

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

Oklahoma Department of Securities)
ex rel. Irving L. Faught,)
Administrator,)
)
Plaintiff,)
)
v.)
)
Trade Partners, Inc., a Michigan)
corporation, TPI Management LLC,)
a Michigan limited liability)
company; TRADE LLC, a Michigan)
limited liability company; Thomas)
J. Smith, an individual; Christine)
M. Zmudka, an individual; Sojkara,)
L.L.C. a/k/a Sojkara ISP India)
L.L.C., a Michigan limited)
liability company; Robert J.)
Seitters, an individual;)
InterGlobal Waste Management, Inc.,)
a California corporation; Harold)
A. Katersky, an individual;)
Elkins & Associates, Inc., an)
Oklahoma corporation; Heartland)
Viaticals, Inc., an Oklahoma)
corporation; Eddie Elkins, an)
individual; and James S. Stanley,)
an individual,)
)
Defendants.)

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

OCT 12 2004

PATRICIA PRESLEY, COURT CLERK
by _____
Deputy

Case No. CJ-2004-6295

Motion To Dismiss Of Defendant, Harold A. Katersky

The Defendant, Harold A. Katersky, pursuant to 12 O.S. §2012(B), asserts his liberty interest which is secured by the due process clause of Article 2, Section 7 of the Oklahoma Constitution and the Fourteenth Amendment to the United States Constitution, and moves the Court to dismiss the Petition against him because courts of this state lack personal jurisdiction over this non-resident

individual who does not have sufficient minimum contacts with Oklahoma. A brief and the Affidavit of Harold A. Katersky are submitted in support of this Motion.

Wherefore, for the reasons stated, Defendant Harold A. Katersky, moves the court to dismiss this action.

Respectfully submitted,



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ATTORNEYS FOR DEFENDANT,
HAROLD A. KATERSKY

NOTICE OF MOTION

Please take notice, that the undersigned will bring the above motion on for hearing before the Honorable Daniel L. Owens, District Court, Oklahoma County, 321 Park Avenue, Oklahoma City, OK 73102, on the 12th day of November, 2004, at 9:00 o'clock A.m. of that day or as soon thereafter as counsel can be heard.

CERTIFICATE OF MAILING

This is to certify that on the 12th day of October, 2004, a true and correct copy of the foregoing instrument was mailed, United States mail, with postage prepaid, to:

Patricia A. Labarthe
Melanie Hall
Oklahoma Department of Securities
120 North Robinson, Suite 860
Oklahoma City, OK 73102

Christine Zmudka
2728 Shire Street, SW
Grand Rapids, MI 49544

Kirk D. Fredrickson
McDonald & Fredrickson, P.C.
24 West Park Place
Oklahoma City, OK 73103



Ronald E. Stakem

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STATE OF OKLAHOMA

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Defendants.)

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Case No. CJ-2004-6295

Brief of Harold A. Katersky
In Support of Motion To Dismiss

Introduction

This Court does not have either general or specific in personam jurisdiction over the non-resident individual Defendant, Harold A. Katersky ("Katersky"), under 71 O.S. 413 (as alleged in ¶ 3 of the Petition) or 12 O.S. §2004 F and the due process clause of the state or federal constitution. Katersky does not have the

constitutionally required minimum contacts with the State of Oklahoma. He has a liberty interest under the due process clause to be free from suit in this state. The Motion To Dismiss ("Motion") for lack of personal jurisdiction should be granted. The Motion and this brief are supported by the Affidavit of Defendant, Harold A. Katersky, a copy of which is attached hereto as Exhibit "A".

Argument and Authorities

A. The Burden Is On The Plaintiff To Prove This State Has Jurisdiction

The Plaintiff, the Administrator of the Oklahoma Department of Securities, must allege and prove the basis for this Court to exercise jurisdiction. The Court cannot infer jurisdiction. Jurisdiction must affirmatively appear from the record. Deerinwater v. Circus Circus Enterprises, 2001 OK CIV APP 37, ¶20, 21 P.3d 646, 651, citing Roberts v. Jack Richards Aircraft Co., 1975 OK 72, ¶ 6, 536 P.2d 353, 354.

B. The Plaintiff Has Not and Cannot Satisfy That Burden

The Plaintiff identifies Katersky as one of the "Defendants" (¶ 1 of the Petition). Referring to Section 413 of Act, the Plaintiff made only conclusory allegations of jurisdiction against any Defendant, saying "By virtue of their transaction of business by contract and otherwise and commission of other acts in this state, Defendants are subject to the jurisdiction of this Court and to service of summons within or outside this state." (¶ 3 of the

Petititon)

Other allegations are similarly conclusory regarding Defendants, generally¹, and Katersky, in particular. For example, see ¶ 13 stating only that, "At all times material hereto, Katersky offered and sold securities in and/or from Oklahoma as described herein."; ¶ 32, repeating that Katersky and other "IWM Defendants", "issued, offered and/or sold securities, in and/or from the state of Oklahoma, to investors ("IWM Investors")" and identifying the securities as "IWM Notes and Stock."; ¶¶ 32, 33 and 34 alleging conduct by IWM Defendants, but nothing specific about Katersky; ¶¶ 40 and 41 alleging the IWM Notes and Stock were unregistered securities "offered and sold by Defendants", but not even alleging that happened in Oklahoma; ¶ 44 alleging that Katersky (and others) "by virtue of their efforts and activities in this state in effecting or attempting to effect transactions in securities, are issuer agents, as defined in Section 2 of the Act" and "not registered under the Act as issuer agents, as required by Section 201", but not stating what constituted any of the actual efforts or

¹ Katersky is identified as one of the "Defendants" about whom "... the Department alleges Defendants offered and sold unregistered securities in violation of Section 301 of the Act, failed to register as broker dealers or issuer agents in violation of Section 201 of the Act, perpetrated fraud in connection with the offer, sale or purchase of securities in violation of Section 101 of the Act, and unlawfully distributed sales literature in connection with the offer and sale of securities in violation of Section 402 of the Act." (¶ 1 of the Petition).

activities allegedly taken by Katersky in this state; ¶ 58 alleging the IWM Defendants omitted to state a list of allegedly material facts, but not specifying any transaction by Katersky with any IWM investor; ¶ 61 purporting to state a claim for fraud and deceit, but without any specification of any wrongdoer other than "Defendants", no specification of any allegedly "untrue statement" (or similar details) and no identification of the alleged "IWM Investors"; finally, ¶ 64 alleging nothing specific about Katersky, only generally that "... Defendants provided promotional literature to ... the IWM Investors in and/or from the state of Oklahoma."

Such conclusory allegations were not made upon personal knowledge of any affiant, even though the Petition is verified by the Administrator of the Oklahoma Department of Securities.² In light of the detailed and specific affidavit of Katersky, such conclusory allegations are insufficient as a matter of law to confer jurisdiction to this Court. Lillard v. Stockton, 267 F. Supp. 2d 1081, 1099 (N.D. Okla. 2003) ("... even well pled allegations in a Complaint are not automatically assumed to be true when contradicted by the affidavits from the opposing party.").

C. Katersky May Not Constitutionally Be Sued In Oklahoma

"A court of this state may exercise jurisdiction on any

² The verification is plainly inadequate, being based on hearsay to the Administrator since "... matters and things stated therein have been provided to him by staff members of the Department under his authority and direction, and are true and correct to the best of his knowledge, information and belief." (Petition at p. 20).

basis consistent with the Constitution of this state and the Constitution of the United States." 12 O.S. §2004 F . Hough v. Leonard, 1993 OK 112, ¶ 7, 867 P.2d 438, 442 (The purpose of the long-arm statute "is to extend the jurisdiction of Oklahoma courts over non-residents to the outer limits permitted by the Oklahoma Constitution and by the due process clause of the United States Constitution.").

The due process clause protects a non-resident defendant's (here Katersky's) liberty interest in not being subject to binding judgments in a state with which he has established no meaningful "contacts, ties or relations." International Shoe Co. v. Washington, 326 U.S. 310, 319, 66 S. Ct. 154, 160 (1945); Deerinwater v. Circus Circus Enterprises, 2001 OK CIV APP 37, ¶10, 21 P.3d 646, 649.

Jurisdiction may be either general or specific. Jurisdiction is general (and, therefore, may extend even to claims that do not arise from the defendant's contacts with the state), only if the defendant has had "continuous and systematic general business contacts" with the state. Helicopteros Nacionales de Columbia, S.A. v. Hall, 466 U.S. 408, 416, 104 S. Ct. 1868, 80 L.Ed. 2d 404 (1984). The facts to prove general jurisdiction must be "extensive and persuasive" Deerinwater v. Circus Circus Enterprises, 2001 OK CIV APP 37, ¶ 11, 21 P.3d 646, 650, citing Reliance Steel Prods. Co. v. Watson, Ess, Marshall & Enggas, 675 F. 2d 587, 589 (3rd Cir. 1982).

It is clear from Katersky's affidavit that he has not engaged in any substantial and continuous local activity in Oklahoma to confer general jurisdiction. (See, especially, ¶¶ 2-6 of Katersky's affidavit). He does not live here. He has never been in the state. He does not own any property here, or earn any income from Oklahoma. He has not directed any personal business dealings from outside the state into Oklahoma or otherwise established any relationship with this state or its citizens. The bare allegations of the Petition, especially those in ¶¶ 1 and 3, without any evidence to refute the substantial affidavit of Katersky, are constitutionally inadequate to confer general jurisdiction.

The Court may exercise specific personal jurisdiction only if a defendant purposely directed his activity at residents of the forum state, and the alleged injuries relate to or arise out of that activity. The activity must be such that the defendant should have "reasonably anticipated being haled into court" in the forum state. World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297, 100 S. Ct. 559, 567 (1980). See, generally, Hough v. Leonard, 1993 OK 112, ¶ 7, 867 P2d 438, 442. The Supreme Court in Hanson v. Denkla, 357 U.S. 235, 78 S. Ct. 1228, 2 L.Ed. 2d 1283 (1958) stated:

"The application of that rule will vary with the quality and nature of the defendant's activity, but it is essential in each case that there be some act by which the defendant purposely avails itself of the privilege of conducting activities within the forum State,

thus invoking the benefits and protections of its laws." Id. at 253, 78 S. Ct. 1228 (citing Int'l Shoe Co., 326 U.S. at 319, 66 S. Ct. 154) (emphasis added)

Jurisdiction exists only "where the contacts proximately result from actions taken by the defendant himself that create a 'substantial connection' with the forum state." Asahi Metal Indus. Co., Ltd. v. Superior Court of Cal., 480 U.S. 102, 109, 107 S. Ct. 1026, 94 L.Ed. 2d 92 (1987) (emphasis added); Calder v. Jones, 465 U.S. 783, 790, 104 S. Ct. 1482, 79 L.Ed. 2d 804 (1984) ("[e]ach defendant's contacts with the forum State must be assessed individually.") Even if there is jurisdiction over a corporation, for example IWM in this case (which is not conceded), that jurisdiction cannot automatically be extended to its officers or directors. Id. One must look to the "quality and nature of the activity" for each individual defendant. Shaffer v. Heitner, 433 U.S. 186, 97 S. Ct. 2569, 53 L.Ed. 2d 683 (1977).

So, this Court cannot have specific jurisdiction over Katersky on the bare allegation of his status as either a CEO or director of IWM, or that he "controlled all acts of the IWM." (¶ 13 of the Petition). See, MFS Series Trust III v. Grainger, 2004 UT 61, 504 Adv. Rep. 7, 96 P.3d 927, 933 (Utah 2004) (sole contact with forum state as officer or director of defendant corporation is insufficient; state securities statute on "controlling person" liability does not confer jurisdiction independent of due process analysis).

Further, the Petition alleges (§ 12) and the Katersky affidavit makes clear that IWM was a distinct legal entity, a corporation, for which Katersky acted only as a representative. (See, especially, §§ 7-10, 16-17 of Katersky's affidavit). There is no allegation that IWM was a sham corporation or of any basis to ignore its corporate existence. Katersky's affidavit at § 10 goes much further and affirmatively establishes that there is no basis to ignore the IWM corporate existence in order to recast Katersky's acts for the corporation as if they were his personal acts. IWM was not Katersky's alter ego, or vice versa. The IWM corporate structure cannot be ignored. Therefore, Katersky's acts for IWM are not his personal acts and those corporate acts cannot be the basis upon which to assert in personam jurisdiction over Katersky in Oklahoma. Basham v. Hendee, 1980 OK CIV APP 10, § 8, 614 P.2d 87 (non-resident officers and directors of foreign bank are not subject to suit in Oklahoma where "there is nothing to indicate that the Wisconsin Bank had been used as a sham or in any manner would justify disregarding its corporate existence."). The court in Basham cited with approval Powder Horn Nursery, Inc. v. Soil & Plant Lab, Inc., 20 Ariz. App. 517, 514 P.2d 270 (Ariz. App. 1973) which stated the rule:

"The individual defendants have conducted no activities in this state, and from the record it appears that the services they rendered in California were solely in discharge of their corporate duties. While acts done by non-resident individuals in the scope of their

employment or duties for a foreign corporation may be sufficient to establish in personam jurisdiction over their corporate employer, it does not necessarily follow that these same acts will be sufficient to support in personam jurisdiction over the non-resident individuals."

The specific jurisdictional statute of the Oklahoma Securities Act, Section 413³, defines the type of conduct which Katersky personally must have done to justify jurisdiction against him in Oklahoma. Its pertinent part, it states:

(a) Sections 101 [Fifth and Sixth Causes of Action], 201(a) [Second Cause of Action], 301 [First Cause of Action], ... of this title apply to persons who sell or offer to sell when:

(1) an offer to sell is made in this state; or

(2) an offer to buy is made and accepted in this state.

(b) Sections 101, 201(a), 404 and 408 of this title apply to persons who buy when:

(1) an offer to buy is made in this state; or

(2) an offer to sell is made and accepted in this state.

(c) For the purpose of this section, an offer to sell or to buy is made in this state, whether or not either party is then present in this state, when the offer:

(1) originates from this state; or

(2) is directed by the offeror to this state and received at the place to which it is

³ The Plaintiff relies on that statute (See, ¶ 3 of the Petition), but did not quote any of its limiting and controlling language.

directed (or at any post office in this state in the case of a mailed offer.)

(d) For the purpose of this section, an offer to buy or to sell is accepted in this state when acceptance:

(1) is communicated to the offeror in this state; and

(2) has not previously been communicated to the offeror, orally or in writing, outside this state; and acceptance is communicated to the offeror in this state, whether or not either party is then present in this state, when the offeree directs it to the offeror in this state reasonably believing the offeror to be in this state and it is received at the place to which it is directed (or at any post office in this state in the case of a mailed acceptance." (emphasis added) (bracketed additions identify the causes of action asserted against Katersky) ⁴

It is mandatory under Section 413 that the core or essential conduct of offer or acceptance occur in the state of Oklahoma. It is never sufficient under Section 413 that some other type of non-core or non-essential activity occurred in Oklahoma, even if it was related to the offer or acceptance. McCullough v. Leede Oil Co.,

⁴ Katersky is not named as a defendant in either the Third Cause of Action or the Fourth Cause of Action. There is a Seventh Cause of Action against Katersky (and others) under Section 402 of the Act which prohibits providing promotional literature "in connection with the offer or sale of any security". Certainly, the foregoing due process analysis of minimum contacts applies with full force to that claim, and would require, at least, the offer or sale to be in Oklahoma even if the circulation of the promotional literature was outside Oklahoma. The Plaintiff alleges the conduct was "in and/or from the state of Oklahoma." (§ 64). Katersky's affidavit §§ 25-26 refutes that allegation.

617 F. Supp. 384 (W.D. Okla. 1985) (related correspondence in or from Oklahoma is not sufficient if the offer or acceptance does not occur in Oklahoma). To obtain in personam jurisdiction over Katersky, the Plaintiff would have to prove an event that is impossible under the facts of this case, namely: that Katersky personally offered to sell or accepted an offer to buy IWM Notes or Stock in the state of Oklahoma. It is clear from his affidavit that Katersky did not engage in any core or essential activity (the offer or acceptance) in Oklahoma, or even any related activity such as correspondence in the state of Oklahoma. (See, especially, ¶¶ 16-26 of Katersky's affidavit). All of his conduct (none of which should be considered his personal act, as opposed to a representative corporate act) occurred outside of Oklahoma and is, therefore, insufficient to confer personal jurisdiction over Katersky, even if one assumed arguendo that conduct was both personal and core or essential, i.e. the offer or acceptance.⁵ Specifically, even if Katersky's signing of the IWM Notes in California were a personal act and was core or essential (the offer or acceptance), there is no basis for in personam jurisdiction in

⁵ In addition, even if the IWM Notes were securities, Katersky denies that his mere signing, in a representative capacity, of the IWM Notes in California is either an offer to sell a security to IWM Investors or acceptance of an offer by IWM Investors to buy a security. From IWM's perspective, that signing was part performance of a prior agreement between IWM and Trade Partners, Inc., which had been created by an earlier offer and acceptance between those parties.

Oklahoma because all of his conduct was outside Oklahoma. In that regard, this case is like Barnes v. Wilson, 1978 OK 97, 580 P.2d 991. Barnes held that traditional notions of fair play and substantial justice prohibited an Oklahoma court from exercising in personam jurisdiction over three non-resident officers and directors of a foreign bank who merely signed their names in Kansas on a promissory note payable to an Oklahoma bank.

Conclusion

For the reasons stated, the Court lacks in personam jurisdiction over the non-resident defendant, Harold A. Katersky, and should grant his Motion To Dismiss.

Respectfully submitted,



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(405) 321-7571 FAX

ATTORNEYS FOR DEFENDANT,
HAROLD A. KATERSKY

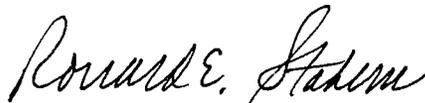
CERTIFICATE OF MAILING

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Melanie Hall
Oklahoma Department of Securities
120 North Robinson, Suite 860
Oklahoma City, OK 73102

Christine Zmudka
2728 Shire Street, SW
Grand Rapids, MI 49544

Kirk D. Fredrickson
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24 West Park Place
Oklahoma City, OK 73103



Ronald E. Stakem

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individual; and James S. Stanley,)
an individual,)

Defendants.)

Case No. CJ-2004-6295

STATE OF CALIFORNIA)

)SS

COUNTY OF LOS ANGELES)

Affidavit of Harold A. Katersky

I, Harold A. Katersky, upon my oath state:

1. I am the Harold A. Katersky named as a Defendant in this

action. I make this affidavit in support of my Motion To Dismiss. I have personal knowledge of the facts set forth herein. If called as a witness, I would testify competently thereto.

2. I am a resident of the State of California. I reside at 508 W. Stafford Rd., Thousand Oaks, CA 91361.

3. I have never lived in Oklahoma.

4. I do not own any property in Oklahoma and I never have owned any property in Oklahoma.

5. I do not have any business interests in Oklahoma. I do not receive any income earned in Oklahoma. I am not liable to pay Oklahoma income or other taxes.

6. I am not registered to vote in, nor have I ever been so registered, in Oklahoma.

7. InterGlobal Waste Management, Inc. ("IWM") was a California corporation with its principal place of business at 820 Calle Plano Ave., Camarillo, CA. I believe it is no longer actively in business.

8. IWM was incorporated in January, 2000 to exploit technology contributed to IWM by Thomas Williams, who was the CEO of IWM until September, 2001.

9. I was employed by IWM from January, 2000 until January

16, 2003 when I resigned. During that time, I was the Chairman of the Board of Directors and, after Thomas Williams was terminated, also its CEO. I was also a shareholder of IWM.

10. IWM was a real corporation with legal existence independent of me. I was not its alter ego or vice versa, for example: IWM maintained separate books of account and bank accounts. Its books were, from time-to-time, audited by independent professionals. IWM organized itself into functioning departments for product development, manufacturing, finance, intellectual property and sales and marketing. IWM hired employees, as many as 60 at one point in time. IWM contracted with and paid ADP or Administaff to provide employment services, including payroll, workers compensation, health and welfare benefits and retirement services. IWM was governed by a Board of Directors which met regularly, voted on issues, and kept formal minutes. From time-to-time the Board of Directors was composed of either six(6) or, after Thomas Williams was terminated, five (5) members. No more than two of the members of the Board of Directors at any one time were insiders. IWM filed government reports and tax returns. IWM maintained insurance to protect its insurable interest. In these and other respects, too numerous here to recall or restate, IWM regularly conducted

business as a distinct, separate legal entity.

11. I am a creditor of IWM for unpaid deferred salary in excess of \$500,000.

12. I am familiar with Trade Partners, Inc. and Thomas J. Smith and Christine M. Zmudka who are also named as defendants in this action. I understood Thomas J. Smith and Christine M. Zmudka were representatives of Trade Partners, Inc. I am not familiar with any of the other defendants.

13. I, personally, did not, and to the best of my knowledge IWM did not ever have any communications or other dealings with any of the following named defendants: TPI Management LLC, Trade LLC, Sojkara, LLC, Robert J. Seitters, Elkins & Associates, Eddie Elkins, or James S. Stanley.

14. IWM did not control Trade Partners, Inc. (or any entity related to it) and was not under common control with Trade Partners, Inc. (or any entity related to it) by some other entity. IWM and Trade Partners, Inc. were not affiliates.

15. I, personally, do not have and never have had any interest in Trade Partners, Inc. or any entity related to it.

16. With prior approval from the Board of Directors, IWM gave its promissory note(s) to raise capital in business dealings with Trade Partners, Inc. I believe these are referred

to in the Petition as "IWM Notes". I refer to them in this affidavit as "IWM Notes".

17. The IWM Notes were prepared in Michigan by Trade Partners, Inc. and sent to IWM in California to be signed and returned to Trade Partners, Inc. IWM made the IWM Notes in California. I signed IWM Notes for IWM in California in my capacity as an officer of IWM and not as an individual. (I do not know if anyone else representing IWM ever signed any IWM Notes.) All of the IWM Notes that I signed for IWM were sent from California back to Michigan to Trade Partners, Inc. as requested. In exchange, Trade Partners, Inc. transferred money by wire from Michigan to IWM's bank account in California. Trade Partners, Inc. did not, however, transfer to IWM all of the capital that it had agreed to transfer to IWM.

18. Only in my representative capacity for IWM, did I ever participate for IWM in business dealings with Trade Partners, Inc., or any of its representatives, regarding the IWM Notes or Stock or otherwise. I did not deal in my personal capacity with Trade Partners, Inc., or with Thomas J. Smith, or with Christine M. Zmudka, or with anyone else who was acting as a representative of Trade Partners, Inc., or otherwise.

19. IWM did not initiate contact from California or any

other place with any Oklahoma resident with respect to IWM stock or the IWM Notes, either before or after the IWM Notes were signed in California.

20. I did not initiate contact from California or any other place with any Oklahoma resident with respect to IWM stock or the IWM Notes, either before or after the IWM Notes were signed in California.

21. I did not speak with or correspond with or otherwise communicate with (including telephonically or electronically) any Oklahoma resident about IWM stock, or with any Oklahoma resident who was a payee of any IWM note about the IWM Notes or any related transaction, either before or after I signed the IWM Notes on behalf of IWM, except privileged communications with counsel in connection with this lawsuit.

22. I did not enter the state of Oklahoma in connection with any transaction involving the IWM Notes or IWM Stock. I have never been in Oklahoma.

23. I did not engage any agent, servant or employee located in the state of Oklahoma in connection with any transaction involving the IWM Notes or IWM Stock.

24. All of my activities with respect to the IWM Notes occurred in California, Illinois or Michigan. None of my

activities with respect to the IWM Notes or IWM Stock occurred in Oklahoma.

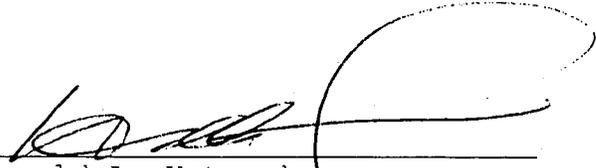
25. I, personally, did not offer to sell or sell any IWM Notes or IWM Stock in Oklahoma; or make an offer to sell or sell any IWM Notes or IWM Stock from outside Oklahoma to anyone in Oklahoma; or issue, offer or sell any IWM Notes or IWM Stock from Oklahoma; or provide any promotional literature regarding any IWM Notes or IWM Stock to anyone in/or from Oklahoma; or undertake in Oklahoma any effort or activity to effect or attempt to effect any transaction in IWM Notes or IWM Stock.

26. As a representative of and acting on behalf of IWM, I did not offer to sell or sell any IWM Notes or IWM Stock in Oklahoma; or make an offer to sell or sell any IWM Notes or IWM Stock from outside Oklahoma to anyone in Oklahoma; or issue, offer or sell any IWM Notes or IWM Stock from Oklahoma; or provide any promotional literature regarding any IWM Notes or IWM Stock to anyone in/or from Oklahoma; or undertake in Oklahoma any effort or activity to effect or attempt

to effect any transaction in IWM Notes or IWM Stock.

Further, affiant saith not.

Dated this 11 day of October, 2004.

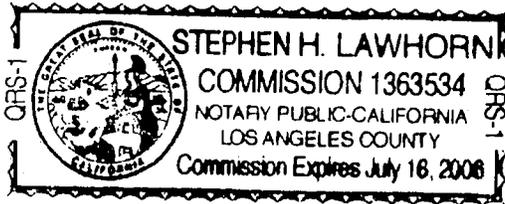

Harold A. Katersky

Subscribed and sworn to before me this 11th day of October, 2004.


Notary Public

My Commission Expires:

JULY 16, 2006



CERTIFICATE OF MAILING

This is to certify that on the 12th day of October, 2004, a true and correct copy of the foregoing instrument was mailed, United States mail, with postage prepaid, to:

Patricia A. Labarthe
Melanie Hall
Oklahoma Department of Securities
120 North Robinson, Suite 860
Oklahoma City, OK 73102

Christine Zmudka
2728 Shire Street, SW
Grand Rapids, MI 49544

Kirk D. Fredrickson
McDonald & Fredrickson, P.C.
24 West Park Place
Oklahoma City, OK 73103



Ronald E. Stakem