefore, Plaintiff Receiver respectfully requests that this Court deny Defendants' Alternate Motion for Change of Venue.

Conclusion

Douglas L. Jackson is the court-appointed receiver for the investors and creditors of Schubert and Associates. Being placed in their shoes, he has standing to bring claims on their behalf, as receiver. When the court takes as true all of the allegations in Plaintiffs' Petition together with all reasonable inferences which may be drawn from them, Plaintiffs have stated claims against these Defendants upon which relief can be granted. Therefore, Plaintiff Receiver respectfully requests that this Court deny Defendants' Motion to Dismiss in its entirety.

Finally, Oklahoma County is a proper venue for this case because of the real property involved. For the same reason, Plaintiffs contend that Logan County would not be a proper venue because none of the real property at issue is situated there. Therefore, Plaintiff Receiver respectfully requests that this Court deny Defendants' Alternate Motion for Change of Venue.

Respectfully submitted,



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Attorney for Douglas L. Jackson, Receiver

1 APPEARANCES

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6 Ms. Amanda Cornmesser, Attorney at Law

7 Ms. Melanie B. Hall, Attorney at Law

8 Oklahoma Department of Securities

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12 For the Receiver:

13
14 Mr. Bradley E. Davenport, Attorney at Law

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25

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1 MR. DAVENPORT: Yes, your Honor.

2 THE COURT: And included in that can be an
3 appointment for the investors and creditors?

4 MR. DAVENPORT: Yes, your Honor.

5 THE COURT: Let me ask this: How does a receiver
6 handle when you have got -- if you're appointed as the
7 receiver for the investors and creditors, how do you act on
8 behalf of -- I just keep thinking is this not a conflict
9 situation for the receiver? You're appointed as receiver
10 on behalf of all the investors, but yet you're trying to
11 take from some investors to give to other investors. Is
12 that not some sort of conflict situation for the receiver?

13 MR. DAVENPORT: Your Honor, as pointed out in the
14 initial response of I think both the plaintiff/receiver and
15 the Oklahoma Department of Securities, I mean, many of
16 these people are not investors at all. When I'm talking
17 about investors, I'm talking about investors of Schubert
18 and Associates. This is a distinct investment program that
19 Marsha Schubert pitched to some of her other securities
20 clients that were investing with her through AXA Advisors
21 and through Wilbanks Securities. She went to some of the
22 existing clients that she already had and pitched to them
23 this new investment program of Schubert and Associates. It
24 was not a related entity.

25 She was promising these people in some cases up to

1 a 30 percent annual return. As stated in the plaintiff's
2 briefs and response, a large number of the ones that are
3 represented at least in Mr. Bryant's client pool, most of
4 those were not investors at all. In other words, if you
5 look at exhibit -- I think it's Exhibit B to
6 plaintiff/receiver's response -- and you look at the
7 money-in column and you start going down through the list
8 of defendants, third parties in this motion to dismiss, and
9 the majority of those relief defendants paid no money into
10 Schubert and Associates but for some unexplained reason
11 they got money out of Schubert and Associates. So in that
12 sense, your Honor, the plaintiff/receiver does not believe
13 that there is a conflict of interest. You know, the
14 receiver is not --

15 THE COURT: Isn't the receiver also seeking monies
16 from certain investors that did invest something and just
17 got very large returns for their investments?

18 MR. DAVENPORT: A small number of those do exist,
19 your Honor.

20 THE COURT: So is the receiver just acting as the
21 receiver for those investors that fall within this category
22 of a creditor type investor? Because I have to admit, I'm
23 just puzzled as to who it is the receiver is working on
24 behalf of.

25 MR. DAVENPORT: It's the defrauded investors and

1 creditors.

2 THE COURT: Okay. Anything further, Mr.
3 Davenport?

4 MR. DAVENPORT: Yes, your Honor. One of the
5 things that you asked that counsel address was the
6 alternate motion to change venue. I'm not sure that
7 defendants' counsel even addressed that, but I think
8 clearly under Title 12, Section 132, any time you have
9 either one parcel of property that spans more than one
10 county or you have multiple pieces of property in different
11 counties at issue in a lawsuit, that venue statute states
12 that a suit can be brought in any one of those counties
13 where at least one of those parcels of real property is
14 located.

15 THE COURT: How do you get around the issue -- I
16 mean, because you're asking the court to impose an
17 equitable lien I think it was on four different properties.
18 Someone pointed out to me none of the properties are also
19 located in Logan County, but I think one was in Oklahoma,
20 two in perhaps Canadian, and one somewhere in Missouri.
21 But are you not asking -- because the statute they're
22 relying upon says something to the effect about unless
23 you're asking for possession of the property. Do you
24 distinguish that because you're just asking for a lien?
25 Because would you agree with me I clearly wouldn't have any

1 authority to foreclose any lien? And you're not asking for
2 that relief in this court should a lien ever even be
3 established.

4 MR. DAVENPORT: All the receiver is asking for,
5 your Honor, is the establishment of a lien, not the
6 foreclosure of a lien in this lawsuit.

7 THE COURT: Do you agree that if the additional
8 relief of a foreclosure was being asked that then you would
9 need to initiate a lawsuit in each county where the
10 property is located?

11 MR. DAVENPORT: Yes, your Honor.

12 THE COURT: But because you're only asking the
13 court to establish the lien, in essence give you the
14 mortgage, lien, whatever in the property, because that can
15 only be done by operation of law at this point that that --
16 you're not asking for possession in this action?

17 MR. DAVENPORT: That's correct, your Honor. And
18 the receiver understands it would have to take any such
19 lien and domesticate that in whatever -- whether it's in a
20 different county in Oklahoma or if it's in Taney County in
21 Branson, Missouri, and go ahead and domesticate that
22 judgment and lien and go for any kind of foreclosure
23 proceeding that way. But that's totally separate. I mean,
24 the receiver understands that unless he wins the other part
25 of this case then this whole motion of a lien is not going

1 to be relevant. It's a remedy requested that the receiver
2 wanted to put both the court and the parties on notice.

3 THE COURT: So best case scenario for the receiver
4 would be a court makes a finding at some point, number one,
5 this motion to decide that there's been unjust enrichment
6 or fraudulent transfer, court then establishes a lien, and
7 then you would be on your own to go pursue whatever rights
8 you have under that lien, but it's basically a two-step
9 process?

10 MR. DAVENPORT: Yes, your Honor. That's also --
11 for that reason, and this Title 12, Section 132, that's why
12 the plaintiff/receiver opposes the defendants' request for
13 change of venue and it states that would not be proper
14 because as your Honor stated there is none of these pieces
15 of property located in Logan County. We would have to go
16 where there is at least one parcel of real property in
17 order to have the proper venue, and that is here in
18 Oklahoma County.

19 THE COURT: In the receivership action when I
20 looked at the docket sheet on that, the creditors were all
21 given notice at some point in time to present claims; is
22 that correct?

23 MR. DAVENPORT: Yes, your Honor.

24 THE COURT: And did that include all 158, whatever
25 the exact numbers of defendants were? Was each defendant

1 in this case given notice in the receivership case to
2 present claims?

3 MR. DAVENPORT: Your Honor, I can't stand here and
4 tell you I have cross-referenced those two lists.

5 THE COURT: But the intent was to give them each
6 notice?

7 MR. DAVENPORT: There were over 158 notices of
8 claim sent out. I feel comfortable saying that most if not
9 all of these defendants were included in that process.

10 THE COURT: So are we going to have two cases
11 going simultaneously? And I think it was in the Wing case
12 where the court seemed to find it didn't matter in that
13 case. Are we going to have investors through the
14 receivership trying to be paid, and then through the
15 receivership proceeding in Logan County through the
16 submission of claims attempt to be paid? Is it going to be
17 a situation where there is going to be a double recovery
18 because you're also in this action trying to recover monies
19 for them?

20 MR. DAVENPORT: No, your Honor. Because the
21 receiver is in control of that process. If someone doesn't
22 file a claim pursuant to that claim process of which notice
23 was given with the receiver, then they're, number one, not
24 going to have a claim unless the court allows them to
25 deviate from its previous order. Secondly, all claims have

1 to come through that process. It was sent out by mail. It
2 was published. So it doesn't matter if we had ten cases
3 going. Someone that wants to recover assets from this
4 receivership has to go through that approved process, and
5 the receiver will be the first person to review those
6 claims, make his recommendations, and pass that onto the
7 court in Logan County for final approval.

8 THE COURT: My concern was under the forum non
9 conveniens argument if it would merit any -- to have one
10 judge deciding all of this. And what you're telling me is
11 that this action is basically an attempt to collect funds
12 that would then be distributed through the receivership
13 proceeding in Logan County to whoever it deemed appropriate
14 creditors?

15 MR. DAVENPORT: Yes, your Honor.

16 THE COURT: Anything further?

17 MR. DAVENPORT: No, your Honor. I believe that's
18 all. Thank you.

19 THE COURT: Thank you.

20 MS. CORNMESSER: Your Honor, I am Amanda
21 Cornmesser on behalf of the Oklahoma Department of
22 Securities. I first wanted to state and make sure that I
23 clarify. Earlier when you asked the question about the
24 investors for the receivership, this is not the first time
25 that the Department has gone -- a relief defendant act.

1 confusion still that remains about the receivership order
2 that took place in December of 2004. At that time, the
3 parties involved in that case were Marsha Schubert, Richard
4 Schubert, and Schubert and Associates. They were the
5 defendants only. We had not done the accounting, we had
6 not completed the investigation. We had no idea who had
7 received funds and who hadn't, so there's no way we could
8 have given notice to anybody. And we didn't have any
9 obligation to give any -- notice anyone other than the
10 defendants, which we did give. It was on OSCN, it was a
11 public hearing, it was on a motion docket, and it was
12 heard.

13 THE COURT: How would one of the individual
14 investors have had any notice of what was going on?

15 MS. CORNMESSER: It was on OSCN for 25 days, and
16 it was on our website which they all had. We had plenty of
17 investor meetings up in Crescent to keep people informed.
18 We did as much as we could. At that time we didn't know
19 who had received monies and who hadn't. So, you know, that
20 was a securities fraud case in Logan County, and we felt
21 like we noticed the appropriate parties at that time. Now
22 we're in a different matter where these are relief
23 defendants who can receive these funds, and it took us
24 months to figure out the accounting.

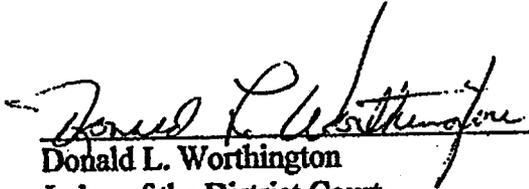
25 THE COURT: Let me tell you what I'm going to do

Attorneys the sum of \$94,220.00 as interim attorney fees and \$4,712.70 as costs through April 30, 2005.

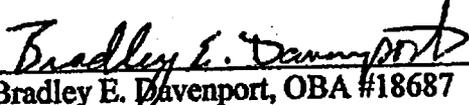
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Receiver's Application for Authority to Pay Interim Attorney Fees is granted, and it is ordered that Gungoll, Jackson, Collins, Box & Devoll, P.C., as attorneys for the Receiver, be allowed the sum of \$94,220.00 as interim attorney fees and \$4,712.70 as costs for services performed through April 30, 2005, and that the Receiver pay such fees.

IT IS FURTHER ORDERED that such interim fees shall not be regarded as full compensation for the services rendered by Receiver's attorneys for the period involved in the statements attached to Receiver's Application, but shall apply against the amount of final attorney fees and costs awarded to the Receiver and his attorneys at the conclusion and termination of these proceedings.

Dated: 6/10/05


Donald L. Worthington
Judge of the District Court

APPROVED AS TO FORM:


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Amanda Commesser, OBA #20044
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Oklahoma City, OK 73102

IN THE DISTRICT COURT OF LOGAN COUNTY,
STATE OF OKLAHOMA

STATE OF OKLAHOMA
JULY 24 AM 10:36



OKLAHOMA DEPARTMENT OF SECURITIES,
ex rel., IRVING L. FAUGHT, Administrator,

Plaintiff,

vs.

MARSHA SCHUBERT, an individual, and d/b/a
SCHUBERT AND ASSOCIATES; and
SCHUBERT AND ASSOCIATES, an unincorporated
association,

Defendants.

Case No. CJ-2004-256

SET FOR HEARING

DATE 6/10/05

TIME 1:30 pm

JUDGE

AT COUNTY COURTHOUSE IN
COUNTY INDICATED IN THE
REAR OF THIS DOCUMENT.

APPLICATION BY RECEIVER FOR AUTHORITY
TO PAY INTERIM ATTORNEY FEES

COMES NOW the Receiver, Douglas L. Jackson, and makes Application to this Court for authority to pay interim attorney fees to Gungoll, Jackson, Collins, Box & Devoll, P.C. (hereinafter "Attorneys"), and would show the Court as follows:

1. Pursuant to the Order of this Court entered on November 15, 2004, Petitioner employed Gungoll, Jackson, Collins, Box, & Devoll, P.C., as attorneys to advise and represent Petitioner in connection with matters pertaining to the administration of the Schubert Receivership Estate.

2. The Order provided that the amount of the fee paid to Receiver's attorneys would be determined by the terms set forth in the Application for Approval for Employment of Legal Counsel, submission of an application for payment of fees to the Court, and approval of the fees by the Court.

3. Attorneys have already expended 471.10 hours through April 30, 2005 in and about the performance of duties as Receivership counsel, as is set forth in the attached itemized statement of Attorneys.

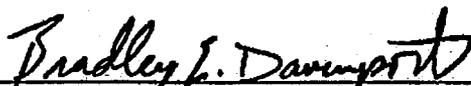


4. Petitioner believes that it would be unduly burdensome and inequitable to require Petitioner's counsel to devote so many hours of time to the service of the Receiver and the Schubert Receivership Estate without receiving interim compensation to remunerate counsel, at least in part, for the time spent and the costs incurred.

5. As appears from Attorneys' itemized statements, their efforts have resulted in considerable assistance to the Receiver and recovery of money on behalf of the Schubert Receivership Estate. The Receiver does have on hand sufficient funds with which to pay interim attorney fees and costs.

WHEREFORE, the Receiver respectfully requests that this Court authorize the Receiver to pay to the Receiver's attorneys, Gungoll, Jackson, Collins, Box, & Devoll, P.C., the amount of \$94,220.00 as interim Attorney fees, and \$4,712.70 as interim costs through April 30, 2005.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on the 23 day of May 2005 I mailed a true and correct copy of the above and foregoing instrument, postage pre-paid to:

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Bradley E. Dayenport

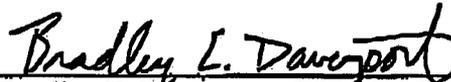
working on the accounting relative to money paid into and out of Schubert and Associates from January 1, 2000 through October 31, 2004. See BKD statements for May, June and July attached at Exhibit "A". Specifically, BKD has been working to identify cash transactions and checks without named payees that were previously placed into the "suspense" category of its accounting.

4. Receiver believes that it would be unduly burdensome and inequitable to require BKD to devote so many hours of time to the service of the Receiver and Schubert Receivership Estate without receiving interim compensation to remunerate the accountants, at least in part, for the time spent and the costs incurred.

5. BKD's efforts have resulted in them being able to identify \$685,398 worth of transactions that were previously placed in the "suspense" category of its accounting, leaving only \$231,679 worth of unidentified transactions. See 7/12/05 Letter from M. Marshall to B. Davenport attached as Exhibit "B". This information is important to the Receiver and Receivership Estate, and will allow the Receiver to have a more accurate accounting to pursue recovery of funds for the benefit of the Receivership Estate. The Receiver does have on hand sufficient funds with which to pay interim accounting fees to BKD.

WHEREFORE, the Receiver respectfully requests that this Court authorize the Receiver to pay to the Receiver's accountants, Baird, Kurtz & Dobson, LLP, \$16,365.00 as interim accounting fees.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of July 2005, I faxed and mailed a true and correct copy of the above and foregoing instrument, postage pre-paid to:

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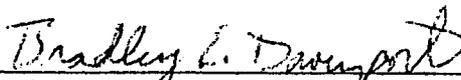
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Bradley E. Davenport

T:\Client\Schubert, Marsha & Richard\Receivship\00 - Pleadings\Pleadings Typed\2005-7-22 App to Pay Interim Acctg Fees.doc

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of July 2005, I mailed a true and correct copy of the above and foregoing instrument, postage pre-paid to:

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Garrett Lee Schubert, *Pro Se*
2520 E. 7th Ave #49
Stillwater, OK 74074

Hillary Schubert, *Pro Se*
723 S. Third
Medford, OK 73759-3704


Bradley E. Davenport

4. The Receiver has employed the law firm of Gungoll, Jackson, Collins, Box & Devoll, PC ("Counsel") and believes it is necessary to continue to have such counsel employed to assist in the location, control and management of Defendants' affairs and assets. In addition, upon review of the Defendants' investor records and bank records, the Receiver may pursue legal actions against third parties that will require additional assistance of counsel.

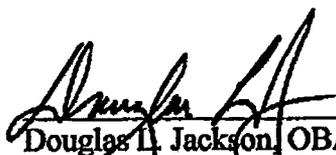
5. The Receiver seeks the Court's authorization to employ the law firm of Gungoll, Jackson, Collins, Box & Devoll, PC of Enid, Oklahoma as its legal counsel. Counsel is an AV rated law firm with significant experience in debtor and creditor legal work, including collection matters, and is well qualified to represent the Receiver. Counsel understands and agrees to accept such amount on account of its fees as may be awarded therefor by this Court. The billing rate of the proposed Counsel is \$200 per hour.

6. To the best of the knowledge, information, and belief of the Receiver, Counsel does not represent any of the parties to this action or the known investor clients of the Defendants.

7. Because of the concern of Defendants liquidating and/or hiding assets, Receiver requests that the Court dispense with the necessity of giving notice of this Application.

WHEREFORE, Receiver requests the Court approve his employment of the law firm of Gungoll, Jackson, Collins, Box & Devoll, PC of Enid, Oklahoma as Counsel to represent Receiver in all matters requiring legal services presently pending or arising hereafter in the course of the Receivership.

Respectfully submitted,



Douglas L. Jackson, OBA #4583
GUNGOLL, JACKSON, COLLINS, BOX & DEVOLL, P.C.
Post Office Box 1549
Enid, Oklahoma 73702-1549
(580) 234-0436 phone number
(580) 233-1284 facsimile number
Court-Appointed Receiver for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of October 2004, I mailed a true and correct copy of the above and foregoing instrument, postage pre-paid to:

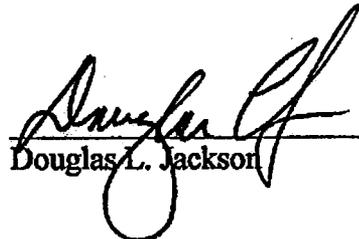
Oklahoma Department of Securities
Attn: Irvin L. Faught
First National Center, Suite 860
120 N. Robinson
Oklahoma City, OK 73102

Mack K. Martin
Martin Law Office
119 N. Robinson - Suite 360
Oklahoma City, OK 73102
Attorney for Marsha & Richard
Schubert

Marsha Schubert
P O Box 314
Crescent, OK 73028-0314

Richard Schubert
P O Box 314
Crescent, OK 73028-0314

Schubert and Associates
P O Box 314
Crescent, OK 73028-0314



Douglas L. Jackson

T:\Clients\Schubert, Marsha & Richard\Receivership\00 - Pleadings\Pleadings Typed\Application for Approval of Employment of Attorney.doc

IN THE DISTRICT COURT OF LOGAN COUNTY,
STATE OF OKLAHOMA

STATE OF OKLAHOMA
LOGAN COUNTY SS
FILED FOR RECORD
2004 NOV -4 AM 9:58



OKLAHOMA DEPARTMENT OF SECURITIES,
ex rel., IRVIN L. FAUGHT, Administrator,

RECEIVED
COURT CLERK

Plaintiff,

Case No. CJ-2004-256

vs.

MARSHA SCHUBERT, an individual, and d/b/a
SCHUBERT AND ASSOCIATES;
RICHARD L. SCHUBERT, an individual and d/b/a
SCHUBERT AND ASSOCIATES;
and
SCHUBERT AND ASSOCIATES, an unincorporated
association,
Defendants.

ORDER

NOW, on this 29 day of October 2004, the Receiver's Application for Approval of Employment of Legal Counsel comes before the Court for consideration.

Based upon the Receiver's Application and the circumstances involved in this case, the Court finds that the Application for Approval of Employment of Legal Counsel should be and is hereby granted.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Receiver's Application for Approval for Employment of Legal Counsel is granted, and Receiver is authorized to employ the law firm of Gungoll, Jackson, Collins, Box & Devoll, PC of Enid, OK as counsel to represent Receiver in all matters requiring legal services currently pending or arising hereafter in the course of the Receivership pursuant to the terms set out in the Application.

Dated: 10/29/04



Donald L. Worthington
Donald Worthington
Judge of the District Court

Department of Securities
State of Oklahoma

*1 IN THE MATTER OF: MARSHA K. SCHUBERT, AXA ADVISORS, LLC, AND
WILBANKS
SECURITIES, INC.
ODS File No. 05-031
December 10, 2004

ORDER INITIATING INVESTIGATION

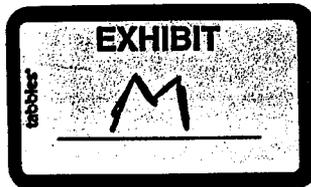
It has come to the attention of the Administrator of the Oklahoma Department of Securities (Department) that certain violations of the Oklahoma Securities Act (Act), Okla. Stat. tit. 71, § § 1
<<http://www.westlaw.com/Find/Default.wl?rs=dfa1.0&vr=2.0&DB=1000165&DocName=OKSTT71S1&FindType=L>>-413
<<http://www.westlaw.com/Find/Default.wl?rs=dfa1.0&vr=2.0&DB=1000165&DocName=OKSTT71S413&FindType=L>>, 501
<<http://www.westlaw.com/Find/Default.wl?rs=dfa1.0&vr=2.0&DB=1000165&DocName=OKSTT71S501&FindType=L>>, 701
<<http://www.westlaw.com/Find/Default.wl?rs=dfa1.0&vr=2.0&DB=1000165&DocName=OKSTT71S701&FindType=L>>-703
<<http://www.westlaw.com/Find/Default.wl?rs=dfa1.0&vr=2.0&DB=1000165&DocName=OKSTT71S703&FindType=L>> (2001 and Supp. 2003), the Oklahoma Uniform Securities Act of 2004 (2004 Act), Okla. Stat. tit. 71, § § 1-101
<<http://www.westlaw.com/Find/Default.wl?rs=dfa1.0&vr=2.0&DB=1000165&DocName=OKSTT71S1-101&FindType=L>> through 1-701 (Supp. 2003)
<<http://www.westlaw.com/Find/Default.wl?rs=dfa1.0&vr=2.0&DB=1000165&DocName=OKSTT71S1-701&FindType=L>>, and/or the Rules of the Oklahoma Securities Commission and the Administrator of the Department of Securities (Rules) occurred in connection with transactions effected by Marsha K. Schubert, formerly registered as an agent of AXA Advisors, LLC and Wilbanks Securities, Inc.

Section 1-602 of the 2004 Act provides in part:

A. The Administrator may:

1. Conduct public or private investigations within or outside of this state which the Administrator considers necessary or appropriate to determine whether a person has violated, is violating, or is about to violate this act or a rule adopted or order issued under this act, or to aid in the enforcement of this act or in the adoption of rules and forms under this act;
2. Require or permit a person to testify, file a statement, or produce a record, under oath or otherwise as the Administrator determines, as to all the facts and circumstances concerning a matter to be investigated or about which an action or proceeding is to be instituted; and
3. Publish a record concerning an action, proceeding, or an investigation under, or a violation of, this act or a rule adopted or order issued under this act if the Administrator determines it is necessary or appropriate in the public interest and for the protection of investors.

B. For the purpose of an investigation or proceeding under this act, the Administrator or its designated officer may administer oaths and



affirmations, subpoena witnesses, seek compulsion of attendance, take evidence, require the filing of statements, and require the production of any records that the Administrator considers relevant or material to the investigation or proceeding[.]

Based upon the information received, and in light of the provisions of the Act and the 2004 Act, the Administrator has determined it to be necessary and in the public interest to conduct an investigation to aid in the enforcement of the 2004 Act.

IT IS THEREFORE ORDERED that an investigation be commenced by the Department relating to the activities of Marsha K. Schubert while an agent of AXA Advisors, LLC, Wilbanks Securities, Inc., and/or any associated or affiliated entities or individuals, to aid in the enforcement of the 2004 Act.

If the Administrator determines that violations of the Act, the 2004 Act, and/or the Rules have occurred by AXA Advisors, LLC, Wilbanks Securities, Inc., and/or any associated or affiliated entities or individuals, the Administrator may pursue any of the courses of action authorized by law. If, however, the facts indicate that no corrective action by the Administrator is warranted, the investigation will be closed.

*2 Witness my Hand and the Official Seal of the Oklahoma Department of Securities this 10th day of December, 2004.

Irving L. Fought

Administrator of the Oklahoma Department of Securities

END OF DOCUMENT



IN THE DISTRICT COURT OF LOGAN COUNTY,
STATE OF OKLAHOMA

OKLAHOMA DEPARTMENT OF SECURITIES,
ex rel., IRVING L. FAUGHT, Administrator,

Plaintiff,

vs.

MARSHA SCHUBERT, an individual, and d/b/a
SCHUBERT AND ASSOCIATES;
RICHARD L. SCHUBERT, an individual and d/b/a
SCHUBERT AND ASSOCIATES;
and
SCHUBERT AND ASSOCIATES, an unincorporated
association,

Defendants.

Case No. CJ-2004-256

SET FOR HEARING

DATE 7/8/05

TIME 1:30 PM

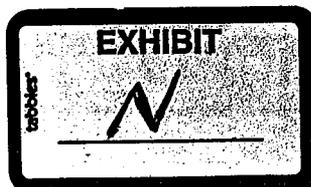
JUDGE W. H. Hargett

AT COUNTY COURTHOUSE IN
COUNTY INDICATED IN THE
HEADING OF THIS DOCUMENT.

MOTION OF RECEIVER FOR LEAVE TO ABANDON CERTAIN PROPERTY

COMES NOW the Receiver, Douglas L. Jackson, and requests that the Court grant him leave to abandon a partially-restored 1969 Plymouth Roadrunner that is part of the Schubert Receivership Estate. In support of his Motion, the Receiver would show the Court as follows:

1. The 1969 Plymouth Roadrunner is currently located at Muscle Car Restorations in Chippewa Falls, Wisconsin.
2. By the time Receiver was appointed over the assets of Marsha Schubert, Richard Schubert and Schubert and Associates, Marsha Schubert had already paid Muscle Car Restorations a total of \$71,317.57 for restoration work on the car.
3. At the present time, there is due and owing to Muscle Car Restorations an additional \$27,227.40 for restoration work, purchase of an engine, a Hemi transmission, and storage fees. See 11-10-04 Letter from Muscle Car Restorations attached as Exhibit A.
4. Upon learning of the outstanding indebtedness on this 1969 Plymouth Roadrunner in mid-November 2004, the Receiver instructed that all work be ceased and that no additional



parts be purchased. See 11-16-04 Letter from Davenport to Balow attached as Exhibit B. As such, no additional costs for parts or labor have accrued since early November.

5. According to the November 10, 2004 Letter of John Balow with Muscle Car Restorations, "the car has just been painted and is totally disassembled. There are hundreds of parts that have not yet been purchased to complete the project. I also project that a minimum of 600 labor hours at \$60/hour to complete the assembly." See Exhibit A. In other words, Mr. Balow has estimated that at least an additional \$21,600 worth of parts and labor would be required to complete the restoration of this car.

6. The Receiver has inquired not only of Muscle Car Restorations, but also of car collectors in Northwest Oklahoma regarding the value of a professionally restored 1969 Plymouth Roadrunner, and the common answer is that this type of car would sell somewhere in the \$20,000 to \$30,000 range once completed.

7. In conjunction with Muscle Car Restorations, the Receiver has listed the 1969 Plymouth Roadrunner on eBay in an attempt to sell it for an amount above the \$27,227.40 that was owed to the restorer as of November 10, 2004. There were no bids on this car in its present, partially completed state with over \$27,000 owed to the restorer.

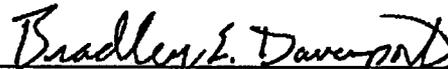
8. Muscle Car Restorations and one other individual have offered to write off or pay off the amount due and owing to Muscle Car Restorations in exchange for title to this vehicle.

9. Based on the facts that the restoration of this car is incomplete, there is due and owing over \$27,000 to the restorer, storage fees are continuing to accrue, and the completed, professionally restored 1969 Plymouth Roadrunner would not likely sell for more than what is owed on the car, the Receiver requests that this Court enter an Order authorizing the Receiver to abandon the 1969 Plymouth Roadrunner in exchange for Muscle Car Restorations and/or an

individual writing off or paying off the current outstanding debt owed to Muscle Car Restorations.

WHEREFORE, the Receiver, Douglas L. Jackson, respectfully requests that this Court grant his Motion and enter an Order allowing him to abandon the 1969 Plymouth Roadrunner that is part of the Schubert Receivership Estate by exchanging title to this vehicle for the write-off or payoff of the amount currently due and owing Muscle Car Restorations.

Respectfully submitted,



Bradley E. Davenport, OBA #18687
GUNGOLL, JACKSON, COLLINS, BOX & DEVOLL, P.C.
Post Office Box 1549
Enid, Oklahoma 73702-1549
(580) 234-0436 phone number
(580) 233-1284 facsimile number
Attorney for Receiver, Douglas L. Jackson

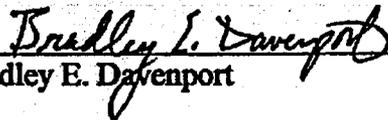
CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of ^{March}~~February~~ 2005, I mailed a true and correct copy of the above and foregoing instrument, postage pre-paid to:

Oklahoma Department of Securities
Attn: Gerri Stuckey
Amanda Cornmesser
First National Center, Suite 860
120 N. Robinson
Oklahoma City, OK 73102

Mack Martin
Martin Law Office
119 N. Robinson, Suite 360
Oklahoma City, OK 73102
Attorneys for Defendant Marsha Schubert,
individually, and d/b/a Schubert and Associates

William J. Baker
Hert, Baker & Koemel, PC
P. O. Box 668
Stillwater, OK 74076
Attorney for Defendant Richard Schubert, individually
and d/b/a Schubert and Associates


Bradley E. Davenport

Muscle Car Restorations

JOHN BALOW
11371 20 TH AVENUE
CHIPPEWA FALLS WI 54729
PHONE: 715-834-2223 * FAX: 715-834-5994
E Mail: MCR@musclecarrestorations.com

November 10, 2004

Mr. Bradley Davenport

Per our phone conversation I have put together the information you requested on Marsha Schubert.

I have included copies of all her checks and monthly invoices for the restoration of her 69 Plymouth RoadRunner. As you review this information may I point out the car came to us as a partial car and was extremely rusty and damaged. The car was found by a friend of hers and sold to her and shipped to MCR. Marsha was in the process of building the car to replicate the Road Runner her and her husband had when they were young. At least that is what she told me. She also told me she wanted it perfect and she would be willing pay what ever, as this was a birthday gift for her husband.

At this time Ms. Schubert owes MCR the following.

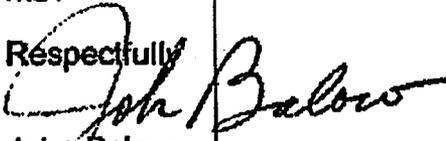
1. October invoice of \$11,973.40
2. Anticipated November billings of \$15,254.00 of parts and supplies.
 - Engine \$8500.00
 - Transmission Hemi 4 Speed \$1800.00
 - Chrome Plating \$273.00
 - Rear end Center section \$1432.00
 - Misc. parts \$2122.00
 - Paint and body shop supplies \$1127.00

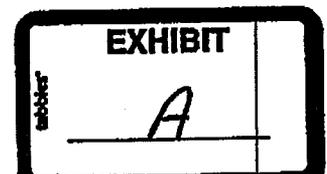
The total amount at this time is \$27,227.40. There is a 1.5% monthly finance charge with a \$25.00 per month late fee to calculate as well. There is also a monthly storage charge of \$125.00 month ongoing. Once her account goes 90 days past due I will then start billing \$25.00 per day for delinquent storage.

At this time I have not heard word one from Ms. Schubert. The car has just been painted and is totally disassembled. There are hundreds of parts that have not yet been purchased to complete the project. I also project a minimum of 600 labor hours @ \$60 per hour to complete the assembly.

If you have any other questions on need any other information please contact me?

Respectfully


John Balow
Owner
Muscle Car Restorations.



Gungoll, Jackson, Collins, Box & Devoll, P.C.

**Attorneys At Law
323 West Broadway
Post Office Box 1549
Enid, Oklahoma 73702
Telephone 580/234-0436
Telecopier 580/233-1284**

**BRADLEY A. GUNGOLL
DOUGLAS L. JACKSON
DAVID M. COLLINS
CRAIG L. BOX
GLENN A. DEVOLL
JULIA C. RIEMAN
VANCE T. NYE**

**KARIG P. CULVER
BRADLEY E. DAVENPORT
BRENDON S. ATKINSON
CHAD N. DAVIS**

R. L. MCKNIGHT - OF COUNSEL

November 16, 2004

John Balow
Muscle Car Restoration
11371 20th Avenue
Chippewa Falls, WI 54729

RE: Schubert 1969 Plymouth RoadRunner

Dear Mr. Balow:

The Receiver for the Schuberts ask me to follow up our recent phone conversation about the November invoice and the fact that all work on the Schubert 1969 Plymouth RoadRunner was to be stopped as of late October. After our phone conversation, it is my understanding that the November invoice contains charges for parts that had already been ordered and work that had already been done in October, and that the related billing simply went out in early November. Furthermore, you advised that the Schubert car had already been moved to a corner of your shop and work on it had ceased. As such, I do not anticipate that any additional billing will be made for parts or labor. The only cost that I understand will continue to accrue is for storage pursuant to the terms of your signed agreement with Marsha Schubert, which I appreciate you faxing to me. You need not reply to this letter unless I have misstated or misunderstood our recent phone conversation on these matters.

Finally, if you or anyone you know may be interested in purchasing the Schubert's car in its present state please let me know.

Sincerely,

Bradley E. Davenport
Bradley E. Davenport

