

IN THE DISTRICT COURT OF LOGAN COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA
LOGAN COUNTY SS
FILED FOR RECORD

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REJEANIA ZMEK
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BY _____ DEPUTY

Oklahoma Department of Securities)
ex rel. Irving L. Faught, Administrator, et al.,)
)
Plaintiff,)
)
vs.)
)
Marsha Schubert, an individual and d/b/a,)
Schubert and Associates, et al.,)
)
Defendants.)

Case No. CJ-2004-256

PLAINTIFF'S RESPONSE TO RICHARD LEBOEUF'S
MOTION TO QUASH SUBPOENA

Plaintiff, Oklahoma Department of Securities *ex rel.* Irving L. Faught, Administrator (Department), respectfully submits this response to the *Motion to Quash Subpoena* (Motion) filed by Richard LeBoeuf (LeBoeuf) on August 10, 2005.

Contrary to LeBoeuf's representation, LeBoeuf has not been granted intervention into this case, as of this date. Therefore, the Department will not refer to LeBoeuf as "Intervener."

1. As required by 12 Okla. Stat. Ann. § 2004.1(C)(3)(a)(1), the Department gave LeBoeuf "reasonable time for compliance" by personally serving the subpoena on Monday, August 8, 2005, four days prior to the date of the hearing.

2. On Wednesday, August 3, 2005, the Department, as a courtesy, sent an email to counsel for LeBoeuf notifying him that the Department would be subpoenaing LeBoeuf and would be sending counsel a copy of the subpoena. *See* Exhibit 1. The Department disputes the fact that the email was "threatening."

3. The Oklahoma County Suit is a separate case against 158 Relief Defendants in which the Department is seeking disgorgement of ill-gotten gains. The enforcement action in this case is against Marsha Schubert and Schubert and Associates based on violations of state securities laws. As the Department has attempted to explain to counsel for LeBoeuf, the Oklahoma County Suit and the Logan County Suit are completely separate actions. Therefore, LeBoeuf's testimony in the Logan County Suit in no way affects the discovery to be conducted in the future in the Oklahoma County Suit.

4. The hearing scheduled in Oklahoma County on August 26, 2005 is a case management conference. That hearing is not applicable to this issue before this Court.

5. The Department denies that its counsel stated it did not "need to tell" counsel for LeBoeuf the purpose of the subpoena. Counsel for LeBoeuf has distorted the conversation held on August 3, 2005.

6. LeBoeuf is not a party in the suit before this Court and has not been entitled to legal notice.

7. The August 12, 2005 hearing is far more than a "jurisdictional hearing." In fact, the primary issue in LeBoeuf's Motion to Vacate is to dissolve the receivership. The Department considers the Motion to Vacate to be of a critical nature and, therefore, may choose to present testimony by LeBoeuf in support of its opposition to the motion. The Department must take the opportunity to object to the motion to set the Receivership aside at the August 12th hearing. Presenting LeBoeuf's testimony after the August 26th hearing in Oklahoma County is too late if the Receivership has been dissolved by this Court.

8. The Department has followed 12 Okla. Stat. Ann. § 2004.1 for serving a subpoena. Witnesses for deposition may only be subpoenaed to appear in an adjacent county;

however, this restriction is not applicable to testimony at a trial or hearing. The Department met the requirement of giving LeBoeuf "reasonable time for compliance" by personally serving the subpoena to him on Monday, August 8, 2005, and by giving his counsel written notice on August 3, 2005. The Department also tendered the required witness fee and mileage reimbursement upon service of the subpoena.

9. The Department has not subjected LeBoeuf to an undue burden by calling him as a witness in a hearing on a Motion to Vacate he filed. The Department is entitled to the opportunity to oppose the Motion which may require the testimony of LeBoeuf.

10. LeBoeuf has made an assumption that the Department has served dozens of parties in the Oklahoma County Suit to appear at the Motion to Vacate hearing. In fact, LeBoeuf is the only Oklahoma County relief defendant called in the Logan County hearing set for August 12, 2005.

11. LeBoeuf relies on criminal statutes in regard to the requirements for subpoenaing witnesses. However, criminal statutes are inapplicable in a civil suit and such requirements are not provided for in the civil procedure statutes.

Respectfully submitted,

OKLAHOMA DEPARTMENT OF SECURITIES
Irving L. Faught, Administrator

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Amanda Cornmesser

From: Amanda Cornmesser

Sent: Wednesday, August 03, 2005 10:17 AM

To: 'alex@bednarlawfirm.com'

Cc: Gerri Stuckey; Melanie Hall

Alex, We are calling witnesses for next Friday afternoon's hearing in Logan County. We are issuing subpoenas and among those, we are only aware of your representation of Richard LeBoeuf. We just wanted you to be notified. We will send you a duplicate copy of the subpoena issued to Mr. LeBoeuf.

Should you have any questions, please respond to this email.

Thank you,
Amanda Cornmesser
Enforcement Attorney

EXHIBIT 1