

IN THE DISTRICT COURT OF LOGAN COUNTY  
STATE OF OKLAHOMA

STATE OF OKLAHOMA  
LOGAN COUNTY SS  
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REJEANIA ZMEK  
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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

**OKLAHOMA DEPARTMENT OF SECURITIES'**  
**MEMORANDUM IN OPPOSITION TO LEBOEUF'S MOTION TO INTERVENE AND**  
**SET ASIDE ORDER APPOINTING RECEIVER, AND**  
**TO TRANSFER AND CONSOLIDATE THIS CASE, AND**  
**MOTION TO AMEND AUTHORITY OF RECEIVER**

On July 28, 2005, the Oklahoma Department of Securities (Department) received a copy of the *Motion to Intervene and Set Aside Order Appointing Receiver, and to Transfer and Consolidate this Case* (Motion to Intervene) filed by Richard LeBoeuf (LeBoeuf). The Motion to Intervene contains unfounded and unsubstantiated allegations about the professional conduct and competency of the Court appointed receiver and the Department's counsel. The allegations will be addressed at the appropriate time in the future. It is the Department's position that these allegations reveal a lack of understanding of the facts and law concerning receiverships in securities cases and enforcement actions brought by securities regulatory agencies. It is difficult to present an orderly response to the motion because of its misstatements of the law and the facts

of this matter. However, the Department begins by incorporating by reference its pleading titled *Oklahoma Department of Securities' Memorandum in Opposition to Richard LeBoeuf's Motion to Consolidate* dated July 25, 2005. Second, please note that the *Motion to Intervene* was set for hearing without affording the Department the full amount of time allowed by statute to respond. The Department respectfully requests that this Court initially consider only the motion to intervene which has been briefed below. However, if the Court should grant LeBoeuf leave to intervene, the Department requests that it be allowed the twenty days pursuant to 12 O.S. § 2024 to respond fully to the merits and insufficiencies of LeBoeuf's substantive arguments.

### **BACKGROUND**

On October 14, 2004, the Department filed suit in this Court against Marsha Schubert, individually and doing business as Schubert and Associates, and Schubert and Associates (collectively, "Enforcement Action Defendants") for violations of the Oklahoma Uniform Securities Act of 2004 (Act), Okla. Stat. tit. 71, §§ 1-101 through 1-701 (Supp. 2003), and the Oklahoma Securities Act (Predecessor Act), Okla. Stat. tit. 71, §§ 1-413, 501, 701-703 (2001 & Supp. 2003) (Logan County Suit). On November 15, 2004, the Logan County District Court issued a consent order of permanent injunction against Marsha Schubert and Schubert and Associates.

On October 14, 2004, this Court also appointed Douglas L. Jackson (Jackson) as Receiver (Receiver) for Marsha Schubert and Schubert and Associates. On December 10, 2004, at the request of the Department, this Court amended the order appointing Jackson to allow the Receiver to act for the creditors of the Enforcement Action Defendants; to institute actions to recover assets, to include assets traceable as proceeds of the Enforcement Action Defendants' fraudulent investment scheme; and to promote equity and a fair distribution among the

participants in the Schubert and Associates investment program. It is this order, along with the original order of receivership, that LeBoeuf seeks to vacate. To better articulate its intentions, the Department hereby requests that the December 10th *Order Amending Authority of Receiver* be amended as reflected in Exhibit 1 hereto.

Over the course of several months, the Receiver and the Department conducted a financial analysis of the bank accounts controlled by the Enforcement Action Defendants. The analysis determined that the Enforcement Action Defendants had operated a Ponzi scheme wherein they made payments to participants, purportedly generated from investment activities, when in actuality the payments came from other participants' money. As a result, three distinct classes of participants in the Ponzi scheme were identified: 1) participants in the investment program who suffered net investment losses (Short Investors); 2) participants in the investment program who were unjustly enriched through the transfers of assets traceable to the proceeds of the fraudulent scheme when such transfers were not supported by proper consideration (Long Investors); and 3) persons who did not invest any amount of money in the investment program, yet received assets traceable to the proceeds of the fraudulent scheme (Non-Investors).

Upon further investigation, it became apparent that there would be no relief for the Short Investors other than through recovery of the money transferred to the Long Investors and the Non-Investors. Therefore, on May 11, 2005, the Department and the Receiver filed a joint civil suit in Oklahoma County District Court against 158 of the Long Investors and Non-Investors as nominal or relief defendants (Oklahoma County Relief Defendants) based on the theories of unjust enrichment and/or fraudulent transfer (Oklahoma County Suit). The Oklahoma County Relief Defendants received phantom investment profits and/or gifts that were not supported by

proper consideration. Such phantom profits and gifts were paid by the Enforcement Action Defendants from the investment proceeds of other persons.

The Department and the Receiver have identified LeBoeuf as a Non-Investor – someone who never put any money into Schubert and Associates, but received money out. The Department and the Receiver sued LeBoeuf in the Oklahoma County Suit as a relief defendant for recovery of that money. LeBoeuf was given notice fully as required by law in the Oklahoma County Suit.

**I. LeBoeuf should not be allowed to intervene.**

Oklahoma statutes and case law recognize two types of intervention: (1) intervention as of right, and (2) permissive intervention. 12 O.S. § 2024(A) and (B). Since Section 2024 is based on Fed. R. Civ. Proc. 24, case law interpreting the federal rule is instructive. See Committee Comment to Section 2024.

Pursuant to 12 O.S. § 2024(C), a person may only intervene in a matter after seeking the permission of the court through a proper motion to intervene. By statute, the motion must state the grounds for intervention and be accompanied by a pleading setting forth the claim or defense for which intervention is sought.

Contrary to statute, LeBoeuf has not succinctly set forth a claim or defense for which he seeks intervention. LeBoeuf has not set forth a monetary claim against the Receivership estate. Therefore, his motion is substantively deficient.

**A. Intervention of right**

Intervention is a matter of right when (1) the application is timely made; (2) the applicant claims an interest relating to the property or transaction which is the subject of the main action; and (3) the applicant's ability to protect that interest may, as a practical matter, be impaired or

impeded if the applicant is not allowed to intervene. 12 O.S. § 2024(A). If one of the factors is absent, intervention as of right is not warranted. *SEC v. Kings Real Estate Investment Trust*, 222 F.R.D. 660 (D. Kan. 2004). In the instant case, none of the required factors is present to warrant intervention as of right.

**1. Timeliness**

The timeliness of a motion to intervene should be considered, in light of all of the circumstances, to include the expired length of time before the motion was filed. *Ute Distrib. Corp. v. Norton*, 43 Fed. Appx. 272 (10th Cir. 2002). Essentially, a determination of timeliness involves a test of reasonableness. “[P]otential intervenors need to be reasonably diligent in learning of a suit that might affect their rights, and upon so learning they need to act reasonably promptly.” *SEC v. Heartland Group, Inc.*, 2003 WL 1089366 (N.D. Ill.).

Ten months after the Receivership commenced, eight months after the Receiver notified LeBoeuf and the other Non-Investors of his claim against them, and three months after the commencement of the Oklahoma County Suit for disgorgement, LeBoeuf filed the motion to intervene. The motion is based in part on his lack of notice of the appointment of the Receiver in October 2004 and the entry of the Amended Order in December of 2004. LeBoeuf did not act promptly to initiate a challenge to the appointment and the authority of the Receiver.

In addition to not being complete, LeBoeuf’s request to intervene is not timely. Therefore, mandatory intervention by LeBoeuf is not warranted.

**2. Interest in Property at Issue**

Intervention of right should be allowed upon a proper showing that the applicant has a “specific legal or equitable claim” to an interest in the subject matter of the main action. *Ute*, 43 Fed. Appx. at 277. This factor should actually be viewed as a prerequisite for intervention.

*Feigin v. Alexa Group, Ltd.*, 19 P.3d 23 (Co. 2001). To justify mandatory intervention, the applicant's purported claim or interest in controversy must relate to specific real or personal property. *Gettler v. Cities Service Company*, 739 P.2d 515 (Okla. 1987). One of the deficiencies in LeBoeuf's intervention request is that he does not establish or otherwise describe any legal or equitable interest in, or a claim to, specific Receivership property - the remaining subject of the main action in the Logan County Suit.

Due to the details of his dealings with Marsha Schubert, LeBoeuf falls into the "Non-Investor" category. LeBoeuf did not invest any money in the Schubert investment program, yet received proceeds of the Enforcement Action Defendants' fraud. LeBoeuf received funds to which he has no legitimate claim; he does not have a property interest that is a subject of controversy in the instant case.

LeBoeuf is asking this Court to vacate the Receivership it previously established. Essentially, LeBoeuf is challenging the Receiver's authority and decision to seek disgorgement from the Relief Defendants in the Oklahoma County Suit. LeBoeuf does not describe a right to, claim to, or interest in Receivership property in his present motion. As further evidence of his lack of a claim or interest, LeBoeuf did not file a claim under the claims process established by the Receiver under the supervision of this Court. LeBoeuf does not have a legally protectable interest or claim in Receivership property; consequently, mandatory intervention is not warranted.

### **3. Effect of Denial of Intervention [Impairment]**

Another factor to support intervention of right is the applicant's ability to demonstrate that his interest or claim will be impaired or impeded absent intervention. As explained above,

LeBoeuf fails to establish a right to, interest in, or claim to Receivership property. It is impossible for LeBoeuf to demonstrate impairment to an interest or claim that does not exist.

As stated by the 10th Circuit Court in *Ute*, “[l]itigation impairs a third party’s interests when the resolution of the legal questions in the case effectively foreclose the rights of the proposed intervenor in later proceedings.” *Ute*, 43 Fed. Appx. at 279. Absent intervention in this matter, LeBoeuf will be able to adequately argue his position in the Oklahoma County Suit.

Since any interest or claim LeBoeuf may have will not be impeded or impaired if he is not allowed to intervene, mandatory intervention is not warranted based on the third prong of the test. LeBoeuf’s request does not meet any one of the elements for mandatory intervention. Thus, this Court should deny intervention of right to LeBoeuf.

**B. Permissive intervention**

Under 12 O.S. § 2024(B), anyone may be permitted to intervene in an action when the application is *timely* made and the applicant’s claim or defense and the main action have a question of law or fact in common. Permissive intervention is within the Court’s discretion. *Gettler*, 739 P.2d 515. The Court may decline to grant intervention even if there is a common question of law or fact, or the requirements of Section 2024(B) are otherwise satisfied. *SEC v. Funding Resource Group*, 233 F.3d 575 (table), 2000 WL 1468823. Ultimately, the Court may deny intervention “if the intervention would unduly delay or prejudice the main case.” *Kings Real Estate*, 222 F.R.D. at 670.

Again, LeBoeuf has not (1) made application for intervention in a timely manner, (2) properly filed a motion to intervene under Section 2024(B), or (3) asserted a specific claim or defense. Nevertheless, since he is not an investor in or creditor of Schubert and Associates,

LeBoeuf lacks standing to intervene in a matter before this Court in order to challenge the appointment and authority of the Receiver.

LeBoeuf simply concludes that there are four common issues between the main action of the Logan County Suit -- to determine whether Marsha Schubert and Schubert and Associates violated Oklahoma's securities laws and to impose appropriate remedies -- and LeBoeuf's assertions in the Oklahoma County Suit that this Court cloaked the Receiver, as an officer of the Court, with inappropriate authority. The Department disagrees with LeBoeuf's conclusions.

For example, Judge Parrish in Oklahoma County has refused to make a determination regarding the propriety of the appointment of the Receiver by this Court and any limits on the powers as granted to him by this Court. In addition, the Enforcement Action Defendants did not contest the appointment of the Receiver by this Court. Until the filing of the two recent motions to intervene, a challenge to the administration of the Receivership has not been presented to this Court. LeBoeuf has interjected the issue of the Receiver's conduct into the Logan County Suit with the filing of the current motion. Thus, there is no preexisting commonality as to that issue between this case and the Oklahoma County Suit.

In his motion, LeBoeuf seriously attacks the conduct of the Receiver including, but not limited to, the Receiver's actions to seize and liquidate property belonging to Marsha Schubert. Due to the restricted availability of the Court's time in the upcoming days and weeks, intervention by LeBoeuf would unnecessarily delay the administration of the Receivership and impede the work of this Court. In addition, the ultimate distribution by the Receiver would be reduced because Receivership assets would have to be expended for the purpose of defending against LeBoeuf's continual unfounded assertions.

In summary, LeBoeuf, who is not an investor in or creditor of Schubert and Associates, lacks standing in this Court to intervene in order to challenge the appointment and authority of the Receiver. LeBoeuf has not complied with the Oklahoma Pleading Code to seek the Court's permission to intervene in this matter and has failed to make a showing upon which intervention of right should be granted. Therefore, the Department requests that the Court disallow intervention by LeBoeuf.<sup>1</sup>

**II. This Court should leave the receivership in place.**

First, the Department would like to address allegations made by LeBoeuf in his Motion to Intervene. LeBoeuf claims that he learned in conversations with the Department's counsel that Marsha Schubert prepared the accounting for this case implying that the accounting fees paid by the receivership estate were not earned. LeBoeuf has distorted the truth in this matter. Marsha Schubert did provide a summary accounting that while initially helpful in identifying certain transactions was neither complete nor reliable for purposes of withstanding challenges in litigation. The Baird Kurtz and Dobson, LLP (BKD) accounting firm was approved by this Court to analyze the bank records in this case. BKD has relied on subpoenaed bank records for their analysis and has produced a professional and reliable accounting in compliance with auditing standards.

Second, the Department also disputes that its counsel had any conversations with counsel for LeBoeuf regarding an "agreement for leniency" with Marsha Schubert concerning the receivership. No conversation has ever taken place, no secret agreement exists and no "gag order" has been issued to Marsha Schubert. See Exhibit 2, Affidavit of Marsha Schubert. The

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<sup>1</sup> However, should intervention be permitted pursuant to Section 2024(B)(2), the Court has discretion to specify any conditions deemed necessary. *Kings Real Estate*, 222 F.R.D. 660. The Department would therefore request that the Court limit LeBoeuf's intervention to challenging the Amended Order only.

Department's enforcement action against Marsha Schubert ended in November of 2004 with a consent order.

**A. This Court has authority to appoint the receiver**

Even if LeBoeuf is granted leave to intervene, the Receivership should not be set aside. LeBoeuf has suggested that the Receivership should be vacated in its entirety. The evidence of securities fraud committed by Enforcement Action Defendants was overwhelming and required emergency action by the Court.

In compliance with this Court's order to marshal the assets of Enforcement Action Defendants, the Receivership has been very active since October of 2004. The Receiver has collected substantial monies from certain of the unjustly enriched investors, hired entities to hold auctions and to analyze bank records, received proceeds from auctions, and made court filings and appearances on behalf of the Receivership. To set aside the Receivership would be an undue hardship on third parties who have already reached resolution of the issues affecting such parties with the Receiver. The Receiver was appointed upon a showing of facts justifying the appointment under the terms of the statutes. To vacate an order rests on a similar showing.

**B. The Department has no administrative powers comparable to a Receivership**

LeBoeuf suggests that the receivership is unnecessary because the Department could accomplish the same result administratively. However, the Act and the Predecessor Act very clearly set forth what actions the Administrator may take administratively and what relief must be sought through the District Courts. *See* Sections 1-603 and 1-604 of the Act and Sections 406 and 406.1 of the Predecessor Act. Specifically, the Administrator may seek the appointment of receivers, asset freezes, restitution and equitable remedies such as disgorgement through the courts. The Administrator has no authority to order these actions administratively. The

Administrator has no authority to secure assets of securities law violaters to prevent dissipation. There is no framework available to the Administrator that is comparable to a receivership to accomplish the marshalling, preservation and distribution of assets in an equitable and efficient manner.

LeBoeuf also suggests that the Logan County Suit and the Oklahoma County Suit should be stayed until the Department exhausts its administrative remedies. However, the plain language of the Act and the Predecessor Act specifically provide that the Administrator may bring a civil action "prior to, concurrently with, or subsequent to an administrative proceeding." See Section 1-603 of the Act and Section 406.1 of the Predecessor Act. The doctrine of exhaustion of administrative remedies does not apply to the Department in its exercise of authority under the Act and the Predecessor Act.

Although the Act provides that the Administrator may be appointed as the Receiver, the Department has neither the resources nor the experience to act as a receiver and what resources it does have are hardly "free." In the interest of conserving the assets of this receivership estate, the Department has participated in this matter to a greater extent than usual. However, the actions taken and work performed by the Department and the Receiver are not duplicative. The Department is an entity entirely separate from the Receiver and each prosecutes the Oklahoma County Suit as a plaintiff in its own right. The Department derives its powers from the Act and the Predecessor Act. The Receiver, although appointed as a remedy requested by the Department pursuant to the Act and the Predecessor Act, derives his authority from the Court. *Eckles v. Busey*, 1941 OK 409, 132 P.2d 344.

### **III. LeBoeuf was not entitled to notice in connection with the Receivership orders.**

Should LeBoeuf be allowed to intervene, his due process argument does not warrant vacation of the Receivership. The Enforcement Action Defendants - the parties subject to the Receivership – received notice of the motion to amend the order and opportunity to be heard. In fact, all of the Enforcement Action Defendants consented to the Receivership orders.

The United States Supreme Court in *Mullane v. Central Hanover Bank and Trust Co.*, 339 U.S. 306, 314 (1950), established the governing principle relating to due process: “an elementary and fundamental requirement of due process **in any proceeding which is to be accorded finality** is notice reasonably calculated, under all of the circumstances, to apprise **interested parties** of the pendency of the action and afford them an opportunity to present their objections.” (Emphasis added.) Stated another way, “due process requires notice in any proceeding with an opportunity to appear and be heard before a valid **final judgment** may be entered.” *Hanley v. Four Corners Vacation Properties, Inc.*, 480 F. 2d 536, 538 (10th Cir. 1973).

First, the entry of the Receivership Orders by this Court in no way constituted a final judgment against LeBoeuf. In entering the Receivership orders, this Court did not conclusively determine the rights of LeBoeuf; adjudicate any claim; resolve any dispute; distribute property; or bar judicial consideration of the alleged transfers not supported by proper consideration. Therefore, LeBoeuf’s due process rights were not violated.

LeBoeuf was, of course, entitled to notice when he was named as a relief defendant in the Oklahoma County Suit for disgorgement of the tainted assets to which he has no legitimate claim. LeBoeuf has been, and continues to be, accorded all the process to which he is due in the Oklahoma County Suit.

Second, LeBoeuf is not an “interested party” in the Logan County Suit and would not have been given notice even if notice were necessary to anyone other than the Enforcement Action Defendants. The Court in *SEC v. Cherif*, 933 F.2d 403 (7th Cir. 1991), held:

“A nominal defendant is not a real party in interest, however, because he has no interest in the subject matter litigated. His relation to the suit is merely incidental and “it is of no moment [to him] whether the one or the other side in [the] controversy succeed[s].” quoting *Bacon v. Rives*, 106 U.S. 99, 104.

LeBoeuf is not a creditor of the Receivership estate, he has no legal or equitable interest in the estate and he can make no claim against the estate. Thus, LeBoeuf was not entitled to notice of the Receivership orders.

Finally, even if the Short Investors could be considered “interested parties” for purposes of notice, they are not before the Court today and do not appear to be contesting the Receivership as it is their best hope of receiving any recovery. Furthermore, the Receivership Orders in question do not interfere with any action that Short Investors may bring to redress the wrongs perpetrated against them. The Department believes that allowing the Receiver to proceed with recovery against the Long Investors and the Non-Investors on behalf of and for the benefit of the Short Investors is the most economical and efficient way to resolve the inequities caused by the securities violations of the Enforcement Action Defendants.

#### **IV. The Department is not liable for the Receivership costs.**

The Department has properly sought the appointment of the Receiver and, therefore, should not be held liable for its costs. The appointment of a receiver is appropriate if the financial consequences of a scheme need to be sorted out or if there has been a diversion of a customer's funds. See *SEC v. Manor Nursing Ctrs., Inc.*, 458 F.2d 1082 (2d Cir. 1972); see also *SEC v. First Sec. Co.*, 466 F.2d 1035 (7th Cir. 1972). When the Receiver was appointed, the

Department had information showing that the Enforcement Action Defendants were fraudulently selling securities involving millions of dollars and potentially hundreds of victims. The multiple victims of the fraud would agree that the appointment of the Receiver to protect the assets in the Enforcement Action Defendants' control was not improvident. Contrary to LeBoeuf's proposition, it would have been careless of the Department not to have sought the appointment of a receiver.

Even if the Receivership is ultimately dissolved, the Department should not be liable for its costs. The United States Supreme Court has held that where a court, in the exercise of jurisdiction, has erroneously appointed a receiver, the acquiescence of the defendant may influence the court to make the receivership expenses a charge upon the fund. *Burnrite Coal Briquette Co. v. Riggs*, 274 U.S. 208, 214-215 (U.S. 1927). In *Clark v. Brown*, 119 F. 130, 132 (8th Cir. 1902), the Court found that the defendant acquiesced in the appointment of the receiver stating, "while defendant did not directly consent to the appointment, he made no objection to it having color of seriousness or force." The *Clark* court also noted that the defendant never made any motion to have the appointment revoked or the receiver discharged. *Id.* Here, the Enforcement Action Defendants, whose assets are under receivership, have not made any motion to have the appointment revoked or the receiver discharged nor have they made a serious or forceful objection. Therefore, the Department should not be liable for the costs of the Receivership even if it is dissolved.

The ultimate recovery to all investors who have suffered net losses continues to be reduced because Receivership assets have to be expended for the purpose of defending claims such as the ones currently before this Court. LeBoeuf's filing of such frivolous motions in both suits, one of which he is not even a party to, drains the Receivership assets. Therefore, the

Department respectfully requests that LeBoeuf reimburse the Receiver for the fees and costs associated with his defense of this matter.

**Conclusion**

The Receivership should not be vacated as requested by LeBouef. Furthermore, it is not necessary to move the Receivership action to Oklahoma County. The Receivership was established by this Court based on violations by the Enforcement Action Defendants of the Act occurring in the Logan County Suit and the Department respectfully requests that there it shall remain.

Respectfully submitted,

OKLAHOMA DEPARTMENT OF SECURITIES  
Irving L. Faight, Administrator

By:

  
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

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 12th day of August, 2005, a true and correct copy of the above and foregoing was mailed by U.S. Mail, with postage prepaid thereon, addressed to:

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

Douglas L. Jackson  
Gungoll, Jackson, Collins, Box & Devoll, P.C.  
323 W. Broadway  
Enid, OK 73701

Alex Bednar  
P.O. Box 3021  
Oklahoma City, OK 73101

William J. Baker  
Hert, Baker & Koemel, P.C.  
P.O. Box 668  
Stillwater, OK 74076

G. David Bryant  
Lisa Mueggenborg  
Kline Kline Elliott & Bryant, PC  
720 N.E. 63rd Street  
Oklahoma City, OK 73105



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

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

Plaintiff, )

v. )

Case No. CJ-2004-256

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. )

**SECOND ORDER AMENDING AUTHORITY OF RECEIVER**

This matter came on for hearing this \_\_\_\_ day of \_\_\_\_\_, 2005, 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.

**EXHIBIT /**

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 Amending Authority of Receiver entered on December 10, 2004, should be modified as provided herein, and, therefore, Douglas L. Jackson ("Receiver"), shall continue to serve as Receiver for the Defendants to, *inter alia*, collect the proceeds of the fraudulent scheme perpetrated by Marsha Schubert and Schubert and Associates, and marshal the assets of Defendants. For purposes of this section, "assets" shall mean those assets 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 (Investment Program)

IT IS FURTHER ORDERED that Douglas L. Jackson is hereby appointed as receiver for the creditors of Marsha Schubert and Schubert and Associates.

IT IS FURTHER ORDERED that the Receiver is authorized to accomplish the following:

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, including any actions against participants in the Investment Program who were unjustly enriched through the transfer of proceeds of the fraudulent scheme when such transfers were not supported by proper consideration (Long Investors); persons who did not invest any amount of money in the Investment Program,

yet received proceeds of the fraudulent scheme (Non-Investors); and brokerage firms and/or other third parties from whom the Receiver deems it necessary to seek disgorgement of the proceeds of the fraudulent scheme, in order to promote equity and a fair distribution among all deserving participants in the Investment Program, and all deserving creditors of Marsha Schubert and/or Schubert and Associates, upon notice and application to the Court; however, such authority shall in no way be intended to impair or impede a private right of any participant in the Investment Program, or any creditor of Marsha Schubert and/or Schubert and Associates, to seek rescission or other appropriate relief;

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 \_\_\_\_ day of \_\_\_\_\_, 2005, at \_\_\_\_:\_\_\_\_, \_\_\_\_m.

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DISTRICT COURT JUDGE

Approved as to Form and Substance:

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Gerri L. Stuckey, OBA #16732  
Amanda Cornmesser, OBA #20044  
Oklahoma Department of Securities  
120 N. Robinson, Suite 860  
Oklahoma City, OK 73102  
(405) 280-7700  
Attorneys for Plaintiffs

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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

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

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Bradley E. Davenport, OBA #18687  
Gungoll, Jackson, Collins, Box & Devoll, P.C.  
323 W. Broadway  
Enid, OK 73701  
(580) 234-1284  
Attorney for Receiver, Douglas L. Jackson

AFFIDAVIT

STATE OF OKLAHOMA    )  
                                  ) SS.  
COUNTY OF OKLAHOMA )

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

1. I have not entered into, or been offered, an "agreement for leniency" by the Oklahoma Department of Securities (Department) or any employee or representative of the Department.
2. I have not been instructed by the Department, or any employee or representative of the Department, not to speak nor have I been placed under a "gag order" by the Department.

FURTHER AFFIANT SAYETH NOT.

Dated this 12 day of August, 2005.

  
\_\_\_\_\_  
Marsha Schubert, Affiant

Subscribed and sworn to before me this 12 day of August, 2005.

(SEAL)

  
\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: Oct. 3, 2006  
My Commission No.: 02016835

EXHIBIT 2