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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.

JEANIA ZMEK  
COURT CLERK  
BY \_\_\_\_\_ DEPUTY  
Case No. CJ-2004-256

RECEIVER'S RESPONSE AND OBJECTION TO NON-PARTY MOVANT  
LEBOEUF'S MOTION TO INTERVENE AND SET ASIDE ORDER APPOINTING  
RECEIVER AND CONSOLIDATE THIS CASE WITH BRIEF IN SUPPORT

COMES NOW Douglas L. Jackson, the Court-appointed Receiver for Marsha Schubert, individually and d/b/a Schubert and Associates, and for the investors and creditors of Schubert and Associates ("Receiver"), and for his Response and Objection to the non-party movant Leboeuf's ("*LeBoeuf*") *Motion to Intervene and Set Aside Order Appointing Receiver and Consolidate this Case With Brief in Support*, would show the Court as follows:

ARGUMENT AND AUTHORITY

- I. **LeBoeuf's Motion to Intervene should be heard and ruled upon first. If the Court allows LeBoeuf to intervene, the current parties in this case should have 20 days therefrom to respond to the substantive motion or pleading of the intervenor LeBoeuf.**

LeBoeuf is not a named party in the above-styled Logan County District Court case. As such, 12 O.S. §2024 requires LeBoeuf to make application to the court for leave

to intervene, which LeBoeuf has done by the Motion served on the Receiver on July 28, 2005.

However, the Motion filed on behalf of LeBoeuf seeks to circumvent the procedure mandated in 12 O.S. §2024 by requesting affirmative relief from the Court and setting his motion for that relief for hearing prior to the Court having considered, much less granted, them leave to intervene. Specifically, 12 O.S. §2024(C) provides as follows:

- C. PROCEDURE. A person desiring to intervene shall serve a motion to intervene upon the parties as provided in section 2005 of this title. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. **If the motion to intervene is granted**, the plaintiff or defendant, or both, may respond to the pleading of the intervenor within twenty days after the date that the motion was granted unless the court prescribes a shorter time. See 12 O.S. §2024(C)(emphasis added).

The effect of LeBoeuf's failure to comply with the above-quoted statutory procedure is an improper and invalid intervention in the case, which deprives the current parties and Receiver of their statutory time of 20 days to respond to LeBoeuf's substantive pleading without even knowing whether or not he will be granted leave to intervene. See 12 O.S. §2024(C).

Furthermore, the stated purpose of LeBoeuf's request to intervene is to ask the Court to set aside the Order Appointing Receiver, which appointed Mr. Jackson receiver for Marsha Schubert individually and d/b/a Schubert and Associates, Schubert and Associates, and also at the outset for Richard Schubert individually and d/b/a Schubert and Associates. LeBoeuf was not and is not one of the Defendants in the Logan County

case, and no receiver was appointed for him, his property, or his assets on October 14, 2004.

Furthermore, LeBoeuf did not pay any money whatsoever into Schubert and Associates, but nonetheless was paid money out of Schubert and Associates' bank accounts. See BKD summary sheet and account ledger for LeBoeuf attached as *Exhibit A*. In addition, LeBoeuf has attached no documents, affidavits or other tangible evidence to his Motion/Brief or stated therein that he provided goods, services or labor to Marsha Schubert and/or Schubert and Associates that might otherwise suggest that he was a creditor. Given these facts, LeBoeuf is neither an investor nor creditor of Schubert and Associates. As such, this Court's December 10, 2004 Order Amending Authority of Receiver likewise did not appoint Mr. Jackson as the receiver over LeBoeuf, his property, or his assets. Because Mr. Jackson has not been appointed as receiver over LeBoeuf and he is neither an investor nor creditor of Schubert and Associates, he lacks both a factual basis and the legal standing to intervene in this Logan County case for the purpose of seeking to set aside the Order Appointing Receiver.

Based on the foregoing facts and legal authority, the Receiver respectfully requests the following: (1) that the Court first hear LeBoeuf's Motion to Intervene; (2) that the Court deny LeBoeuf's Motion to Intervene for lack of standing; and, (3) alternatively, should the Court grant LeBoeuf's Motion to Intervene, the Receiver requests that he be granted 20 days from the date leave to intervene is granted to respond to LeBoeuf's substantive pleading as expressly provided in 12 O.S. §2024(C).

**II. Alternatively, should the Court hear LeBoeuf's substantive Motion to Set Aside Order Appointing Receiver, and to Transfer and Consolidate Case on the same date as the motion to intervene, the substantive Motion should be denied.**

A. The Receiver does not have a conflict of interest in the instant case.

The fact that Mr. Jackson is a member of the firm (“Gungoll, Jackson”) that has been appointed to represent the Receiver does not create a conflict of interest. The “fiduciary duty” or interest that Mr. Jackson has with respect to the financial well-being of Gungoll, Jackson is no more of an influence on his professional conduct and ethical responsibility in this case than in any other. Put another way, Mr. Jackson, like most every practicing attorney, has a financial interest in every case in which he or his law firm is involved since that is the means by which he earns a living. The same is no doubt true of the other attorneys involved in this case. However, this reality does not warrant or mandate the conclusion that Mr. Jackson or any other attorney that practices law for a living bases their case strategy and decision-making on their own self-interest.

To follow the logic of LeBoeuf’s assertion that there is a conflict of interest simply because the Receiver has a financial interest in the law firm appointed to represent him would necessarily imply that no attorney could take a case on a contingency fee basis. After all, an attorney or law firm only collects a fee in a contingency fee case if his client wins, and the larger the recovery or settlement for the client, the larger the fee for the attorney or firm. Under LeBoeuf’s logic, such an arrangement would mandate the conclusion that an attorney would always place his or her own financial interest ahead of the client’s interests, thereby resulting in a conflict of interest.

However, Oklahoma law, specifically Rule 1.5(c) of the Rules of Professional Conduct, expressly provides for contingency fees. One reason for contingency fees is to allow parties who might not otherwise be able to afford legal representation access to the judicial system. Another reason for or result of contingency fees is that by tying the

attorney's fee to the outcome of the client's case, the attorney has an incentive to work hard and to attain the best result possible for his or her client. The same is true in the case of the Receiver here. If the Receiver and Gungoll, Jackson work hard to protect the assets of the receivership estate, collect debts, etc., it will benefit the creditors of Schubert and Associates and make it more likely that they will be compensated for their efforts. As such, the Receiver's financial interest in the present case, whether as Receiver or as a member of Gungoll, Jackson law firm, does not create a conflict of interest, but rather provides an incentive for him to do the best possible job he can on behalf of the creditors.

The allegations made by LeBoeuf regarding the Receiver, the number of pleadings filed and whether some pleadings have been filed jointly with Oklahoma Department of Securities constitute nothing more than baseless personal attacks. The Receiver has filed or joined pleadings in this case that affect his role directly or indirectly, required his approval, sought or required leave of the court to act, directly address the receiver such as LeBoeuf's instant motion, and has participated in or attended proceedings to maintain apprised of both factual information and court rulings that may affect or influence the subject matter of the estate or the manner in which he proceeds. Furthermore, the reason the Receiver filed suit as a Plaintiff in Oklahoma County against 158 people is for the simple fact that approximately two-thirds of the money lost through Schubert and Associates' Ponzi scheme, or just over \$6,000,000, was paid out to those Relief Defendants. Compare relief defendants in Oklahoma County case caption with Exhibit B to BKD accounting identifying individuals with a net long position all attached hereto as *Exhibit B*. As the official comment to Rule 1.7 of the Rules of Professional Conduct provides, a court should view a conflict of interest objection raised by an

opposing party in litigation with caution, “for it can be misused as a technique of harassment.” See Rule 1.7 of Rules for Professional Conduct, COMMENT, Conflict Charged by an Opposing Party. Such is the case here.

Likewise, LeBoeuf’s argument that Mr. Jackson’s appointment as receiver for the investors and creditors of Schubert and Associates gives rise to a conflict of interest is without merit. The Temporary Order entered on October 14, 2004 specifically charged the Receiver “to conserve, hold, and manage all assets of Defendants and the business Schubert and Associates pending further action by this Court **in order to prevent any irreparable loss, damage, or injury to investors....**” See excerpt of Temporary Order entered 10/14/04 attached as *Exhibit C* at pp. 3-4 (emphasis added). The same Order further provides that the Receiver is authorized “to take the necessary steps to protect the interests of investors, including the liquidation or sale of assets of Defendants....” Id. at pg. 4. As such, the Receiver was to protect assets, collect debts, etc. in place of Marsha Schubert and Schubert and Associates for the benefit and protection of investors and creditors under the original Order Appointing Receiver. Therefore, there is no conflict of interest in Mr. Jackson subsequently being appointed receiver over those same creditors whose interests he was already trying to protect.

Also, the suit the Receiver has filed in Oklahoma County does not name the investors and creditors of Schubert and Associates as Relief Defendants. The Relief Defendants are comprised of (1) people who paid no money whatsoever into Schubert and Associates, but nonetheless received payments from Schubert and Associates, and (2) people who did pay some money into Schubert and Associates, but was paid back more money from Schubert and Associates than they had paid into that business. Neither of

these groups lost money, nor have they provided evidence of providing some other type of goods or services to Schubert and Associates for which money is owed. As such, the Relief Defendants are not creditors. Furthermore, the accounting prepared and meetings with Marsha Schubert demonstrate that Schubert and Associates did not invest anybody's money in option contracts, day trading, cattle or anything else, meaning there were no true investors. Based on the foregoing facts and legal authority, there is no conflict of interest created by the Order Amending Authority of Receiver that was entered on December 10, 2004.

Finally, there is no inherent conflict of interest created by Mr. Jackson being appointed receiver over Marsha Schubert and Schubert and Associates. The Temporary Order entered on October 14, 2004 froze Schubert's assets so that neither she nor third parties who had her assets in their possession would dissipate them. However, as noted above, the Court specifically authorized the Receiver not only to take possession of those assets, but to liquidate or sale assets for the protection and benefit of investors and creditors. See Exhibit C at pp. 3-4. To follow LeBoeuf's logic would imply that every receiver appointed over a person or entity and their assets would give rise to an inherent conflict of interest. Such an argument is without merit and must fail.

Based on the foregoing facts and legal authority, the Receiver does not have a conflict of interest. As such, the Receiver cannot have breached any duty to notify the Court and/or opposing parties of a conflict that does not exist.

B. The Receiver was not legally required to give LeBoeuf or other non-parties notice.

LeBoeuf was not and is not a Defendant in the instant case. The Temporary Order entered on October 14, 2004 appointed a receiver over the Defendants, Marsha

Schubert, Richard Schubert and Schubert and Associates only. As such, the Order did not appoint a receiver over LeBoeuf, his property or assets. These facts are distinguishable from those present in the cases of McGrath v. Clift, 181 P.2d 555 (Okla. 1947) and State ex rel. Com'rs of the Land Office v. Terry, 192 P.2d 1000 (Okla. 1948) relied upon by LeBoeuf wherein the named defendant and mortgagor respectively in those actions had a receiver appointed over them and/or their property without notice. Furthermore, for the reasons noted above, LeBoeuf is neither an investor nor creditor of Schubert and Associates. Therefore, LeBoeuf had and has no protected property interest at stake that would have required that he be provided notice under due process requirements. See Stern v. Univ. of Okla. Bd. of Regents, et al., 1992 OK CIV APP 138, 841 P.2d 1168, 1170 (*citing* Wood v. Independent School District No. 141 of Pottawatomie County, 661 P.2d 892, 894 (Okla. 1983)). For the same reasons, neither the Receiver nor the Department was required to give advance notice to LeBoeuf relative to the hearing on the Motion to Amend Authority of Receiver held on December 10, 2004.

Likewise, the receiver was not required by law to give LeBoeuf notice of other proceedings such as applications for payment of accounting or attorney fees. First, LeBoeuf was not and is not a party to the Logan County case. Second, for the reasons stated in Section I above (LeBoeuf paid no money whatsoever into Schubert and Associates), he is neither an investor nor creditor of Schubert and Associates. As such, neither the constitutional requirements of due process, nor rules of civil procedure, nor local court rules required that the Receiver provide notice of judicial proceedings in the Logan County case to LeBoeuf. Furthermore, there is nothing in the Order Appointing

Receiver that requires the Receiver to provide notice of proceedings or actions in the receivership to non-parties that do not directly affect those non-parties' own property rights and interests.

The Receiver has been granted specific powers, authorities and duties defined by the Court. The Receiver has utilized those powers and authorities in conjunction with the statutory provisions relative to receivers found at 12 O.S. §1551, *et seq.* The Receiver made application to this Court and obtained approval to hire an accounting firm. See 12/15/04 Application and 1/14/05 Order attached as *Exhibit D*. Likewise, the Receiver made application to this Court and obtained its approval to hire Gungoll, Jackson as legal counsel. See 10/25/04 Application and 11/04/04 Order attached as *Exhibit E*. Furthermore, the Receiver has made application to this Court and obtained its approval prior to making any large expenditure of Receivership assets. See e.g., 3/24/05 Application and 5/13/05 Order for Authority to Pay Interim Accounting Fees attached as *Exhibit F*. Every month the Receiver has prepared and filed an accounting with this Court detailing the deposits into and payments made out of the Receiver's checking and money market accounts. See e.g., Receiver's Accounting for July 2005 (8/9/05) attached as *Exhibit G*.

Furthermore, the Receiver has complied with Local Court Rules adopted by the Ninth Judicial District for presenting an order or journal entry to a judge for signature. Specifically, Local Rule 2.1 in provides in pertinent part as follows:

1. No order or journal entry shall be presented to a judge for signature unless that order or judgment has been approved by the attorney or attorneys of record affected by said judgment or order.

See Rules of the Northcentral Judicial Administrative District, Rule 2.1.

First, the Receiver has served copies of the applications and pleadings he has filed on all attorneys of record. Second, in compliance with the above local rule, the Orders that the Receiver has presented to Judge Worthington for signature, examples of which are included in Exhibits D, E and F, were approved or acquiesced to by the attorneys of record.

Based on the facts and legal authority set forth above, the Receiver has provided notice to the parties of pleadings filed and hearings held thereon in this case, and was under no legal requirement to provide notice to a non-party such as LeBoeuf. Therefore, LeBoeuf's argument that this Court should set aside the Order Appointing Receiver due to the Receiver's failure to give notice to LeBoeuf must fail.

C. Rule 1.15 of the Rules of Professional Conduct does not apply to the court-appointed Receiver.

Rule 1.15 of the Rules of Professional Conduct sets out requirements and prohibitions pertaining to a lawyer's client trust account and maintaining the client's funds and property separate from that of the lawyer. See Title 5, Chp.1, App. 3-A at Rule 1.15. The rule also requires a lawyer to safeguard his client's property. Id.

In the instant case, Mr. Jackson is the court-appointed receiver. Although Mr. Jackson is an attorney, he is not providing legal representation to Marsha Schubert, LeBoeuf or anyone else in this Logan County case. Furthermore, as noted above, LeBoeuf paid no money into Schubert and Associates, and has attached no documents, affidavits or other evidence to his Motion/Brief that would even suggest that he is a creditor of Schubert and Associates. See Exhibit A. For these reasons, Rule 1.15 of the Rules of Professional Conduct is inapplicable to the court-appointed receiver in this case generally, and specifically does not impose a duty on the Receiver relative to LeBoeuf.

Furthermore, the Receiver has opened separate accounts for the receivership at Central National Bank of Enid. See signature cards attached as *Exhibit H*. In addition, the Receiver has prepared and filed an accounting of record with the Court each month beginning in December 2004 showing all activity relative to the receivership accounts. See Exhibit G as an example. The monthly accounting filed by the Receiver is published on the Oklahoma Supreme Court Network website and the Oklahoma Department of Securities website. Therefore, LeBoeuf's argument based upon Rule 1.15 of the Rules of Professional Conduct is without merit and must fail.

D. Receiver has been expressly authorized by the Court to liquidate or sell assets of Marsha Schubert and/or Schubert and Associates.

The original Order Appointing Receiver entered on October authorized the Receiver "to take the necessary steps to protect the interests of investors, including the liquidation or sale of assets of Defendants...." See Exhibit C at pg. 4. The Order granting authority to sell assets does not stipulate that the Receiver must first obtain leave of Court to exercise the authority the Court has already granted him. As such, the Receiver was acting within the scope of authority granted him by the Court when he sold the cabin in Branson, Missouri. The proceeds from that sale are being held in an escrow account pending resolution of the divorce case. LeBoeuf neither cites nor attaches any support or authority in support of his allegation that the cabin was sold below market value, or even states what he alleges the market value to have been. Therefore, Leboeuf's complaint regarding the sale of the cabin is without merit.

Relative to the 1969 Plymouth Roadrunner, the Receiver has obtained leave of Court to abandon that property in exchange for a write-off of the debt owed for restoration work. The car is titled in Richard Brandon Schubert's (son) name. However,

Richard Schubert (husband) testified at deposition that Marsha Schubert bought the car for him because that is what he drove when he was a young man. See excerpt of R. Schubert's 1/18/05 depo. transcript attached as *Exhibit I* at pg. 50. He also testified that his son, Richard Brandon Schubert, did not have a Roadrunner. See *Exhibit I* at pg. 150. Furthermore, Marsha Schubert wrote 13 checks on Schubert and Associates' bank accounts totaling \$71,317.57 for restoration work for the 1969 Plymouth Roadrunner. See checks attached as *Exhibit J*. In any event, the Receiver has not transferred title to this vehicle should the Court determine further hearing relative to this car is warranted.

E. The Department had authority to seek appointment of a Receiver in this matter, and the Order Amending Authority of the Receiver provides the Receiver standing to bring actions to recover based on unjust enrichment and to set aside fraudulent conveyances.

Section 1-603 of Title 71 of the Oklahoma statutes pertains to civil enforcement of the Oklahoma Uniform Securities Act. Paragraph A of that section pertains only to the events that can trigger an enforcement act, which includes the belief that a person has engaged, is engaging, or is about to engage in an act or practice constituting a violation of the Act. See 71 O.S. §1-603(A). Here, the operation of a Ponzi scheme by Marsha Schubert and Schubert and Associates gave rise to the enforcement action, which warranted the Department seeking the appointment of a receiver.

Once an enforcement action is initiated, section 1-603(B) lists some of the types of relief that a court may order in such an action. The types of relief listed in subpart B are non-exclusive. For example, subpart B states that, “[i]n an action under this section and on a proper showing, the court **may**: ....” Some of the relief a court may provide includes issuance of a permanent or temporary injunction. See 71 O.S. §1-603(B)(1). Subpart B goes on to state that the court may “[o]rder other appropriate or ancillary relief,

which **may** include:" things such as an asset freeze, accounting, appointment of a receiver for the defendant or the defendant's assets, and imposing a civil penalty. See 71 O.S. §1-603(B)(2)(a) through (d). Again, the statutory section uses the non-exclusive language of "other appropriate or ancillary relief, which may include" the types of relief listed, but clearly does not limit the Department to asking for or the court from providing only the representative or exemplary types of relief identified. The non-exclusive nature of subparagraphs (1) and (2) of 1-603(B) is further underscored by the broad discretionary authority provided by subparagraph (3). That paragraph provides that the court may "[o]rder such other relief as the court considers appropriate." See 71 O.S. §1-603(B)(3).

In the instant case, LeBoeuf does not address 71 O.S. §1-603(B)(3) in the context of this case. Specifically, LeBoeuf ignores this broad discretionary provision as providing the basis and source for the Department seeking and the Court amending the Order Appointing Receiver to make Mr. Jackson the receiver for the investors and creditors of Schubert and Associates. More importantly, LeBoeuf cites no legal authority that establishes or even suggests that this Court, acting under the broad discretionary authority provided by section 1-603(B)(3), is prohibited from appointing a receiver for the investors and creditors of Schubert and Associates to provide for a means of ancillary relief to Schubert's operation of a Ponzi scheme, which was perpetuated by fraudulent conveyances made to individuals including LeBoeuf. Rather, the broad discretionary authority of section 1-603(B)(3) of title 71 does provide the Department with the authority to seek and the Court authority to appoint Mr. Jackson as receiver for the investors and creditors of Schubert and Associates.

Under Oklahoma law, once a receiver is appointed he or she becomes an officer of the court. See Eckles, et al. v. Busey, 1941 OK 409, 132 P.2d 344, 346. In other words, a receiver is not the employee or agent of the individual, agency or entity who sought his or her appointment. See Hardman v. Whitney, 1936 OK 183, 52 P.2d 1065, 1066 (noting that a receiver derives his authority from the act of the court appointing him, and not from the act of the parties at whose suggestion or by whose consent his is appointed). Here, the Court has granted authority allowing the Receiver to bring an action against individuals who paid no money into Schubert and Associates, but nonetheless received money from Schubert and Associates. See Order Amending Authority of Receiver filed 12/10/04. Likewise, the Court has granted authority allowing the Receiver to bring an action against individuals who received more money from Schubert and Associates than they paid into Schubert and Associates. Id.

While there are no Oklahoma cases on point, courts in other jurisdictions have authorized and permitted a receiver to recover fictitious profits made by individuals in a Ponzi scheme pursuant to fraudulent conveyance statutes and the common law theory of unjust enrichment. In Wing v. Yager, the U.S. District Court for the District of Utah addressed a motion to dismiss a receiver's claims for fraudulent conveyance, unjust enrichment, and disgorgement of fictitious profits received through operation of a Ponzi scheme. See Wing v. Yager, 2003 WL 23354487 at \*1 (D. Utah 2003). There the court found that the receiver had been appointed by the court to marshal and preserve assets for the benefit of the receivership entity's creditors and investors. Id. at \*3. The District Court provided that it did not believe that its appointment of a Receiver for the benefit of investors defrauded by the company was at odds with Utah law on receivership. Id. The

Court held that because the Receiver was appointed for the benefit of any creditors or defrauded investors, he was in a position to assert equitable claims. Id. The Wing case is in accord with and supports this Court's December 10, 2004 Order Amending Authority of Receiver, as well as the Receiver asserting equitable claims against LeBoeuf pursuant to that Order.

Likewise, in Scholes v. Lehman, the 7th Circuit Court of Appeals addressed the appeal of summary judgment granted in favor of a receiver for corporations owned by an individual operating a Ponzi scheme and against the recipients of "profits" and charitable gifts from the scheme. See Scholes v. Lehman, 56 F.3d 750 (7th Cir. 1995). The receiver's cause of action against recipients of the funds from operation of the Ponzi scheme was brought pursuant to the Illinois law of fraudulent conveyances. Id. at 753. Among the Appellants against whom summary judgment had been granted were five religious organizations who had received charitable gifts that were funds or proceeds of the Ponzi scheme. Id. The Court found that the receiver had standing to assert claims against these individuals and sustained the summary judgment against the religious organizations. Id. at 755, 763. Furthermore, the 7th Circuit determined that the action by the receiver was more efficient and practical than the alternatives of multiple lawsuits brought by defrauded individuals and creditors, a class action suit, or an adversary action in bankruptcy court. Id. at 755. The same reasoning applies in the instant case and supports the Court entering the December 10, 2004 Order Amending Authority of Receiver.

LeBoeuf relies on the United States District Court for the District of Colorado case of Johnson v. Studholme to support his argument that the Receiver does not have

standing to sue them in spite of this Court's December 10, 2004 Order. 614 F. Supp. 1347 (D. Colo. 1985). The Johnson v. Studholme case is not binding precedent, and the facts are distinguishable from those in the instant case. First, the receiver in the Johnson v. Studholme case was appointed receiver for two corporate entities and the one individual behind those entities. Id. at 1348. The receiver in that case was not appointed as receiver for the investors or creditors of those corporate entities, nor did the receiver allege that he was asserting claims on behalf of the investors or creditors. Id. The express appointment of Mr. Jackson as receiver for the investors and creditors of Schubert and Associates in the instant case is a critical distinguishing factor.

Second, there was no cause of action asserted in the Johnson case based on the Uniform Fraudulent Transfer Act or another fraudulent transfer statute because the State of Colorado did not adopt the Uniform Fraudulent Transfer Act until 1991. See C.R.S.A. §38-8-101 attached as *Exhibit K*. This is another, critical distinguishing factor from the instant case.

Finally, the U.S. District Court for the District of Colorado has itself addressed the non-binding nature of its 20-year old opinion in Johnson v. Studholme. In Lyons v. Jefferson Bank & Trust, the District Court stated as follows:

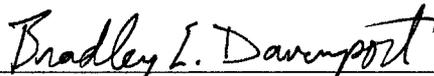
One court's balancing of the particular equities in a case is not binding or even necessarily persuasive to another court's balancing of the equities in the case before it. The facts in the case before me fit squarely within the constructive trust doctrine set out in *Allen*. **Indeed, the equities would be clear to any child on a school playground. If A steals a toy from B and gives it to C, then C must give it back to B. This is true even though A also stole some other toy from C.** See Lyons, 793 F. Supp. 989, 993 (D. Colo. 1992) (emphasis added).

Based on the foregoing facts and legal authority, there was and is authority for the Department to seek and the Court to enter an Order appointing a receiver, as well as entering the Order on December 10, 2004 appointing Mr. Jackson receiver over the investors and creditors of Schubert and Associates. Furthermore, the Court's Order expressly provides the Receiver with standing to bring actions on behalf of the creditors of Schubert and Associates. Therefore, the Court should deny LeBoeuf's Motion to Set Aside Order Appointing Receiver.

F. There are insufficient factual or legal grounds to transfer this case to the District Court of Oklahoma County.

In response and objection to LeBoeuf's alternate motion to transfer this case to the District Court of Oklahoma County and consolidate it with cases pending there, the Receiver adopts and incorporates as though fully set for herein that section of his previous *Motion to Strike, and Alternatively, Objection to LeBoeuf's Intervention of Party and Motion to Transfer and Consolidate this Matter*, including all arguments, facts, and legal authority cited therein and all exhibits attached thereto. Therefore, the Receiver respectfully requests that the Court deny LeBoeuf's Motion to Set Aside Order Appointing Receiver and his alternate Motion to Transfer and Consolidate.

Respectfully submitted,



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Douglas L. Jackson

**CERTIFICATE OF SERVICE**

I hereby certify that on the 12<sup>th</sup> day of August 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

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\_\_\_\_\_  
Bradley E. Davenport

**MARSHA SCHUBERT  
General Ledger**

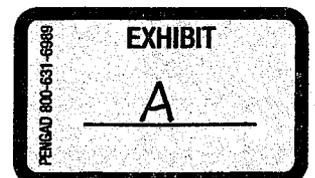
Date	Reference	T	Description	Beginning Balance	Debit	Credit	Period End Amount	YTD Balance
<b>L010801 Cash draw</b>				0.00				
04/08/04	1958	V	RICHARD LEBOEUF		4,859.00			
				April	4,859.00	0.00	4,859.00	
					<u>4,859.00</u>	<u>0.00</u>		<u>4,859.00</u>
<b>L010864 Transfers to investment firms</b>				0.00				
06/13/02	8959	V	RICHARD LEBOEUF- AXA MEDFORD SCHOOL DONATION PER MARSHA		2,000.00			
				June	2,000.00	0.00	2,000.00	
					<u>2,000.00</u>	<u>0.00</u>		<u>2,000.00</u>

Range of Periods Specified:

Total Profit/(Loss) (6,859.00)

Number of Transactions 2

The General Ledger is in balance 0.00



**MARSHA SCHUBERT**  
**ACTIVITY REGARDING RICHARD LE BOUIF**

	<u>2004</u>	<u>2003</u>	<u>2002</u>	<u>2001</u>	<u>2000</u>	<u>2000-2004</u>
<b>MONEY OUT</b>						
Cash draw	4,859	0	0	0	0	4,859
Transfers to investment firms	0	0	2,000	0	0	2,000
	<u>4,859</u>	<u>0</u>	<u>2,000</u>	<u>0</u>	<u>0</u>	<u>6,859</u>
<b>NET POSITION SHORT (LONG)</b>	<u>\$ (4,859)</u>	<u>\$ 0</u>	<u>\$ (2,000)</u>	<u>\$ 0</u>	<u>\$ 0</u>	<u>\$ (6,859)</u>

IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

Oklahoma Department of Securities )  
*ex rel.* Irving L. Faught, )  
Administrator; and )  
Douglas L. Jackson, in his capacity )  
as the court appointed receiver )  
for the investors and creditors of )  
Schubert and Associates )  
and for the assets of Marsha Schubert, )  
individually, and doing business as )  
Schubert and Associates, and )  
for Schubert and Associates, )

Plaintiffs, )

v. )

Robert W. Mathews, Marvin L. Wilcox, )  
Pamela J. Wilcox, Detria J. Owens, )  
Kathleen Gibson, Sheryl Mercer, )  
Frank Ward, Alice Sue Ward, Ben J. Allen, )  
Sharon A. Allen, Michael Rogers, )  
Bob E. Hudson, Wade Toepfer, Janice Fagg, )  
Edward G. Stanton, Kenneth LaRue, )  
Ella Carr, Martin W. Mathews, )  
Beth Armer, *individually, and as trustee* )  
*for the Beth Armer Revocable Trust,* )  
Shanna Kinslow, Roy E. Landwehr, )  
Vicki L. Landwehr, Scott A. Wilcox, )  
Ryan E. Landwehr, Lindsay Landwehr, )  
John Pumphrey, Carolyn Pumphrey, )  
Justin R. Tarrant, Jeffrey L. Wilcox, )  
Jacquelyn Bounds, Steven R. Espolt, )  
Phillip Yenzer, Glenda Yenzer, )  
Loyd R. Jones, Richard Brandon Schubert )  
Hillary Michelle Schubert, Garrett Lee )  
Schubert, Jack D. Simpson, Sue J. Simpson, )  
Robert J. Owens, Chad Johnson, )  
Sonny Harmon, Rodney J. Martin, )  
Wanda Martin, Neil Sheehan, K. R. LaRue, )  
Dana LaRue, Kenneth Young, )  
Leslie A. Young, Alexandra Young, )  
Dean Cue, Claudette Cue, Theresa Pittman, )  
Daniel Jackson, Crystal Jackson, )  
Jerald Wayne Drake, Regina Kraus, )

CJ-2005-3796-1

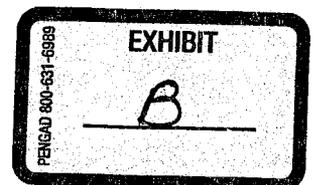
FILED IN THE DISTRICT COURT  
OKLAHOMA COUNTY, OKLA.

Case No. CJ-

MAY 11 2005

PATRICIA PRESLEY, COURT CLERK

By \_\_\_\_\_  
Deputy



Lance E. Berry, Robert E. Proctor, *if living,* )  
*individually, and as trustee for the* )  
*Proctor Family Revocable Trust,* )  
*and if deceased, his unknown successors,* )  
 Bobbie Proctor, *individually, and as trustee* )  
*for the Proctor Family Revocable Trust,* )  
 Sandra K. Phillips, Elnora Viefhaus, )  
 Chester J. Weems, Becky Drake, )  
 Curtis R. Sanders, Paul Lec, )  
 R. Kurt Blair, Wendy B. Blair, )  
 Danny Gregory, Martha Gregory, )  
 Linda K. Jindra, Josephine Ward, )  
 Kerry Long, Raymond C. Laubach, )  
 Gary L. Scott, James W. Powell, )  
 Billie A. Vincent, Ted A. Payne, )  
 Joyce E. Payne, Sean Winn, )  
 Trey A. Roehrig, Robert Rains, )  
 Angela D. Ewers, Brenda L. Enos, )  
 Olin R. Rising, J. M. Miller, Willis Luber, )  
 Carol A. Lindley, Maudie L. Cook, )  
 Bill Harris, Rebecca Honeyman, )  
 Todd A. Ward, William Etheridge, )  
 Christopher LaRue, Viola M. Estes, )  
 Brian Reinhardt, Tonya Reinhardt, )  
 James Wyatt, Thelma Wyatt, Arthur Platt, )  
 Bette McClure, Phillip Matthews, )  
 Brad Pollard, Allen Griffith, Linda Elliott, )  
 Linda Stewart, Chelsea Venable, )  
 Gayle Venable, Jamie Walker Glover, )  
 Richard LeBoeuf, E. E. Tackett, )  
 Timothy W. Rains, Krista Rains, )  
 Michael L. Malloy, Renyssa Wines, )  
 Mike Bostick, Don Poindexter, )  
 Anita Tarralbo, Kirsten Allard, )  
 Mike Richey, Shawna Allen, )  
 Timothy Jackson, Julia Jackson, )  
 Betty Lamb, Bill McCutchen, )  
 Brandi Pollard, Craig Simmons, )  
 Billy D. Horn, Jack McNally, Laura Payne, )  
 Manuel Segura, Kenneth R. Williams, )  
 Bertha L. Cooper, Wes Price, )  
 Tricia Price, Tawnya Merchant, )  
 Margaret Hooley, Janet L. Lawhon, )  
 Mary Frates, Bob Prestridge, Jr., )  
 Gerald D. Knight, Jim Copcland, )  
 Monte Phillips, Vincent H. Scott, )  
 Tracy Tarrant, Ellen Clay Benner, )

Brian Owens, Lloyd Avcry, Denise Meloy, )  
Gary L. Bounds, Donald D. Hall, )  
Kevin L. Carnes, Cecil Williams, )  
Jeffrey Palmer, Mark Richards, )  
Melinda Hobbs, Jodi Sharp, )  
and Beverly Kegin, )  
Defendants Solely For )  
Purposes of Equitable Relief. )

**PETITION**

Plaintiffs, Oklahoma Department of Securities, *ex rel.* Irving L. Faught, Administrator (Department), and Douglas L. Jackson, in his capacity as court appointed receiver for the investors and creditors of Schubert and Associates and for the assets of Marsha Schubert and Schubert and Associates (Receiver), allege and state as follows:

**OVERVIEW**

1. On October 14, 2004, the Department filed suit against Marsha Schubert, individually and doing business as Schubert and Associates (Marsha Schubert), and Schubert and Associates in the District Court of Logan County, State of Oklahoma, 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 (1991 & Supp. 2003) (Logan County Suit). *See Exhibit 1.* Specifically, the Department alleged that Marsha Schubert and Schubert and Associates offered and sold unregistered securities, failed to register as agents and employed unregistered agents, and perpetrated fraud in connection with the offer, sale, or purchase of securities.

2. On October 14, 2004, the Logan County District Court appointed Douglas L. Jackson as Receiver for the assets of Marsha Schubert and Schubert and Associates. *See Exhibit 2.* On December 10, 2004, the Logan County District Court amended the order appointing receiver providing that Douglas L. Jackson be the Receiver for the investors and creditors of

## EXHIBIT B

NAME	MONEY IN	MONEY OUT	BALANCE
Allard, Kirsten		\$ 5,000	\$ (5,000)
Allen, Ben & Sharon	\$ 140,000	\$ 310,899	\$ (170,899)
Allen, Shawna		\$ 4,455	\$ (4,455)
Allison, Sondra	\$ 10,000	\$ 18,700	\$ (8,700)
Anderson, Sabrina		\$ 1,000	\$ (1,000)
Armer, Beth	\$ 75,892	\$ 151,169	\$ (75,277)
Avery, Lloyd		\$ 1,117	\$ (1,117)
Bengs, Frank		\$ 2,500	\$ (2,500)
Benner, Ellen Clay		\$ 1,345	\$ (1,345)
Berry, Lance	\$ 45,000	\$ 78,640	\$ (33,640)
Blair, Kurt		\$ 24,500	\$ (24,500)
Bostick, Mike		\$ 5,860	\$ (5,860)
Bounds, Garry	\$ 15,000	\$ 16,065	\$ (1,065)
Bounds, Jackie	\$ 31,000	\$ 75,723	\$ (44,723)
Bredy, Brandon		\$ 2,601	\$ (2,601)
Bredy, Brock		\$ 2,601	\$ (2,601)
Butts, Richard & Kayla		\$ 1,600	\$ (1,600)
Carnes, Kevin		\$ 1,010	\$ (1,010)
Carr, Ella		\$ 99,051	\$ (99,051)
Choat, Rena		\$ 7,468	\$ (7,468)
Clark, Karlee		\$ 110	\$ (110)
Coker, Lance		\$ 1,500	\$ (1,500)
Coker, Phil		\$ 10,000	\$ (10,000)
Collier, Lela		\$ 2,600	\$ (2,600)
Cook, Maude		\$ 11,000	\$ (11,000)
Coon, James		\$ 2,500	\$ (2,500)
Cooper, Bertha		\$ 13,000	\$ (13,000)
Copeland, Jim		\$ 1,510	\$ (1,510)
Cue, Dean & Claudette		\$ 31,448	\$ (31,448)
Dellinger, Bryan		\$ 2,000	\$ (2,000)
Drake, Becky		\$ 25,870	\$ (25,870)
Drake, Jerald Wayne		\$ 30,045	\$ (30,045)
Elliott, Linda	\$ 25,000	\$ 32,157	\$ (7,157)
Enos, Brenda & James Welch		\$ 21,181	\$ (21,181)
Espolt, Steve		\$ 44,510	\$ (44,510)
Estes, Viola		\$ 9,010	\$ (9,010)
Ethridge, William(Jim) & Betty		\$ 9,163	\$ (9,163)
Ewers, Angela		\$ 12,860	\$ (12,860)
Fagg, Jan	\$ 76,805	\$ 193,380	\$ (116,575)
Frates, Mary		\$ 1,930	\$ (1,930)
Gallaher, Hazel		\$ 81	\$ (81)
Garner, Bill		\$ 135	\$ (135)
George, Wilma		\$ 11,736	\$ (11,736)
Gibson, Kathleen	\$ 776,341	\$ 1,088,846	\$ (312,505)
Glover, Jamie Walker		\$ 6,920	\$ (6,920)
Grabow, Bud		\$ 10,000	\$ (10,000)
Grabow, Regina		\$ 22,148	\$ (22,148)
Gregory, Danny & Martha		\$ 23,997	\$ (23,997)

Griffith, Allen		\$	7,530	\$	(7,530)	
Hall, Donald	\$	20,000	\$	21,040	\$	(1,040)
Hanks, CJ			\$	140	\$	(140)
Hanks, Lelia			\$	116	\$	(116)
Harmon, Melvin (Sonny)			\$	35,039	\$	(35,039)
Harris, Bill			\$	10,300	\$	(10,300)
Hart, Aaron & Connie			\$	4,000	\$	(4,000)
Hobbs, Melinda			\$	344	\$	(344)
Honeyman, Becky	\$	20,000	\$	30,000	\$	(10,000)
Hooley, Margaret			\$	2,045	\$	(2,045)
Horn, Billy & Jamay			\$	3,124	\$	(3,124)
Hudson, Bob	\$	30,000	\$	190,118	\$	(160,118)
Jackson, Krista	\$	10,000	\$	41,120	\$	(31,120)
Jackson, Tim & Julia			\$	4,110	\$	(4,110)
Jindra, Linda			\$	21,041	\$	(21,041)
Johnson, Chad			\$	35,200	\$	(35,200)
Johnson, David			\$	2,500	\$	(2,500)
Johnson, Dwayne & Segi			\$	6,154	\$	(6,154)
Jones, Loyd			\$	43,097	\$	(43,097)
Kadavy, Kent			\$	41,126	\$	(41,126)
Kegin, Joe & Beverly			\$	241	\$	(241)
Kinslow, Shanna			\$	62,792	\$	(62,792)
Klopfenstien, Floyd			\$	410	\$	(410)
Knight, Gerald			\$	8,776	\$	(8,776)
Krause, Regina			\$	30,000	\$	(30,000)
Krittenbrink, Jason	\$	1,000	\$	4,658	\$	(3,658)
Lamb, Betty			\$	4,000	\$	(4,000)
Landwehr, Lindsay			\$	4,300	\$	(4,300)
Landwehr, Roy & Vicki	\$	1,000	\$	60,030	\$	(59,030)
Landwehr, Ryan			\$	53,958	\$	(53,958)
Larue, Chris			\$	9,038	\$	(9,038)
Larue, Ken	\$	9,000	\$	109,331	\$	(100,331)
Larue, KR & Dana			\$	31,646	\$	(31,646)
Laubach, Raymond			\$	18,346	\$	(18,346)
Lawhorn, Janet			\$	2,000	\$	(2,000)
Le Bouif, Richard			\$	6,859	\$	(6,859)
Lee, Andrew			\$	750	\$	(750)
Lee, Paul	\$	15,000	\$	40,000	\$	(25,000)
Lindley, Carol			\$	11,010	\$	(11,010)
Long, Steve & Carrie			\$	19,310	\$	(19,310)
Lovell, Harold & Roselea			\$	995	\$	(995)
Luber, Willis			\$	11,415	\$	(11,415)
Malloy, Mike			\$	6,000	\$	(6,000)
Martin, Mark			\$	1,000	\$	(1,000)
Martin, Rod & Wanda	\$	38,143	\$	72,185	\$	(34,042)
Masquelier, Robert			\$	2,000	\$	(2,000)
Mathews, Bob	\$	77,853	\$	616,080	\$	(538,227)
Mathews, Marty			\$	90,510	\$	(90,510)
Mathews, Philip			\$	8,010	\$	(8,010)
McClure, Betty			\$	8,118	\$	(8,118)
McCutcher, Bill			\$	3,500	\$	(3,500)
McDaniel, Lacy			\$	910	\$	(910)

McNally, Jack		\$	3,000	\$	(3,000)	
McQueen, Mona		\$	188	\$	(188)	
Meloy, Dennis	\$	8,095	\$	9,200	\$	(1,105)
Mercer, Sheryl	\$	20,000	\$	254,050	\$	(234,050)
Merchant, Tawyna			\$	2,295	\$	(2,295)
Millarr, Debra	\$	60,000	\$	63,890	\$	(3,890)
Miller, JM			\$	11,497	\$	(11,497)
Nicholas, Robin			\$	4,294	\$	(4,294)
Nowell, Eddie			\$	7,257	\$	(7,257)
Owens, Brian			\$	1,179	\$	(1,179)
Owens, Detria	\$	229,845	\$	631,559	\$	(401,714)
Owens, Robert Jr	\$	27,500	\$	63,651	\$	(36,151)
Owndey, Charles	\$	12,500	\$	20,000	\$	(7,500)
Palmer, Jeff			\$	510	\$	(510)
Payne, Laura			\$	3,000	\$	(3,000)
Payne, Ted & Joyce			\$	16,675	\$	(16,675)
Phillips, Monte			\$	1,500	\$	(1,500)
Phillips, Sandy	\$	30,000	\$	57,491	\$	(27,491)
Pittman, Teresa			\$	31,396	\$	(31,396)
Platt, Art & Yvonne			\$	35,757	\$	(35,757)
Poindexter, Don			\$	5,400	\$	(5,400)
Pollard, Barry & Roxanne	\$	59,110	\$	432,255	\$	(373,145)
Pollard, Brad & Lori			\$	7,909	\$	(7,909)
Pollard, Brandi			\$	3,500	\$	(3,500)
Powell, James (Jamie)			\$	17,599	\$	(17,599)
Prestridge, Bob			\$	1,670	\$	(1,670)
Price, Wes & Tricia			\$	2,500	\$	(2,500)
Proctor, Rob & Bobbie			\$	27,843	\$	(27,843)
Pumphrey, John & Carolyn			\$	50,695	\$	(50,695)
Pumphrey, John & Janet			\$	900	\$	(900)
Rains, Rob			\$	16,200	\$	(16,200)
Rains, Tim & Crystal			\$	6,465	\$	(6,465)
Randall, Charles & Linda			\$	92,287	\$	(92,287)
Reid, Leon			\$	2,400	\$	(2,400)
Reinhardt, Brian & Tonya			\$	9,010	\$	(9,010)
Richards, Mark			\$	350	\$	(350)
Richey, Mike & Rhonda			\$	4,900	\$	(4,900)
Rising, Olin			\$	11,893	\$	(11,893)
Roehring, Trey			\$	16,500	\$	(16,500)
Rogers, Mike (MKR Prop)			\$	165,993	\$	(165,993)
Sanders, Curtis & Martha			\$	25,728	\$	(25,728)
Scott, Gary			\$	18,000	\$	(18,000)
Scott, Vincent			\$	1,465	\$	(1,465)
Segura, Manuel			\$	3,000	\$	(3,000)
Sharp, Jodie			\$	321	\$	(321)
Shechan, Neil			\$	32,200	\$	(32,200)
Simmons, Craig			\$	3,500	\$	(3,500)
Simpson, Jack & Sue			\$	41,513	\$	(41,513)
Smith, Charles			\$	5,000	\$	(5,000)
Sollars, Janet			\$	5,000	\$	(5,000)
Stanton, Ed			\$	104,029	\$	(104,029)
Stewart, Kathryn			\$	4,810	\$	(4,810)

Stewart, Linda		\$	7,000	\$	(7,000)	
Swanson, Richard		\$	4,000	\$	(4,000)	
Tackett, E E Trust		\$	6,550	\$	(6,550)	
Tarralbo, Anita		\$	5,010	\$	(5,010)	
Tarrant, Justin		\$	49,939	\$	(49,939)	
Tarrant, Tracy		\$	1,401	\$	(1,401)	
Thomas, David		\$	101,306	\$	(101,306)	
Toepfer, Wade		\$	127,909	\$	(127,909)	
Venable, Dub & Gayle		\$	6,970	\$	(6,970)	
Viefhaus, Elnora		\$	27,264	\$	(27,264)	
Vincent, Billy		\$	17,000	\$	(17,000)	
Ward, Frank & Alice Sue		\$	227,555	\$	(227,555)	
Ward, Josephine		\$	20,510	\$	(20,510)	
Ward, Todd		\$	10,000	\$	(10,000)	
Watson, Shanee		\$	70	\$	(70)	
Weems, Chester & Velma		\$	27,000	\$	(27,000)	
Welch, Dillion		\$	64	\$	(64)	
Welch, Jarred		\$	147	\$	(147)	
Welch, Tosha		\$	138	\$	(138)	
Wilcox, Jeff		\$	46,070	\$	(46,070)	
Wilcox, Marvin & Pamela	\$	96,020	\$	598,125	\$	(502,105)
Wilcox, Scott		\$	58,496	\$	(58,496)	
Williams, Cecil		\$	672	\$	(672)	
Williams, Ken		\$	3,000	\$	(3,000)	
Wines, Renayssa		\$	6,000	\$	(6,000)	
Winn, Sean		\$	16,594	\$	(16,594)	
Wyatt, James & Thelda		\$	8,727	\$	(8,727)	
Yenzer, Phillip & Glenda		\$	43,533	\$	(43,533)	
Young, Ken & Leslie & Alex	\$	50,000	\$	81,591	\$	(31,591)
				\$	(6,059,024)	

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Logan 10/14/04

IN THE DISTRICT COURT OF LOGAN COUNTY  
STATE OF OKLAHOMA

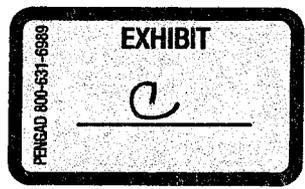
Oklahoma Department of Securities )  
ex rel. Irving L. Faught, )  
Administrator, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
Marsha Schubert, an individual and )  
dba Schubert and Associates; )  
Richard L. Schubert, an individual and )  
dba Schubert and Associates; and )  
Schubert and Associates, )  
an unincorporated association, )  
 )  
Defendants. )

Case No. CJ 2004-256

**TEMPORARY RESTRAINING ORDER, ORDER APPOINTING RECEIVER,  
ORDER FREEZING ASSETS AND ORDER FOR ACCOUNTING**

This matter came on for hearing this 14<sup>th</sup> day of October, 2004, before the undersigned Judge of the District Court in and for Logan County, State of Oklahoma, upon the verified Petition for Permanent Injunction and Other Equitable Relief of the Plaintiff ("Petition") and the application therein for a temporary restraining order, an order freezing assets, an order for an accounting, and an order appointing a receiver 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).

It appears to this Court from the facts alleged in Plaintiff's verified Petition that Plaintiff is entitled to the relief prayed for; it further appears that the public will suffer irreparable damage and injury unless the Defendants, their officers, directors, agents, and other individuals acting on their behalf and under their direction and control are restrained forthwith and without notice.



institution or securities brokerage firm. It shall also apply to accounts in the name of any individuals or entities controlled by Defendants or over which Defendants have signatory or other designated authority, if the funds are derived to any extent from the activities alleged in Plaintiff's Petition. All banks or other depository or financial institutions or securities brokerage firms served with a copy of this order shall cooperate with the Department relating to implementation of this order, including imposing a freeze on all Assets, including accounts and funds, and producing records relating thereto. Facsimile transmission shall constitute service on the banks or other depository or financial institutions or securities brokerage firms.

IT IS FURTHER ORDERED that Douglas Jackson ("Receiver") be appointed as Receiver for Defendants. The Logan County Sheriff shall immediately install the Receiver at the place of business of Defendants. The Receiver is given directions and authority to accomplish the following with regard to Defendants:

1. to assume full control of Schubert and Associates by removing, as the Receiver deems necessary or advisable, any director, officer, independent contractor, employee, or agent of Schubert and Associates, including any Defendant, from control of, management of, or participation in the affairs of Schubert and Associates;
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 business Schubert and Associates 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 that will, in the judgment of the Receiver, be advisable or proper for the protection of the assets of Defendants; and

IT IS FURTHER ORDERED that a hearing is hereby set at 1:30 P.m. on the 15<sup>th</sup> day of November, 2004 before the Honorable Donald Worthington of Logan County District Court, Logan County Courthouse, Guthrie, Oklahoma, at which time the Defendants may seek the dissolution of this Temporary Restraining Order and the Plaintiff may seek a temporary injunction and other equitable relief.

THIS ORDER IS ENTERED this 14<sup>th</sup> day of October, 2004, at 3:28 P.m.

Jerry A. Bucher  
DISTRICT COURT JUDGE

I, REJEANIA ZMEK, Court Clerk for Logan County, Okla., hereby certify that the foregoing is a true, correct and complete copy of the instrument herewith set out as appears of record in the Court Clerk's Office of Logan County, Okla. this 8 day of Oct 2004.  
REJEANIA ZMEK, Court Clerk  
By [Signature] Deputy

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.

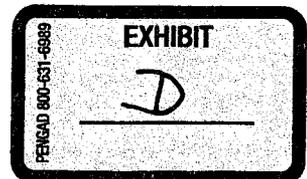
STATE OF OKLAHOMA  
LOGAN COUNTY, OK  
CLERK OF DISTRICT COURT  
2004 DEC 15 AM 10:10  
RECEIVED  
COURT CLERK

Case No. CJ-2004-256

APPLICATION BY RECEIVER FOR APPROVAL OF EMPLOYMENT  
OF ACCOUNTING FIRM

COMES NOW, Douglas L. Jackson, Receiver for Defendants Marsha Schubert, Richard Schubert and Schubert and Associates, and would show the Court the following:

1. Mr. Jackson was appointed Receiver by Order of this Court entered in the above-entitled case on October 14, 2004. Mr. Jackson has qualified to act as Receiver and filed his Oath of Receiver on October 18, 2004.
2. The Order appointing Mr. Jackson as Receiver contained a provision authorizing him to retain and employ attorneys, accountants, computer consultants, and other persons that he deems advisable and 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. See October 14, 2004 Order at p. 4, ¶5.
3. The Order appointing Mr. Jackson as Receiver authorized him to immediately retain or employ attorneys, accountants or other persons, all subject to filing as soon as practical with this Court an Application seeking approval of the employment.



4. The Receiver has employed the accounting firm of Baird, Kurtz & Dobson, LLP ("BKD") and believes it is necessary to continue to have an accounting firm employed to assist in the review and assessment of Defendants' investor records and bank records.

5. The Receiver seeks the Court's authorization to employ the accounting firm of BKD as accountants for the receivership. BKD is a well-established, regional accounting firm. Patrick S. Donehue and Don Wingler will be the lead service providers for this project. BKD understands and agrees to accept such amount on account of its fees as may be awarded therefor by this Court. A copy of BKD's engagement letter is attached as Exhibit "A."

WHEREFORE, Receiver requests the Court approve his employment of the accounting firm of Baird, Kurtz & Dobson, LLP of Enid, Oklahoma as accountants to assist Receiver in the review and assessment of Defendants' investor records and bank records, as well as generally assisting the Receiver in unraveling Defendants' scheme and tracing assets on behalf of the Receivership.

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 Court-Appointed Receiver  
Douglas L. Jackson

CERTIFICATE OF SERVICE

I hereby certify that on the 13<sup>th</sup> day of December 2004, I mailed a true and correct copy of the above and foregoing instrument, postage pre-paid to:

Gerri Stuckey  
Amanda Cornmesser  
Oklahoma Department of Securities  
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 & Associates,  
Schubert & 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

**COPY**



Continental Center South  
205 W. Maple, Suite 200  
Enid, Oklahoma 73701  
580 237-3300 Fax 580 234-5046

bkd.com

November 16, 2004

Mr. Doug Jackson  
Gungoll, Jackson, Collins, Box & Devoll, P.C.  
P. O. Box 1549  
Enid, OK 73702-1549

Dear Mr. Jackson:

We are pleased to confirm the arrangements of our engagement and the nature of the services we will provide to Gungoll, Jackson, Collins, Box & Devoll, P.C.

**OUR SERVICES AND RESPONSIBILITIES**

We will provide fraud investigation services for Gungoll, Jackson, Collins, Box & Devoll, P.C. as receiver for the District Court in the Securities Fraud Case of Marsha and Richard L. Schubert in connection with a security fraud violation alleged at Crescent, Oklahoma. We will work with you to develop the scope and nature of specific procedures to be performed.

There can be no assurance that such procedures will identify fraud that may exist. Therefore, at the conclusion of our engagement, we will request representation from you that the procedures performed are sufficient for your purposes.

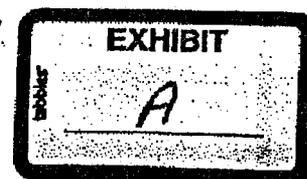
At the conclusion of our work, we will present our findings either orally or through a written report. We have been retained to provide fraud investigation services only; however, we understand and accept that we may be requested to furnish testimony at trial and will prepare accordingly.

**Solutions  
for  
Success**

We will not update our report for or disclose any event or circumstances after the date of our report.

If for any reason we are not able to complete our fraud investigation, we may decline to issue a report as a result of this engagement.

Patrick S. Donehue and Don Wingler will be the lead service providers for this engagement.



A member of  
Moore Rowland  
International 

Mr. Doug Jackson  
Gungoll, Jackson, Collins, Box & Devoll, P.C.  
November 16, 2004  
Page 2

### ENGAGEMENT FEES

Our fees will be based on time expended plus charges for travel, long-distance telephone, copies, etc. We will issue progress billings during the course of our engagement and our statements are due when received. Due to the nature of our engagement, we are unable to provide a maximum fee range for our services.

Our invoices are due within 30 days. If our invoices for this or any other engagement you may have with BKD are not paid when due, we may suspend or terminate our services for this or any other engagement. In the event our work is suspended or terminated as a result of nonpayment, you agree we will not be responsible for any consequences to you.

### OTHER ENGAGEMENT MATTERS AND LIMITATIONS

During the course of our engagement, it may be necessary for us to prepare written reports that support our conclusions. These reports are not to be published or used in any other manner other than noted above without the written consent of BKD.

As of the date of this letter, we are not aware of any potential conflicts of interest with any party except as separately disclosed to you in the attached acknowledgement. If we determine that any additional potential conflict of interest has arisen, we will immediately advise you so that a determination may be made by both of us as to whether we should continue to be engaged. If services are terminated as a result of a conflict of interest, or for any other reason, you agree to pay us for time expended to date plus charges for travel, long-distance telephone, copies, etc.

We will use and rely on information furnished by you and on information available from generally recognized public sources.

Our workpapers and documentation retained in any form of media for this engagement are the property of BKD. We can be compelled to provide information under legal process. In addition, we may be requested by regulatory or enforcement bodies to make certain workpapers available to them pursuant to authority granted by law or regulation. You agree that we have no legal responsibility to you in the event we provide such documents or information pursuant to legal process.

You agree to indemnify and hold harmless BKD and its personnel from any claims, liabilities, costs and expenses relating to our services under this agreement, except to the extent determined to have resulted from the intentional or deliberate misconduct of BKD personnel.

Any liability of BKD and its personnel to you is limited to the amount of the fee you paid for this engagement as liquidated damages.

Mr. Doug Jackson  
Gungoll, Jackson, Collins, Box & Devoll, P.C.  
November 16, 2004  
Page 3

You agree that any dispute regarding this engagement will, prior to resorting to litigation, be submitted to mediation upon written request by either party. Both parties agree to try in good faith to settle the dispute in mediation. The American Arbitration Association will administer any such mediation in accordance with its Commercial Mediation Rules. The results of the mediation proceeding shall be binding only if each of us agrees to be bound. We will share any costs of mediation proceedings equally.

If any provision of this agreement is declared invalid or unenforceable, no other provision of this agreement is affected and all other provisions remain in full force and effect.

This engagement letter represents the entire agreement regarding the services described herein and supersedes all prior negotiations, proposals, representations or agreements, written or oral, regarding these services. It shall be binding on heirs, successors and assigns of you and BKD.

BKD is a registered limited liability partnership under Missouri law. Under applicable professional standards, partners of BKD, LLP have the same responsibilities as do partners in a general accounting and consulting partnership with respect to conformance by themselves and other professionals in BKD with their professional and ethical obligations. However, unlike the partners in a general partnership, the partners in a registered limited liability partnership do not have individual civil liability, directly or indirectly, including by way of indemnification, contribution, assessment or otherwise, for any debts, obligations or liabilities of or chargeable to the registered limited liability partnership or each other, whether arising in tort, contract or otherwise.

We will be pleased to discuss this letter with you and look forward to the opportunity of serving you. If the above arrangements are acceptable to you, please sign the enclosed copy of this letter and return it to us.

*BKD, LLP*

BKD, LLP

PSD/ELH/adg

The services and arrangements described in this letter are in accordance with our understanding and are acceptable to us.

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

BY

*[Signature]*  
(Name & Title)

DATE

*12/10/04*

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.

STATE OF OKLAHOMA  
LOGAN COUNTY SS  
FILED FOR RECORD

2005 JAN 14 PM 2:20

REJEANNA ZIMM  
COURT CLERK

BY: \_\_\_\_\_ DEPUTY

Case No. CJ-2004-256

ORDER

NOW on this 14 day of January 2005, the Receiver's Application for Approval of Employment of Accounting Firm is before the Court for consideration.

Based upon the Receiver's Application and the Court having reviewed all pleadings and submissions of the parties, the Court finds that the Application for Approval of Employment of Accounting Firm should be and is hereby granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Receiver's Application of Approval of Employment of Accounting Firm is granted, and Receiver is authorized to employ the accounting firm of Baird, Kurtz & Dobson, LLP of Enid, Oklahoma as accountants to represent and assist Receiver in reviewing the Defendants' investor records and bank records, as well as assisting Receiver in tracing assets on behalf of the Receivership pursuant to the terms set out in the Application and attached engagement letter.

Dated: 1/14/05

DONALD L. WORTHINGTON

Donald Worthington  
Judge of the District Court

Date: 1-17-05

cc:  Willie Baker  
 Mack Martin  
 Gerri Stuekey/Amanda Corumesser  
 Doug Jackson  
 Handwritten initials

Approved as to Form:



---

Bradley E. Davenport, OBA#18687  
GUNGOLL, JACKSON, COLLINS, BOX & DEVOLL, P.C.  
Post Office Box 1549  
Enid, Oklahoma 73702-1549  
(580) 234-0436 phone/(580) 233-1284 facsimile  
Attorneys for Court-Appointed Receiver for Defendants

**COPY**



Continental Center South  
205 W. Maple, Suite 200  
Enid, Oklahoma 73701  
580 237-3300 Fax 580 234-5046

bkd.com

November 16, 2004

Mr. Doug Jackson  
Gungoll, Jackson, Collins, Box & Devoll, P.C.  
P. O. Box 1549  
Enid, OK 73702-1549

Dear Mr. Jackson:

We are pleased to confirm the arrangements of our engagement and the nature of the services we will provide to Gungoll, Jackson, Collins, Box & Devoll, P.C.

**OUR SERVICES AND RESPONSIBILITIES**

We will provide fraud investigation services for Gungoll, Jackson, Collins, Box & Devoll, P.C. as receiver for the District Court in the Securities Fraud Case of Marsha and Richard L. Schubert in connection with a security fraud violation alleged at Crescent, Oklahoma. We will work with you to develop the scope and nature of specific procedures to be performed.

There can be no assurance that such procedures will identify fraud that may exist. Therefore, at the conclusion of our engagement, we will request representation from you that the procedures performed are sufficient for your purposes.

At the conclusion of our work, we will present our findings either orally or through a written report. We have been retained to provide fraud investigation services only; however, we understand and accept that we may be requested to furnish testimony at trial and will prepare accordingly.

**Solutions  
for  
Success**

We will not update our report for or disclose any event or circumstances after the date of our report.

If for any reason we are not able to complete our fraud investigation, we may decline to issue a report as a result of this engagement.

Patrick S. Donehue and Don Wingler will be the lead service providers for this engagement.

Mr. Doug Jackson  
Gungoll, Jackson, Collins, Box & Devoll, P.C.  
November 16, 2004  
Page 2

### ENGAGEMENT FEES

Our fees will be based on time expended plus charges for travel, long-distance telephone, copies, etc. We will issue progress billings during the course of our engagement and our statements are due when received. Due to the nature of our engagement, we are unable to provide a maximum fee range for our services.

Our invoices are due within 30 days. If our invoices for this or any other engagement you may have with BKD are not paid when due, we may suspend or terminate our services for this or any other engagement. In the event our work is suspended or terminated as a result of nonpayment, you agree we will not be responsible for any consequences to you.

### OTHER ENGAGEMENT MATTERS AND LIMITATIONS

During the course of our engagement, it may be necessary for us to prepare written reports that support our conclusions. These reports are not to be published or used in any other manner other than noted above without the written consent of BKD.

As of the date of this letter, we are not aware of any potential conflicts of interest with any party except as separately disclosed to you in the attached acknowledgement. If we determine that any additional potential conflict of interest has arisen, we will immediately advise you so that a determination may be made by both of us as to whether we should continue to be engaged. If services are terminated as a result of a conflict of interest, or for any other reason, you agree to pay us for time expended to date plus charges for travel, long-distance telephone, copies, etc.

We will use and rely on information furnished by you and on information available from generally recognized public sources.

Our workpapers and documentation retained in any form of media for this engagement are the property of BKD. We can be compelled to provide information under legal process. In addition, we may be requested by regulatory or enforcement bodies to make certain workpapers available to them pursuant to authority granted by law or regulation. You agree that we have no legal responsibility to you in the event we provide such documents or information pursuant to legal process.

You agree to indemnify and hold harmless BKD and its personnel from any claims, liabilities, costs and expenses relating to our services under this agreement, except to the extent determined to have resulted from the intentional or deliberate misconduct of BKD personnel.

Any liability of BKD and its personnel to you is limited to the amount of the fee you paid for this engagement as liquidated damages.

Mr. Doug Jackson  
Gungoll, Jackson, Collins, Box & Devoll, P.C.  
November 16, 2004  
Page 3

You agree that any dispute regarding this engagement will, prior to resorting to litigation, be submitted to mediation upon written request by either party. Both parties agree to try in good faith to settle the dispute in mediation. The American Arbitration Association will administer any such mediation in accordance with its Commercial Mediation Rules. The results of the mediation proceeding shall be binding only if each of us agrees to be bound. We will share any costs of mediation proceedings equally.

If any provision of this agreement is declared invalid or unenforceable, no other provision of this agreement is affected and all other provisions remain in full force and effect.

This engagement letter represents the entire agreement regarding the services described herein and supersedes all prior negotiations, proposals, representations or agreements, written or oral, regarding these services. It shall be binding on heirs, successors and assigns of you and BKD.

BKD is a registered limited liability partnership under Missouri law. Under applicable professional standards, partners of **BKD, LLP** have the same responsibilities as do partners in a general accounting and consulting partnership with respect to conformance by themselves and other professionals in BKD with their professional and ethical obligations. However, unlike the partners in a general partnership, the partners in a registered limited liability partnership do not have individual civil liability, directly or indirectly, including by way of indemnification, contribution, assessment or otherwise, for any debts, obligations or liabilities of or chargeable to the registered limited liability partnership or each other, whether arising in tort, contract or otherwise.

We will be pleased to discuss this letter with you and look forward to the opportunity of serving you. If the above arrangements are acceptable to you, please sign the enclosed copy of this letter and return it to us.

*BKD, LLP*

**BKD, LLP**

PSD/ELH/adg

The services and arrangements described in this letter are in accordance with our understanding and are acceptable to us.

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

BY

*Douglas Jackson*  
\_\_\_\_\_  
(Name & Title)

DATE

*12/10/04*  
\_\_\_\_\_

IN THE DISTRICT COURT OF LOGAN COUNTY,  
STATE OF OKLAHOMA

OKLAHOMA DEPARTMENT OF SECURITIES,  
*ex rel.*, IRVIN 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.

STATE OF OKLAHOMA  
LOGAN COUNTY  
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Case No. CJ-2004-256

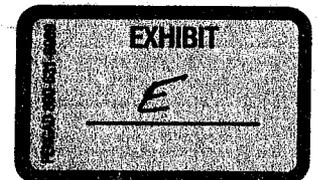
APPLICATION BY RECEIVER FOR APPROVAL OF  
EMPLOYMENT OF LEGAL COUNSEL

COMES NOW the Receiver, Douglas L. Jackson, for Defendants Marsha Schubert, Richard Schubert and Schubert and Associates, and would show the Court the following:

1. Mr. Jackson was appointed Receiver by Order of this Court entered in the above-entitled case on October 14, 2004. Mr. Jackson has qualified to act as Receiver and filed his Oath of Receiver on October 18, 2004.

2. The Order appointing Mr. Jackson as Receiver contained a provision authorizing him to retain and employ attorneys, accountants, computer consultants, and other persons as he deems advisable and 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. See October 14, 2004 Order at pg. 4, ¶5.

3. The Order appointing Mr. Jackson as Receiver authorized him to immediately retain or employ attorneys, accountants and other persons, all subject to filing as soon as practical with this Court an Application seeking approval of the employment.



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.

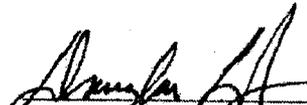
5. The Receiver seeks the Court's authorization to employ the law firm of Gungoll, Jackson, Collins, Box & Devoll, PC of Enid, Oklahoma as its legal counsel. Counsel is an AV rated law firm with significant experience in debtor and creditor legal work, including collection matters, and is well qualified 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 21<sup>st</sup> day of October 2004, I mailed a true and correct copy of the above and foregoing instrument, postage pre-paid to:

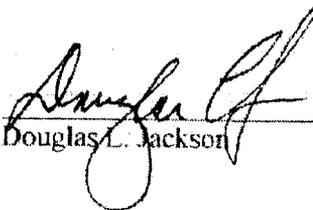
Oklahoma Department of Securities  
Attn: Irvin L. Faught  
First National Center, Suite 860  
120 N. Robinson  
Oklahoma City, OK 73102

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

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IN THE DISTRICT COURT OF LOGAN COUNTY,  
STATE OF OKLAHOMA

STATE OF OKLAHOMA  
LOGAN COUNTY SS:  
FILED FOR RECEPTION

NOV 15 PM 2:49

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

Plaintiff,

vs.

Case No. CJ-2004-256

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 the 15th day of November 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 THEREFORE 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: 11/15/04

DONALD L. WORTHINGTON

Donald Worthington  
Judge of the District Court

APPROVED AS TO FORM:



---

Douglas L. Jackson, OBA #4583  
323 W. Broadway - P O Box 1549  
Enid, OK 73701-1549  
Receiver for Defendants

---

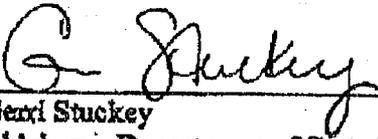
Irvin L. Faught  
Oklahoma Department of Securities  
First National Center, Suite 860  
120 N. Robinson  
Oklahoma City, OK 73102

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APPROVED AS TO FORM:

---

Douglas L. Jackson, OBA #4583  
323 W. Broadway - P O Box 1549  
Enid, OK 73701-1549  
Receiver for Defendants



---

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

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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,

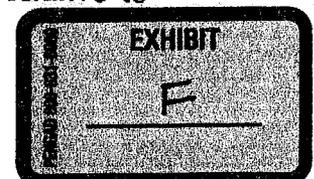
Defendants.

Case No. CJ-2004-256

APPLICATION OF RECEIVER FOR AUTHORITY  
TO PAY INTERIM ACCOUNTING FEES

COMES NOW the Receiver, Douglas L. Jackson, and makes Application to this Court for authority to pay interim accounting fees to Baird, Kurtz & Dobson, LLP (hereinafter "BKD"), and would show the Court as follows:

1. Pursuant to the Order of this Court entered on January 14, 2005, Receiver employed BKD as accountants to represent and assist Receiver in reviewing the Defendants' investor records and bank records, as well as assisting Receiver in tracing assets on behalf of the Receivership Estate.
2. The Order provided that the amount of the fee paid to Receiver's accountants would be determined by the terms of the BKD Engagement Letter attached to the Receiver's Application for Approval for Employment of Accounting Firm, submission of an Application for payment of fees, and approval of the fees by the Court.
3. To date, BKD employees have expended over 1,100 hours in and about the performance of duties assisting the Receiver and preparing a preliminary analysis relative to



money paid into and out of Schubert and Associates from January 1, 2000 through October 31, 2004, as is set forth in the statements of BKD attached hereto as Exhibit A.

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. As appears from BKD's statements, the accountants' efforts have resulted in a preliminary accounting relative to the Schubert Receivership Estate, which provides to the extent possible the sum of money lost and where the money went. This information is of tremendous importance to the Receiver and Receivership Estate, and will allow the Receiver to pursue recovery of substantial 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, \$97,756.00 as interim accounting fees.

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

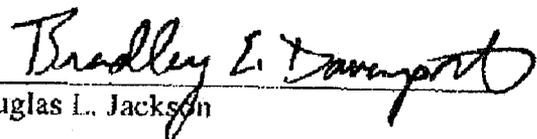
CERTIFICATE OF SERVICE

I hereby certify that on the 23 day of March 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 Commesser  
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

  
Douglas L. Jackson



Continental Center South  
205 West Maple, Suite 200  
Enid, OK 73701-4026  
580 237-3300 Fax 580 234-5046

BKD Tax ID#: 44-0160260

I N V O I C E

AMOUNT ENCLOSED	
\$	

MARSHA SCHUBERT  
DOUGLAS JACKSON  
GUNGOLL JACKSON COLLINS BOX & DEVOLL PC  
P O BOX 1549  
ENID OK 73702-1549

Date: 12/16/04  
Page: 1  
22135-057237

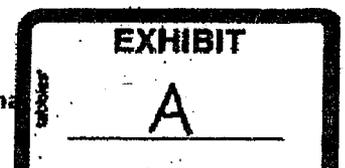
Return Top Portion With Payment

CONFERENCE WITH ATTORNEYS AND MARSHA SCHUBERT TO DISCUSS AVAILABILITY OF INFORMATION AND DETAILS OF PROCEDURES REQUIRED FOR ACCOUNTING TO RECEIVERSHIP.	3,069.00
PREPARATION OF ENGAGEMENT LETTER.	184.00
ACCOUNTING SERVICES DURING NOVEMBER, 2004.	158.00
CHARGES FOR MILEAGE AND POSTAGE.	92.00
INVOICE TOTAL	\$ 3,503.00
BALANCE DUE	\$ 3,503.00

Invoices are due upon receipt unless detailed in your engagement letter. A service charge is assessed on accounts 45 days past due.

*Thank you for your business!*

Fees charged for the preparation of income tax returns do not include services that may be required relative to any federal or state examination of a return.





Confidential Center South  
205 West Maple, Suite 200  
Enid, OK 73701-4026  
580 237-3300 Fax 580 234 5046

BKD Tax ID#: 44-0160260

I N V O I C E

AMOUNT ENCLOSED  
\$

MARSHA SCHUBERT  
DOUGLAS JACKSON  
GUNGOLL JACKSON COLLINS BOX & DEVOLL PC  
P O BOX 1549  
ENID OK 73702-1549

Date: 1/21/05  
Page: 1  
22135-067427

Return Top Portion With Payment

BALANCE FORWARD \$ 3,503.00

PROFESSIONAL SERVICES RENDERED FROM DECEMBER 1,  
2004 TO JANUARY 15, 2005 FOR 581.70 HOURS FOR  
THE FOLLOWING:

RESEARCH AND SET UP FOR QUICKBOOKS/CSA	
INPUT CHECKS AND DEPOSITS INTO QUICKBOOKS/CSA	
PREPARE LOAN ANALYSIS SPREADSHEET	
REVIEW AND SUPERVISION OF THE INPUTTING PERSONNEL	
CONFERENCE WITH MARSHA SCHUBERT	
ANALYZING FILES FROM OKLAHOMA SECURITIES COMM.	
ORGANIZE BANK STATEMENTS FOR THREE ACCOUNTS	
REVIEW SIX BANK ACCOUNTS FOR SPECIFIC RELATED PARTY TRANSACTIONS	49,930.00
CHARGES FOR COPIES, POSTAGE, FACSIMILES, MEALS MILEAGE, LODGING, TOLLS AND COMPUTER SOFTWARE.	1,393.00
INVOICE TOTAL	\$ 51,323.00
BALANCE DUE	\$ 54,826.00

Invoices are due upon receipt unless detailed in your engagement letter. A service charge is assessed on accounts 45 days past due.

Thank you for your business!

Fees charged for the preparation of income tax returns do not include services that may later be required relative to any federal or state examination of a return.

BKD, LLP  
Work in Process

Employee Name	Billing Rate	Time Period	Services Rendered	Hours	Amount
B HENDRICK	87	12/15/2004	Input Checks and Deposits into Quickbooks/CSA	22.00	1,914.00
B HENDRICK	87	12/31/2004	Input Checks and Deposits into Quickbooks/CSA	66.50	5,785.50
B HENDRICK	87	1/15/2005	Input Checks and Deposits into Quickbooks/CSA	48.50	4,219.50
B MILLER	68	12/31/2004	Input Checks and Deposits into Quickbooks/CSA	5.00	340.00
B MILLER	68	12/15/2004	Input Checks and Deposits into Quickbooks/CSA	7.75	527.00
C McFARLAND	60	1/15/2005	Input Checks and Deposits into Quickbooks/CSA	6.50	390.00
C McFARLAND	60	12/15/2004	Input Checks and Deposits into Quickbooks/CSA	3.00	180.00
C McFARLAND	60	12/15/2004	Input Checks and Deposits into Quickbooks/CSA	3.75	225.00
C McFARLAND	60	12/31/2004	Input Checks and Deposits into Quickbooks/CSA	16.00	960.00
D MACKIE	128	12/31/2004	Prepare loan and analysis spreadsheet	3.50	448.00
D MACKIE	128	12/31/2004	Input Checks and Deposits into Quickbooks/CSA	15.70	2,009.60
D MACKIE	128	1/15/2005	Input Checks and Deposits into Quickbooks/CSA	23.50	3,008.00
E SUESS	97	1/15/2005	Input Checks and Deposits into Quickbooks/CSA	16.75	1,624.75
J CRAVENS	87	12/31/2004	Input Checks and Deposits into Quickbooks/CSA	19.50	1,696.50
J HUCKINS	61	12/15/2004	Research and Setup for Quickbooks/CSA	6.75	413.75
J HUCKINS	61	12/15/2004	Review and Supervision	28.75	1,753.75
J HUCKINS	61	12/15/2004	Conference with Marsha Schubert	0.50	30.50
J HUCKINS	61	12/15/2004	Input Checks and Deposits into Quickbooks/CSA	9.25	564.25
J HUCKINS	61	12/31/2004	Review and Supervision	44.60	2,714.50
J HUCKINS	61	1/15/2005	Review and Supervision	21.50	1,311.50
J LINK	60	12/15/2004	Research and Setup for Quickbooks/CSA	0.50	34.00
L SMITH	93	12/15/2004	Input Checks and Deposits into Quickbooks/CSA	3.75	348.75
L SMITH	93	12/31/2004	Input Checks and Deposits into Quickbooks/CSA	65.25	6,068.25
L SMITH	93	1/15/2005	Input Checks and Deposits into Quickbooks/CSA	44.50	4,138.50
M MARSHALL	121	12/15/2004	Review and Supervision	13.00	1,573.00
M MARSHALL	121	12/31/2004	Review and Supervision	17.25	2,087.25
M MARSHALL	121	1/15/2005	Analyzing files from Oklahoma Securities Comm	12.50	1,512.50
P DONEHUE	220	12/15/2004	Review and Supervision	2.00	440.00
P DONEHUE	220	12/31/2004	Review and Supervision	3.00	660.00
S OWENS	44	12/15/2004	Organize bank statements for two accounts	5.75	253.00
T ROBBINS	60	12/31/2004	Input Checks and Deposits into Quickbooks/CSA	45.00	2,700.00
				581.70	49,929.35

BKD, LLP  
Charges for expenses

Time Period Expense

1/15/2005 Copying expense	379.80
12/31/2004 Fax expense	11.00
1/15/2005 Fax expense	5.00
12/31/2004 Quickbooks expenses	27.09
12/15/2004 Postage	15.00
12/31/2004 Postage	17.12
12/31/2004 Meal Reimbursement- T Robbins	18.20
12/31/2004 Meal Reimbursement- T Robbins	54.73
1/15/2005 Meal Reimbursement- E Suess	49.13
1/15/2005 Mileage Reimbursment- L Estill	44.55
12/31/2004 Mileage Reimbursment- E Cravens	187.50
12/31/2004 Mileage Reimbursment- T Robbins	163.13
1/15/2005 Mileage Reimbursment- E Suess	111.38
12/31/2004 Lodging Reimbursement- T Robbins	216.21
12/31/2004 Tolls	5.00
12/31/2004 Tolls	5.00
12/31/2004 Tolls	2.50
12/31/2004 Tolls	5.00
1/15/2005 Lodging Reimbursement- E Suess	72.07
1/15/2005 Tolls	3.00
	1,392.41



Continental Center South  
205 W. Maple, Suite 200  
Enid, OK 73701-4026  
600 237-3300 Fax 580 234-6046

BKD Tax ID#: 44-0160260

I N V O I C E

AMOUNT ENCLOSED

\$

MARSHA SCHUBERT  
DOUGLAS JACKSON  
GUNGOLL JACKSON COLLINS BOX & DEVOLL PC  
P O BOX 1549  
ENID OK 73702-1549

Date: 2/22/05  
Page: 1  
22135-077041

Return Top Portion With Payment

BALANCE FORWARD \$ 54,826.00

PROFESSIONAL SERVICES RENDERED FROM JANUARY 15,  
2005 TO JANUARY 31, 2004 FOR 147 HOURS FOR THE  
FOLLOWING:

INPUT CHECKS AND DEPOSITS INTO QUICKBOOKS

REVIEW AND SUPERVISION OF THE INPUTTING  
PERSONNEL

ANALYSIS OF DEPOSITS AND CHECKS WHERE PAYOR/  
PAYEE INFORMATION MISSING

11,571.00

CHARGES FOR COPIES, POSTAGE, TELEPHONE, MILEAGE,  
MEALS, TOLLS AND LODGING.

470.00

INVOICE TOTAL

\$ 12,041.00

BALANCE DUE

\$ 66,867.00

Invoices are due upon receipt unless detailed in your engagement  
letter. A service charge is assessed on accounts 45 days past due.

*Thank you for your business!*

Fees charged for the preparation of income tax returns do not include services that may later be  
required relative to any federal or state examination of a return.



Continental Center South  
205 West Maple, Suite 200  
Enid, OK 73701-4026  
580 237-3300 Fax 580 234-5046

BKD Tax ID#: 44-0160260

I N V O I C E

AMOUNT ENCLOSED  
\$

MARSHA SCHUBERT  
DOUGLAS JACKSON  
GUNGOLL JACKSON COLLINS BOX & DEVOLL PC  
P O BOX 1549  
ENID OK 73702-1549

Date: 3/03/05  
Page: 1  
22135-080808

Return Top Portion With Payment

BALANCE FORWARD \$ 66,867.00

PROFESSIONAL SERVICES RENDERED FROM FEBRUARY 1,  
2005 TO FEBRUARY 28, 2005 FOR 350 HOURS FOR THE  
FOLLOWING:

INPUT CHECKS AND DEPOSITS INTO QUICKBOOKS

REVIEW AND SUPERVISION OF THE INPUTTING  
PERSONNEL

ANALYSIS OF DEPOSITS AND CHECKS WHERE PAYOR/  
PAYEE INFORMATION MISSING

CONFERENCES WITH MARSHA SCHUBERT REGARDING  
MISSING PAYOR/PAYEE INFORMATION.

24,534.00

CHARGES FOR COPIES, POSTAGE, TELEPHONE, MILEAGE  
MEALS, TOLLS AND LODGING.

231.00

INVOICE TOTAL

\$ 24,765.00

BALANCE DUE

\$ 91,632.00

Invoices are due upon receipt unless detailed in your engagement  
letter. A service charge is assessed on accounts 45 days past due.

**Thank you for your business!**

Fees charged for the preparation of income tax returns do not include services that may later be  
required relative to any federal or state examination of a return.



Continental Center South  
265 West Maple, Suite 200  
Enid, OK 73701-4026  
580 237-3300 Fax 580 234-5046

BKD Tax ID#: 44-0160260

I N V O I C E

AMOUNT ENCLOSED  
\$

MARSHA SCHUBERT  
DOUGLAS JACKSON  
GUNGOLL JACKSON COLLINS BOX & DEVOLL PC  
P O BOX 1549  
ENID OK 73702-1549

Date: 3/18/05  
Page: 1  
22135-085145

Return Top Portion With Payment

BALANCE FORWARD \$ 91,632.00

PROFESSIONAL SERVICES RENDERED FROM MARCH 1,  
2005 TO MARCH 15, 2005 FOR 68.5 HOURS FOR THE  
FOLLOWING:

ANALYSIS OF DEPOSITS AND CHECKS WHERE PAYEE/  
PAYOR INFORMATION WAS MISSING.

ANALYSIS OF ITEMS WHERE CLASSIFICATION TO  
PROPER INVESTOR WAS MISSING.

CONFERENCES WITH ATTORNEYS REGARDING INVESTOR  
REPORTS.

5,844.00

CHARGES FOR COPIES AND FACSIMILES.

280.00

INVOICE TOTAL

\$ 6,124.00

BALANCE DUE

\$ 97,756.00

Invoices are due upon receipt unless detailed in your engagement  
letter. A service charge is assessed on accounts 45 days past due.

**Thank you for your business!**

Fees charged for the preparation of income tax returns do not include services that may later be  
required relative to any federal or state examination of a return.

IN THE DISTRICT COURT OF LOGAN COUNTY,  
STATE OF OKLAHOMA

OKLAHOMA DEPARTMENT OF SECURITIES,  
*ex rel.*, IRVIN 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.

CLERK OF DISTRICT COURT  
LOGAN COUNTY, OKLAHOMA  
2005 MAY 13 PM 2:09  
DEPARTMENT OF SECURITIES  
COURT CLERK  
BY: \_\_\_\_\_  
Case No. CJ-2004-256

ORDER

NOW on the 13<sup>th</sup> day of May 2005 the Receiver's Application for Authority to Pay Interim Accounting Fees comes before the Court for consideration.

Based upon the Receiver's Application and the Court having reviewed all pleadings and submissions of the parties, the Court finds as follows:

1. It appears to the Court that Receiver's accountants, Baird, Kurtz & Dobson, LLP, has expended a considerable amount of time in performance of accounting services for the Receivership Estate, and that the services have been and will continue to be beneficial to the Estate, and will allow the Receiver to pursue the recovery of substantial sums of money for the benefit of the parties in interest.

2. It further appears that there are ample funds on hand from which interim accounting fees may be paid, and that it would be just and equitable to allow a payment to be made at this time.

Date: 5-16-05

cc:  Willie Baker  
 Mack Martin  
 Gerri Stuckey/Amanda Cornmesser  
 Doug Jackson  
 BKD

3. The Court finds that the Receiver's Application for Authority to Pay Interim Accounting Fees should be and is hereby granted, and that the Receiver should be allowed to pay Baird, Kurtz & Dobson, LLP the sum of \$ 97,756.00 as interim accounting fees.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Receiver's Application for Authority to Pay Interim Accounting Fees is granted, and it is ordered that Baird, Kurtz & Dobson, LLP, as accountants for the Receiver, be allowed the sum of \$ 97,756.00 as interim accounting fees, 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 accountants for the period involved in the statements attached to Receiver's Application, but shall also apply against the amount of final accounting fees awarded to the Receiver and his accountants at the conclusion and termination of these proceedings.

Dated: 5/13/05

DONALD L. WORTHINGTON

Donald L. Worthington  
Judge of the District Court

APPROVED AS TO FORM:

Bradley E. Davenport  
Bradley E. Davenport, OBA #18687  
Gungoll, Jackson, Collins, Box, & Devoll, PC  
323 W. Broadway - P O Box 1549  
Enid, OK 73701-1549  
Attorney for Receiver, Douglas L. Jackson

Amanda Cornmesser, OBA #20044  
Oklahoma Department of Securities  
First National Center, Suite 860  
120 N. Robinson  
Oklahoma City, OK 73102



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;  
and  
SCHUBERT AND ASSOCIATES, an unincorporated  
association,

Defendants.

2005 AUG -9 10:02

Case No. CJ-2004-256

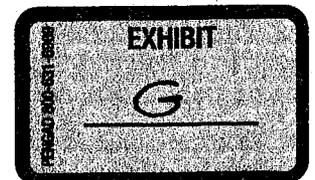
RECEIVER'S ACCOUNTING FOR JULY 2005

COMES NOW the Court-appointed Receiver, Douglas L. Jackson, and submits to the Court his accounting through July 31, 2005.

The Receiver deposited funds in the amount of \$62,913.76 in the Receivership commercial checking account, and 1 check was written totaling \$87.50 out of that account in July. The beginning balance of the Receiver's checking account as of July 1, 2005 was \$17,034.25, and the ending balance for July 31, 2005 was \$79,860.51. The balance of the Receiver's money market account, including interest earned for the month of July 2005, is \$300,601.90. The following is a general listing of the activity on the Receiver's checking account:

No.	Date	Transaction Description	Payment	Deposit	Balance
	07-01	June Balance Forward			\$ 17,034 25
	07-01	Deposit (1 check)		344 16	\$ 17,378 41
	07-07	Deposit (1 check)		7,247 10	\$ 24,625 51
	07-08	Deposit (1 check)		5,010 00	\$ 29,635 51
	07-22	Deposit (1 check)		312 50	\$ 29,948 01
	07-26	Deposit (1 check)		50,000 00	\$ 79,948 01
1012	07-27	OK Tax Commission	\$ 87 50		\$ 79,860 51

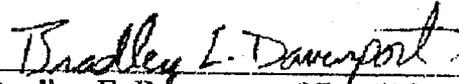
A more detailed transaction report of the activity relative to the Receiver's checking account during the month of July 2005 is attached hereto as Exhibit A.



The \$192,946.42 from the sale of the Schubert condominium in Branson, Missouri, continues to be held in an escrow account at Stillwater National Bank while the Schubert divorce case is pending.

The Receiver will file a new, updated accounting in this form with the Court shortly after the end of each month from this point until the Receivership ends and/or the Court directs otherwise.

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/(580) 233-1284 fax  
Attorney for Receiver, Douglas L. Jackson

CERTIFICATE OF SERVICE

I hereby certify that on the 8<sup>th</sup> day of August 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

Charles Meyers  
711 S. Husband  
Stillwater, OK 74074  
Attorney for Farmers & Merchants Bank

Alexander L. Bednar  
P. O. Box 3021  
Oklahoma City, OK 73101  
Attorney for Richard LeBocuf

G. David Bryant, OBA 01264  
Lisa Mueggenborg, OBA 18595  
Kline Kline Elliott & Bryant, PC  
720 N.E. 63<sup>rd</sup> St.  
Oklahoma City, OK 73105

*Counsel for B. Allen, S. Allen, B. Armer, K. Blair, W. Blair, J. Bounds, M. Cook, C. Cue, D. Cue, S. Espolt, W. Etheridge, A. Ewers, D. Gregory, M. Gregory, M. Harman, R. Honeymoon, B. Hudson, C. Jackson, D. Jackson, L. Jones, S. Kinslow, B. Lamb, C. LaRue, K. R. LaRue, K. LaRue, R. Laubach, C. Lindley, K. Long, W. Lubber, R. Martin, W. Martin, M. Mathews, R.W. Mathews, D. Owens, R. Owens, J. Palmer, J. Payne, L. Payne, T. Payne, S. Phillips, T. Pittman, A. Platt, K. Rains, T. Rains, M. Rogers, C. Sanders, G. Scott, M. Segura, N. Sheehan, E. Stanton, J. Tarrant, E.E. Tackett, W. Toepfer, E. Viehhaus, B. Vincent, J. Wilcox, M. Wilcox, P. Wilcox, S. Wilcox, S. Winn, F. Yenser, G. Yenser, A. Young, K. Young, L. Young*

  
Bradley E. Davenport

**Detail of Transactions  
As of July 31, 2005**

Date	Payor/Check # & Date	Payment	Deposit	Transaction Total
07-01	Balance Fwd			\$ 17,034.25
07-01	M. Hobbs #1311 \$ 344.16		\$ 344.16	\$ 17,378.41
07-07	E. Nowell #5656 \$ 7,247.10		\$ 7,247.10	\$ 24,625.51
07-08	Tarralbo #212106149 \$ 5,010.00		\$ 5,010.00	\$ 29,635.51
07-22	C. Ownbey #5571 \$ 312.50		\$ 312.50	\$ 29,948.01
07-26	C. Randall #520698 \$50,000.00		\$50,000.00	\$ 79,948.01
07-27	#1012 OK Tax Commission	\$ 87.50		\$ 79,860.51
	Ending Balance	\$ 87.50	\$62,913.76	\$ 79,860.51

T:\Clients\Schubert, Marsha & Richard\Receivership\Accounting\CNI\07-31-05 Detail of Transactions.doc



CENTRAL NATIONAL BANK  
AND TRUST COMPANY OF ENID  
324 W BROADWAY AVE  
ENID, OK 73701-3838

**OWNERSHIP OF ACCOUNT - CONSUMER PURPOSE**

- INDIVIDUAL  \_\_\_\_\_  
 JOINT - WITH SURVIVORSHIP (and not as tenants in common)  
 JOINT - NO SURVIVORSHIP (as tenants in common)  
 TRUST - SEPARATE AGREEMENT:

REVOCABLE TRUST OR  PAY-ON-DEATH  
DESIGNATION AS DEFINED IN THIS AGREEMENT  
Name and Address of Beneficiaries:

**OWNERSHIP OF ACCOUNT - BUSINESS PURPOSE**

- SOLE PROPRIETORSHIP  
 CORPORATION:  FOR PROFIT  NOT FOR PROFIT  
 PARTNERSHIP  
 \_\_\_\_\_

BUSINESS: \_\_\_\_\_  
COUNTY & STATE \_\_\_\_\_  
OF ORGANIZATION: \_\_\_\_\_  
AUTHORIZATION DATED: \_\_\_\_\_

DATE OPENED 11/29/04 BY SNULL  
INITIAL DEPOSIT \$ \_\_\_\_\_  
 CASH  CHECK  RECIEVER ACCT  
HOME TELEPHONE # (580) 234-0436  
BUSINESS PHONE # (580) 234-0436  
DRIVER'S LICENSE # \_\_\_\_\_  
E-MAIL \_\_\_\_\_  
EMPLOYER RECEIVER ACCOUNT  
MOTHER'S MAIDEN NAME \_\_\_\_\_  
Name and address of someone who will always know your location: \_\_\_\_\_

**BACKUP WITHHOLDING CERTIFICATIONS**

TIN: 75-2973658  
 **TAXPAYER I.D. NUMBER** - The Taxpayer Identification Number shown above (TIN) is my correct taxpayer identification number.

**BACKUP WITHHOLDING** - I am not subject to backup withholding either because I have not been notified that I am subject to backup withholding as a result of a failure to report all interest or dividends, or the Internal Revenue Service has notified me that I am no longer subject to backup withholding.

**EXEMPT RECIPIENTS** - I am an exempt recipient under the Internal Revenue Service Regulations.

**SIGNATURE:** I certify under penalties of perjury the statements checked in this section and that I am a U.S. person (including a U.S. resident alien).

X \_\_\_\_\_ (Date)

ACCOUNT NUMBER 10348990

**ACCOUNT OWNER(S) NAME & ADDRESS**

SCHUBERT AND ASSOCIATES  
MARSHA AND RICHARD SCHUBERT DBA  
DOUGLAS JACKSON RECEIVER  
PO BOX 1549  
ENID OK 73702

COPY

TYPE OF ACCOUNT  NEW  EXISTING  
 CHECKING  SAVINGS  
 MONEY MARKET  CERTIFICATE OF DEPOSIT  
 NOW  \_\_\_\_\_  
This is your (check one): Commercial Checking  
 Permanent  Temporary account agreement.

Number of signatures required for withdrawal 1  
FACSIMILE SIGNATURE(S) ALLOWED?  YES  NO

[ X ]

**SIGNATURE(S)** - The undersigned agree to the terms stated on every page of this form and acknowledge receipt of a completed copy. The undersigned further authorize the financial institution to verify credit and employment history and/or have a credit reporting agency prepare a credit report on the undersigned, as individuals. The undersigned also acknowledge the receipt of a copy and agree to the terms of the following disclosure(s):

- Deposit Account  Funds Availability  Privacy  
 Electronic Funds Transfer  Truth in Savings  
 \_\_\_\_\_

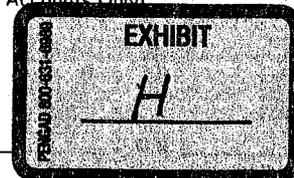
(1): [ X ]  
DOUGLAS JACKSON RECEIVER  
I.D. # \_\_\_\_\_ D.O.B. \_\_\_\_\_

(2): [ X ]  
I.D. # \_\_\_\_\_ D.O.B. \_\_\_\_\_

(3): [ X ]  
I.D. # \_\_\_\_\_ D.O.B. \_\_\_\_\_

(4): [ X ]  
I.D. # \_\_\_\_\_ D.O.B. \_\_\_\_\_

Authorized Signer (Individual Accounts Only)  
[ X ]  
I.D.# \_\_\_\_\_



## TERMS AND CONDITIONS OF YOUR ACCOUNT

**AGREEMENT** - This document, along with any other documents we give you pertaining to your account(s), is a contract that establishes rules which control your account(s) with us. Please read this carefully.

This agreement is subject to applicable federal laws and the laws of the state of Oklahoma (except to the extent that this agreement can and does vary such rules or laws). The body of state and federal law that governs our relationship with you, however, is too large and complex to be reproduced here. The purpose of this document is to:

- (1) summarize some laws that apply to common transactions;
- (2) establish rules to cover transactions or events which the law does not regulate;
- (3) establish rules for certain transactions or events which the law regulates but permits variation by agreement; and
- (4) give you disclosures of some of our policies to which you may be entitled or in which you may be interested.

If any provision of this document is found to be unenforceable according to its terms, all remaining provisions will continue in full force and effect. We may permit some variations from our standard agreement, but we must agree to any variation in writing either on the signature card for your account or in some other document.

As used in this document the words "we," "our," and "us" mean the financial institution and the words "you" and "your" mean the account holder(s) and anyone else with the authority to deposit, withdraw, or exercise control over the funds in the account. The headings in this document are for convenience or reference only and will not govern the interpretation of the provisions. Unless it would be inconsistent to do so, words and phrases used in this document should be construed so the singular includes the plural and the plural includes the singular.

**LIABILITY** - You agree, for yourself (and the person or entity you represent if you sign as a representative of another) to the terms of this account and the schedule of charges. You authorize us to deduct these charges directly from the account balance as accrued. You will pay any additional reasonable charges for services you request which are not covered by this agreement.

Each of you also agrees to be jointly and severally (individually) liable for any account shortage resulting from charges or overdrafts, whether caused by you or another with access to this account. This liability is due immediately, and can be deducted directly from the account balance whenever sufficient funds are available. You have no right to defer payment of this liability, and you are liable regardless of whether you signed the item or benefited from the charge or overdraft. This includes liability for our costs to collect the deficit including, to the extent permitted by law, our reasonable attorneys' fees.

**DEPOSITS** - We will give only provisional credit until collection is final for any items, other than cash, we accept for deposit (including items drawn "on us"). Actual credit for deposits of, or payable in, foreign currency will be at the exchange rate in effect on final collection in U.S. dollars. We are not responsible for transactions by mail or outside depository until we actually record them. We will treat and record all transactions received after our "daily cutoff time" on a business day we are open, or received on a day we are not open for business, as if initiated on the next following business day that we are open.

**WITHDRAWALS** - Unless clearly indicated otherwise on the account records, any of you, acting alone, who signs in the space designated for signatures on the signature card may withdraw or transfer all or any part of the account balance at any time. Each of you (until we receive written notice to the contrary) authorizes each other person signing the signature card to indorse any item payable to you or your order for deposit to this account or any other transaction with us. We may charge your account for a check even though payment was made before the date of the check, unless we have received written notice of the postdating in time to have a reasonable opportunity to act. We may refuse any withdrawal or transfer request which you attempt on forms not approved by us, by any method we do not specifically permit, which is greater in number than the frequency permitted, or which is for an amount greater or less than any withdrawal limitations. Even if we honor a nonconforming request, we may treat continued abuse of the stated limitations (if any) as your act of closing the account. We will use the date the transaction is completed by us (as opposed to the date you initiate it) to apply the frequency limitations. The fact that we may honor withdrawal requests that overdraw the available account balance does not obligate us to do so later. See the funds availability policy disclosure for information about when you can withdraw funds you deposit. For those accounts for which our funds availability policy disclosure does not apply, you can ask us when you make a deposit when those funds will be available for withdrawal.

We may require not less than 7 days' notice in writing before each withdrawal from an interest-bearing account other than a time deposit. Withdrawals from a time account prior to maturity or prior to any notice period may be restricted and may be subject to penalty. See your notice of penalty for early withdrawal.

**ACH AND WIRE TRANSFERS** - This agreement is subject to Article 4A of the Uniform Commercial Code in the state in which you have your account with us. If you originate a fund transfer for which Fedwire is used, and you identify by name and number a beneficiary financial institution, an intermediary financial institution or a beneficiary, we and every receiving or beneficiary financial institution may rely on the identifying number to make payment. We may rely on the number even if it identifies a financial institution, person or account other than the one named. You agree to be bound by automated clearing house association rules. These rules provide, among other things, that payments made to you, or originated by you, are provisional until final settlement is made through a Federal Reserve Bank or payment is otherwise made as provided in Article 4A-403(a) of the Uniform Commercial Code. If we do not receive such payment, we are entitled to a refund from you in the amount credited to your account and the party originating such payment will not be considered to have paid the amount so credited. If we receive a credit to an account you have with us by wire or ACH, we are not required to give you any notice of the payment order or credit.

**OWNERSHIP OF ACCOUNT AND BENEFICIARY DESIGNATION** - These rules apply to this account depending on the form of ownership and beneficiary designation, if any, specified on the account records. We make no representations as to the appropriateness or effect of the ownership and beneficiary designations, except as they determine to whom we pay the account funds. **Individual Account** - is an account in the name of one person. **Joint Account - With Survivorship (And Not As Tenants In Common)** - is an account in the name of two or more persons. Each of you intend that when you die the balance in the account (subject to any previous pledge to which we have agreed) will belong to the survivor(s). If two or more of you survive,

you will own the balance in the account as joint tenants with survivorship and not as tenants in common. **Joint Account - No Survivorship (As Tenants In Common)** - is owned by two or more persons, but none of you intend (merely by opening this account) to create any right of survivorship in any other person. We encourage you to agree and tell us in writing of the percentage of the deposit contributed by each of you. This information will not, however, affect the "number of signatures" necessary for withdrawal. **Revocable Trust or Pay-On-Death Account** - If two or more of you create such an account, you own the account jointly with survivorship. Beneficiaries acquire the right to withdraw only if: (1) all persons creating the account die, and (2) the beneficiary is then living. If, at the death of the owner(s) of this account, the beneficiary is not living, the beneficiary's estate acquires ownership of the account. If two or more beneficiaries are named and survive the death of all persons creating the account, such beneficiaries will own this account in equal shares, without right of survivorship. The person(s) creating either of these account types reserves the right to: (1) change beneficiaries, (2) change account types, and (3) withdraw all or part of the account funds at any time.

**BUSINESS ACCOUNTS** - Earnings in the form of interest, dividends, or credits will be paid only on collected funds, unless otherwise provided by law or our policy. We may require the governing body of the legal entity opening the account to give us a separate authorization telling us who is authorized to act on its behalf. We will honor the authorization until we actually receive written notice of a change from the governing body of the legal entity.

**STOP PAYMENTS** - You must make any stop-payment order in the manner required by law and we must receive it in time to give us a reasonable opportunity to act on it before our stop-payment cutoff time. To be effective, your stop-payment order must precisely identify the number, date and amount of the item, and the payee.

You may stop payment on any item drawn on your account whether you sign the item or not, if you have an equal or greater right to withdraw from this account than the person who signed the item. A release of the stop-payment request may be made only by the person who initiated the stop-payment order.

Our stop-payment cutoff time is one hour after the opening of the next banking day after the banking day on which we receive the item. Additional limitations on our obligation to stop payment are provided by law (e.g., we paid the item in cash or we certified the item).

**TELEPHONE TRANSFERS** - A telephone transfer of funds from this account to another account with us, if otherwise arranged for or permitted, may be made by the same persons and under the same conditions generally applicable to withdrawals made in writing. Unless a different limitation is disclosed in writing, we restrict the number of transfers from a savings account to another account or to third parties, to a maximum of six per month (less the number of "preauthorized transfers" during the month). Other account transfer restrictions may be described elsewhere.

**AMENDMENTS AND TERMINATION** - We may change any term of this agreement. Rules governing changes in interest rates are provided separately. For other changes, we will give you reasonable notice in writing or by any other method permitted by law. We may also close this account at any time upon reasonable notice to you and tender of the account balance personally or by mail. Notice from us to any one of you is notice to all of you.

**STATEMENTS** - You must examine your statement of account with "reasonable promptness." If you discover (or reasonably should have discovered) any unauthorized signatures or alterations, you must promptly notify us of the relevant facts. As between you and us, if you fail to do either of these duties, you will have to either share the loss with us, or bear the loss entirely yourself (depending on whether we used ordinary care and, if not, whether we substantially contributed to the loss). The loss could be not only with respect to items on the statement but other items with unauthorized signatures or alterations by the same wrongdoer.

You agree that the time you have to examine your statement and report to us will depend on the circumstances, but will not, in any circumstance, exceed a total of 30 days from when the statement is first sent or made available to you.

You further agree that if you fail to report any unauthorized signatures, alterations, forgeries, or any other errors in your account within 60 days of when we first send or make the statement available, you cannot assert a claim against us on any items in that statement, and as between you and us the loss will be entirely yours. This 60-day limitation is without regard to whether we used ordinary care. The limitation in this paragraph is in addition to that contained in the first paragraph of this section.

**ACCOUNT TRANSFER** - This account may not be transferred or assigned without our prior written consent.

**DIRECT DEPOSITS** - If, in connection with a direct deposit plan, we deposit any amount in an account which should have been returned to the Federal Government for any reason, you authorize us to deduct the amount of our liability to the Federal Government from the account or from any other account you have with us, without prior notice and at any time, except as prohibited by law. We may also use any other legal remedy to recover the amount of our liability.

**TEMPORARY ACCOUNT AGREEMENT** - If this option is selected, we may restrict or prohibit further use of this account if you fail to comply with the requirements we have imposed within a reasonable time.

**SETOFF** - We may (without prior notice and when permitted by law) set off the funds in this account against any due and payable debt you owe us now or in the future, by any of you having the right of withdrawal, to the extent of such persons' or legal entity's right to withdraw. If the debt arises from a note, "any due and payable debt" includes the total amount of which we are entitled to demand payment under the terms of the note at the time we set off, including any balance the due date for which we properly accelerate under the note.

This right of setoff does not apply to this account if: (a) it is an IRA or other tax-deferred retirement account, or (b) the debt is created by a consumer credit transaction under a credit card plan (but this does not affect our rights under any consensual security interest), or (c) the debtor's right of withdrawal only arises in a representative capacity. We will not be liable for the dishonor of any check when the dishonor occurs because we set off a debt against this account. You agree to hold us harmless from any claim arising as a result of our exercise of our right of setoff.

**AUTHORIZED SIGNER (Individual Accounts only)** - A single individual is the owner. The authorized signer is merely designated to conduct transactions on the owner's behalf. We undertake no obligation to monitor transactions to determine that they are on the owner's behalf.

**RESTRICTIVE LEGENDS** - We are not required to honor any restrictive legend on checks you write unless we have agreed in writing to the restriction. Examples of restrictive legends are, "must be presented within 90 days" or "not valid for more than \$1,000.00."

**SOLE PROPRIETORSHIP RESOLUTION OF AUTHORITY**

CENTRAL NATIONAL BANK  
AND TRUST COMPANY OF ENID  
324 W BROADWAY AVE  
ENID, OK 73701-3838

By:  
SCHUBERT AND ASSOCIATES  
PO BOX 1549  
ENID OK 73702

Referred to in this document as "Financial Institution"

Referred to in this document as "Proprietorship"

I, MARSHA AND RICHARD SCHUBERT, certify that I am the sole owner of the above named proprietorship, Federal Tax I.D. Number 75-2973658, engaged in business under the trade name of SCHUBERT AND ASSOCIATES

**AGENTS** Any agent listed below, subject to any written limitations, is authorized to exercise the powers granted as indicated below:

Name and Title or Position	Signature	Facsimile Signature (if used)
A. <u>DOUGLAS JACKSON RECEIVER</u>	X _____	X _____
B. _____	X _____	X _____
C. _____	X _____	X _____
D. _____	X _____	X _____
E. _____	X _____	X _____
F. _____	X _____	X _____

**POWERS GRANTED** (Attach one or more Agents to each power by placing the letter corresponding to their name in the area before each power. Following each power indicate the number of Agent signatures required to exercise the power.)

Indicate A, B, C, D, E, and/or F	Description of Power	Indicate number of signatures required
<u>A</u>	(1) Exercise all of the powers listed in this resolution.	<u>1</u>
_____	(2) Open any deposit or share account(s) in the name of the Proprietorship.	_____
_____	(3) Endorse checks and orders for the payment of money or otherwise withdraw or transfer funds on deposit with this Financial Institution.	_____
_____	(4) Borrow money on behalf and in the name of the Proprietorship, sign, execute and deliver promissory notes or other evidences of indebtedness.	_____
_____	(5) Endorse, assign, transfer, mortgage or pledge bills receivable, warehouse receipts, bills of lading, stocks, bonds, real estate or other property now owned or hereafter owned or acquired by the Proprietorship as security for sums borrowed, and to discount the same, unconditionally guarantee payment of all bills received, negotiated or discounted and to waive demand, presentment, protest, notice of protest and notice of non-payment.	_____
_____	(6) Enter into a written lease for the purpose of renting, maintaining, accessing and terminating a Safe Deposit Box in this Financial Institution.	_____
_____	(7) Other _____	_____

**LIMITATIONS ON POWERS** The following are the Proprietorship's express limitations on the powers granted under this resolution.

**EFFECT ON PREVIOUS RESOLUTIONS** This resolution supersedes resolution dated \_\_\_\_\_. If not completed, all resolutions remain in effect.

**CERTIFICATION OF AUTHORITY** I further certify that the Proprietorship has, and at the time of adoption of this resolution had, full power and lawful authority to adopt the resolutions on page 2 and to confer the powers granted above to the person named who have full power and lawful authority to exercise the same.

Optional Notarization:

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
Notary Public

In Witness Whereof I have subscribed my name to this document on \_\_\_\_\_ (date).

\_\_\_\_\_  
**MARSHA AND RICHARD SCHUBERT**  
(Type Name of Proprietor Below Signature)

As used in this agreement, "I" means the owner of the sole proprietorship designated on page one. The term "resolution" means this agreement or any other agreement granting authority to others to act on behalf of the Proprietorship. I warrant that I am the sole owner of the business whose trade name is designated on this resolution. If any other parties acquire an ownership interest in the business (for example if I were to include a partner in ownership or if I were to incorporate), or if the ownership is changed in any way and I do not notify the Financial Institution of that fact, I will remain fully liable personally in accordance with the terms of this resolution and any other agreements that I have signed. In consideration of the Financial Institution's acceptance of this account under the designated trade name, and/or for the purpose of cashing or negotiating checks, drafts or other negotiable instruments payable to the designated trade name, that I endorse in my name as owner, that are endorsed in the designated trade name, or by those authorized on page one as Agents, I agree that:

**The Proprietorship named on this resolution resolves that,**

- (1) The Financial Institution is designated as a depository for the funds of the Proprietorship and to provide other financial accommodations indicated in this resolution.
- (2) This resolution shall continue to have effect until express written notice of its rescission or modification has been received and recorded by the Financial Institution. Any and all prior agreements or resolutions adopted by the Proprietorship and certified to the Financial Institution as governing the operation of this proprietorship's account(s), are in full force and effect, until the Financial Institution receives and acknowledges an express written notice of its revocation, modification or replacement. Any revocation, modification or replacement of a resolution or agreement must be accompanied by documentation, satisfactory to the Financial Institution, establishing the authority for the changes.
- (3) The signature of an Agent on this resolution is conclusive evidence of their authority to act on behalf of the Proprietorship. Any Agent, so long as they act in a representative capacity as agents of the Proprietorship, is authorized to make any and all other contracts, agreements, stipulations and orders which they may deem advisable for the effective exercise of the powers indicated on page one, from time to time with the Financial Institution, subject to any restrictions on this resolution or otherwise agreed to in writing.
- (4) All transactions, if any, with respect to any deposits, withdrawals, rediscounts and borrowings by or on behalf of the Proprietorship with the Financial Institution prior to the adoption of this resolution are hereby ratified, approved and confirmed.
- (5) I agree to the terms and conditions of any account agreement, properly opened by any Agent of the Proprietorship. I authorize the Financial Institution, at any time, to charge the Proprietorship for all checks, drafts, or other orders, for the payment of money, that are drawn on the Financial Institution, so long as they contain the required number of signatures for this purpose.
- (6) I acknowledge and agree that the Financial Institution may furnish at its discretion automated access devices to Agents of the Proprietorship to facilitate those powers authorized by this resolution or other writings in effect at the time of issuance. The term "automated access device" includes, but is not limited to, credit cards, automated teller machines (ATM), and debit cards.
- (7) I acknowledge and agree that the Financial Institution may rely on alternative signature and verification codes issued to or obtained from the Agent named on this resolution. The term "alternative signature and verification codes" includes, but is not limited to, facsimile signatures on file with the Financial Institution, personal identification numbers (PIN), and digital signatures. If a facsimile signature specimen has been provided on this resolution, (or that are filed separately by the Proprietorship with the Financial Institution from time to time) the Financial Institution is authorized to treat the facsimile signature as the signature of the Agent(s) regardless of by whom or by what means the facsimile signature may have been affixed so long as it resembles the facsimile signature specimen on file. I authorize each Agent to have custody of the Proprietorship's private key used to create a digital signature and to request issuance of a certificate listing the corresponding public key. The Financial Institution shall have no responsibility or liability for unauthorized use of alternative signature and verification codes unless otherwise agreed in writing.

---

FOR FINANCIAL INSTITUTION USE ONLY

Acknowledged and received on 11/29/04 (date) by SPN (initials)  This resolution is superseded by resolution dated \_\_\_\_\_

Comments:

10348990 D

### TRUTH IN SAVINGS DISCLOSURE

Terms following a  apply only if checked.

Acct: Commercial Checking

Acct #: 10348990

Date: NOVEMBER 29, 2004

The interest rate and annual percentage yield stated below are accurate as of the date printed above. If you would like more current rate and yield information please call us at \_\_\_\_\_.

This disclosure contains the rules which govern your deposit account. Unless it would be inconsistent to do so, words and phrases used in this disclosure should be construed so that the singular includes the plural and the plural includes the singular.

We reserve the right to at any time require not less than \_\_\_\_\_ days notice in writing before any withdrawal from an interest bearing account.

**FIXED RATE**

The interest rate for your account is \_\_\_\_\_ % with an annual percentage yield of \_\_\_\_\_ %. We will pay this rate \_\_\_\_\_.  
We will not decrease this rate unless we first give you at least 30 days notice in writing.

The interest rate and annual percentage yield for your account depend upon the applicable rate tier. We will pay these rates \_\_\_\_\_.

We will not decrease these rates unless we first give you at least 30 days notice in writing.

**VARIABLE RATE**

The interest rate for your account is \_\_\_\_\_ % with an annual percentage yield of \_\_\_\_\_ %. Your interest rate and annual percentage yield may change.

The interest rate and annual percentage yield for your account depend upon the applicable rate tier. The interest rate and annual percentage yield for these tiers may change.

**Determination of rate**

At our discretion, we may change the interest rate on your account.

The interest rate for your account \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The fixed initial rate is not determined by this rule.

The initial interest rate on your account \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Subsequent rates \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Frequency of rate change**

We may change the interest rate on your account \_\_\_\_\_

Your initial interest rate will not change \_\_\_\_\_

We may change the interest rate on your account at that time and \_\_\_\_\_ thereafter.

**Limitations on rate changes**

The interest rate for your account will not \_\_\_\_\_

by more than \_\_\_\_\_ each \_\_\_\_\_.

The interest rate will not be less than \_\_\_\_\_ % or more than \_\_\_\_\_ %.

The interest rate will not \_\_\_\_\_

the interest rate initially disclosed to you.

**Minimum Balance Requirements**

*To open the account.* You must deposit at least \$ 100.00 to open this account.

*To avoid imposition of fees.*

To avoid the imposition of the \_\_\_\_\_ you must meet \_\_\_\_\_ following requirements:

A \_\_\_\_\_ of \$ \_\_\_\_\_ will be imposed every \_\_\_\_\_

if the balance in the account falls below \$ \_\_\_\_\_ any day of the \_\_\_\_\_.

A \_\_\_\_\_ of \$ \_\_\_\_\_ will be imposed every \_\_\_\_\_

if the average daily balance for the \_\_\_\_\_ falls below \$ \_\_\_\_\_.

The average daily balance is calculated by adding the principal in the account for each day of the period and dividing that figure by the number of days in the period.

The period we use is \_\_\_\_\_.

To avoid the imposition of the \_\_\_\_\_ you must meet \_\_\_\_\_ following requirements:

A \_\_\_\_\_ of \$ \_\_\_\_\_ will be imposed for \_\_\_\_\_

transaction (withdrawal, check paid, automatic transfer or payment out of your account) if the balance in the account

falls below \$ \_\_\_\_\_ any day of the \_\_\_\_\_.

A \_\_\_\_\_ of \$ \_\_\_\_\_ will be imposed for \_\_\_\_\_

transaction (withdrawal, check paid, automatic transfer or payment out of your account) if the average daily balance for the \_\_\_\_\_ falls below

\$ \_\_\_\_\_. The average daily balance is calculated by adding the principal in the account for each day of the period and dividing that figure by the number of days in the period.

The period we use is \_\_\_\_\_.

*To obtain the annual percentage yield disclosed.*

You must maintain a minimum balance of \$ \_\_\_\_\_ in the account each day to obtain the disclosed annual percentage yield.

You must maintain a minimum average daily balance of \$ \_\_\_\_\_ to obtain the disclosed annual percentage yield. The average daily balance is calculated by adding the principal in the account for each day of the period and dividing that figure by the number of days in the period.

The period we use is \_\_\_\_\_.

**Compounding and Crediting**

*Frequency* - Interest \_\_\_\_\_ be compounded \_\_\_\_\_ . Interest will be \_\_\_\_\_ .

*Effect of closing an account* - If you close your account before interest is credited, you \_\_\_\_\_ receive the accrued interest.

**Balance Computation Method**

*Daily Balance Method*. We use the daily balance method to calculate the interest on your account. This method applies a daily periodic rate to the principal in the account each day.

*Average Daily Balance Method*. We use the average daily balance method to calculate interest on your account. This method applies a periodic rate to the average daily balance in the account for the period. The average daily balance is calculated by adding the principal in the account for each day of the period and dividing that figure by the number of days in the period.

The period we use is \_\_\_\_\_ .

**Accrual of interest on noncash deposits**

Interest begins to accrue no later than the business day we receive credit for the deposit of noncash items (for example, checks).

Interest begins to accrue \_\_\_\_\_ .

\_\_\_\_\_ you deposit noncash items (for example, checks).

**Bonuses**

You will \_\_\_\_\_ as a bonus \_\_\_\_\_ .

You must maintain a minimum \_\_\_\_\_ of \$ \_\_\_\_\_ to obtain the bonus.

To earn the bonus, \_\_\_\_\_ .

**Transaction Limitations**

The minimum amount you may deposit is \$ \_\_\_\_\_ .

The minimum amount you may withdraw is \$ \_\_\_\_\_ .

You may only make \_\_\_\_\_ transfers from your account each \_\_\_\_\_ by checks to third parties and \_\_\_\_\_ .

The minimum withdrawal is \$ \_\_\_\_\_ .

You may only make \_\_\_\_\_ deposits into your account each statement cycle.

You may only make \_\_\_\_\_ ATM \_\_\_\_\_ your account each statement cycle.

You may only make \_\_\_\_\_ preauthorized transfers \_\_\_\_\_ your account each statement cycle.

**ADDITIONAL TRUTH IN SAVINGS DISCLOSURES**

FOR ASSOCIATED ACCOUNT FEES, SEE "SCHEDULE OF FEES AND SERVICES" AND "ACCOUNT ANALYSIS SCHEDULE OF FEES."

CENTRAL NATIONAL BANK  
AND TRUST COMPANY OF ENID  
324 W BROADWAY AVE  
ENID, OK 73701-3838

ACCOUNT NUMBER 10349804

ACCOUNT OWNER(S) NAME & ADDRESS

SCHUBERT AND ASSOCIATES  
MARSHA AND RICHARD SCHUBERT DBA  
DOUGLAS JACKSON RECEIVER  
PO BOX 1549  
ENID OK 73702-1549

COPY

OWNERSHIP OF ACCOUNT - CONSUMER PURPOSE

- INDIVIDUAL
- JOINT - WITH SURVIVORSHIP (and not as tenants in common)
- JOINT - NO SURVIVORSHIP (as tenants in common)
- TRUST - SEPARATE AGREEMENT:

REVOCABLE TRUST OR  PAY-ON-DEATH  
DESIGNATION AS DEFINED IN THIS AGREEMENT  
Name and Address of Beneficiaries:

- NEW  EXISTING
- TYPE OF ACCOUNT  CHECKING  SAVINGS
- MONEY MARKET  CERTIFICATE OF DEPOSIT
- NOW

This is your (check one): Commercial Money Market  
 Permanent  Temporary account agreement.

OWNERSHIP OF ACCOUNT - BUSINESS PURPOSE

- SOLE PROPRIETORSHIP
- CORPORATION:  FOR PROFIT  NOT FOR PROFIT
- PARTNERSHIP
- 

BUSINESS: \_\_\_\_\_  
COUNTY & STATE \_\_\_\_\_  
OF ORGANIZATION: \_\_\_\_\_  
AUTHORIZATION DATED: \_\_\_\_\_

Number of signatures required for withdrawal 1

FACSIMILE SIGNATURE(S) ALLOWED?  YES  NO

[ X ]

SIGNATURE(S) - The undersigned agree to the terms stated on every page of this form and acknowledge receipt of a completed copy. The undersigned further authorize the financial institution to verify credit and employment history and/or have a credit reporting agency prepare a credit report on the undersigned, as individuals. The undersigned also acknowledge the receipt of a copy and agree to the terms of the following disclosure(s):

- Deposit Account  Funds Availability  Privacy
- Electronic Funds Transfer  Truth in Savings
- 

(1): [ X ]  
DOUGLAS JACKSON RECEIVER

I.D. # \_\_\_\_\_ D.O.B. \_\_\_\_\_

(2): [ X ]

I.D. # \_\_\_\_\_ D.O.B. \_\_\_\_\_

(3): [ X ]

I.D. # \_\_\_\_\_ D.O.B. \_\_\_\_\_

(4): [ X ]

I.D. # \_\_\_\_\_ D.O.B. \_\_\_\_\_

Authorized Signer (Individual Accounts Only)

[ X ]

I.D.# \_\_\_\_\_ D.O.B. \_\_\_\_\_

BACKUP WITHHOLDING CERTIFICATIONS

TIN: 75-2973658  
 TAXPAYER I.D. NUMBER - The Taxpayer Identification Number shown above (TIN) is my correct taxpayer identification number.

BACKUP WITHHOLDING - I am not subject to backup withholding either because I have not been notified that I am subject to backup withholding as a result of a failure to report all interest or dividends, or the Internal Revenue Service has notified me that I am no longer subject to backup withholding.

EXEMPT RECIPIENTS - I am an exempt recipient under the Internal Revenue Service Regulations.

SIGNATURE: I certify under penalties of perjury the statements checked in this section and that I am a U.S. person (including a U.S. resident alien).

X \_\_\_\_\_ (Date)

## TERMS AND CONDITIONS OF YOUR ACCOUNT

**AGREEMENT** - This document, along with any other documents we give you pertaining to your account(s), is a contract that establishes rules which control your account(s) with us. Please read this carefully.

This agreement is subject to applicable federal laws and the laws of the state of Oklahoma (except to the extent that this agreement can and does vary such rules or laws). The body of state and federal law that governs our relationship with you, however, is too large and complex to be reproduced here. The purpose of this document is to:

- (1) summarize some laws that apply to common transactions;
- (2) establish rules to cover transactions or events which the law does not regulate;
- (3) establish rules for certain transactions or events which the law regulates but permits variation by agreement; and
- (4) give you disclosures of some of our policies to which you may be entitled or in which you may be interested.

If any provision of this document is found to be unenforceable according to its terms, all remaining provisions will continue in full force and effect. We may permit some variations from our standard agreement, but we must agree to any variation in writing either on the signature card for your account or in some other document.

As used in this document the words "we," "our," and "us" mean the financial institution and the words "you" and "your" mean the account holder(s) and anyone else with the authority to deposit, withdraw, or exercise control over the funds in the account. The headings in this document are for convenience or reference only and will not govern the interpretation of the provisions. Unless it would be inconsistent to do so, words and phrases used in this document should be construed so the singular includes the plural and the plural includes the singular.

**LIABILITY** - You agree, for yourself (and the person or entity you represent if you sign as a representative of another) to the terms of this account and the schedule of charges. You authorize us to deduct these charges directly from the account balance as accrued. You will pay any additional reasonable charges for services you request which are not covered by this agreement.

Each of you also agrees to be jointly and severally (individually) liable for any account shortage resulting from charges or overdrafts, whether caused by you or another with access to this account. This liability is due immediately, and can be deducted directly from the account balance whenever sufficient funds are available. You have no right to defer payment of this liability, and you are liable regardless of whether you signed the item or benefited from the charge or overdraft. This includes liability for our costs to collect the deficit including, to the extent permitted by law, our reasonable attorneys' fees.

**DEPOSITS** - We will give only provisional credit until collection is final for any items, other than cash, we accept for deposit (including items drawn "on us"). Actual credit for deposits of, or payable in, foreign currency will be at the exchange rate in effect on final collection in U.S. dollars. We are not responsible for transactions by mail or outside depository until we actually record them. We will treat and record all transactions received after our "daily cutoff time" on a business day we are open, or received on a day we are not open for business, as if initiated on the next following business day that we are open.

**WITHDRAWALS** - Unless clearly indicated otherwise on the account records, any of you, acting alone, who signs in the space designated for signatures on the signature card may withdraw or transfer all or any part of the account balance at any time. Each of you (until we receive written notice to the contrary) authorizes each other person signing the signature card to indorse any item payable to you or your order for deposit to this account or any other transaction with us. We may charge your account for a check even though payment was made before the date of the check, unless we have received written notice of the postdating in time to have a reasonable opportunity to act. We may refuse any withdrawal or transfer request which you attempt on forms not approved by us, by any method we do not specifically permit, which is greater in number than the frequency permitted, or which is for an amount greater or less than any withdrawal limitations. Even if we honor a nonconforming request, we may treat continued abuse of the stated limitations (if any) as your act of closing the account. We will use the date the transaction is completed by us (as opposed to the date you initiate it) to apply the frequency limitations. The fact that we may honor withdrawal requests that overdraw the available account balance does not obligate us to do so later. See the funds availability policy disclosure for information about when you can withdraw funds you deposit. For those accounts for which our funds availability policy disclosure does not apply, you can ask us when you make a deposit when those funds will be available for withdrawal.

We may require not less than 7 days' notice in writing before each withdrawal from an interest-bearing account other than a time deposit. Withdrawals from a time account prior to maturity or prior to any notice period may be restricted and may be subject to penalty. See your notice of penalty for early withdrawal.

**ACH AND WIRE TRANSFERS** - This agreement is subject to Article 4A of the Uniform Commercial Code in the state in which you have your account with us. If you originate a fund transfer for which Fedwire is used, and you identify by name and number a beneficiary financial institution, an intermediary financial institution or a beneficiary, we and every receiving or beneficiary financial institution may rely on the identifying number to make payment. We may rely on the number even if it identifies a financial institution, person or account other than the one named. You agree to be bound by automated clearing house association rules. These rules provide, among other things, that payments made to you, or originated by you, are provisional until final settlement is made through a Federal Reserve Bank or payment is otherwise made as provided in Article 4A-403(a) of the Uniform Commercial Code. If we do not receive such payment, we are entitled to a refund from you in the amount credited to your account and the party originating such payment will not be considered to have paid the amount so credited. If we receive a credit to an account you have with us by wire or ACH, we are not required to give you any notice of the payment order or credit.

**OWNERSHIP OF ACCOUNT AND BENEFICIARY DESIGNATION** - These rules apply to this account depending on the form of ownership and beneficiary designation, if any, specified on the account records. We make no representations as to the appropriateness or effect of the ownership and beneficiary designations, except as they determine to whom we pay the account funds. **Individual Account** - is an account in the name of one person. **Joint Account - With Survivorship (And Not As Tenants in Common)** - is an account in the name of two or more persons. Each of you intend that when you die the balance in the account (subject to any previous pledge to which we have agreed) will belong to the survivor(s). If two or more of you survive,

you will own the balance in the account as joint tenants with survivorship and not as tenants in common. **Joint Account - No Survivorship (As Tenants in Common)** - is owned by two or more persons, but none of you intend (merely by opening this account) to create any right of survivorship in any other person. We encourage you to agree and tell us in writing of the percentage of the deposit contributed by each of you. This information will not, however, affect the "number of signatures" necessary for withdrawal. **Revocable Trust or Pay-On-Death Account** - If two or more of you create such an account, you own the account jointly with survivorship. Beneficiaries acquire the right to withdraw only if: (1) all persons creating the account die, and (2) the beneficiary is then living. If, at the death of the owner(s) of this account, the beneficiary is not living, the beneficiary's estate acquires ownership of the account. If two or more beneficiaries are named and survive the death of all persons creating the account, such beneficiaries will own this account in equal shares, without right of survivorship. The person(s) creating either of these account types reserves the right to: (1) change beneficiaries, (2) change account types, and (3) withdraw all or part of the account funds at any time.

**BUSINESS ACCOUNTS** - Earnings in the form of interest, dividends, or credits will be paid only on collected funds, unless otherwise provided by law or our policy. We may require the governing body of the legal entity opening the account to give us a separate authorization telling us who is authorized to act on its behalf. We will honor the authorization until we actually receive written notice of a change from the governing body of the legal entity.

**STOP PAYMENTS** - You must make any stop-payment order in the manner required by law and we must receive it in time to give us a reasonable opportunity to act on it before our stop-payment cutoff time. To be effective, your stop-payment order must precisely identify the number, date and amount of the item, and the payee.

You may stop payment on any item drawn on your account whether you sign the item or not, if you have an equal or greater right to withdraw from this account than the person who signed the item. A release of the stop-payment request may be made only by the person who initiated the stop-payment order.

Our stop-payment cutoff time is one hour after the opening of the next banking day after the banking day on which we receive the item. Additional limitations on our obligation to stop payment are provided by law (e.g., we paid the item in cash or we certified the item).

**TELEPHONE TRANSFERS** - A telephone transfer of funds from this account to another account with us, if otherwise arranged for or permitted, may be made by the same persons and under the same conditions generally applicable to withdrawals made in writing. Unless a different limitation is disclosed in writing, we restrict the number of transfers from a savings account to another account or to third parties, to a maximum of six per month (less the number of "preauthorized transfers" during the month). Other account transfer restrictions may be described elsewhere.

**AMENDMENTS AND TERMINATION** - We may change any term of this agreement. Rules governing changes in interest rates are provided separately. For other changes, we will give you reasonable notice in writing or by any other method permitted by law. We may also close this account at any time upon reasonable notice to you and tender of the account balance personally or by mail. Notice from us to any one of you is notice to all of you.

**STATEMENTS** - You must examine your statement of account with "reasonable promptness." If you discover (or reasonably should have discovered) any unauthorized signatures or alterations, you must promptly notify us of the relevant facts. As between you and us, if you fail to do either of these duties, you will have to either share the loss with us, or bear the loss entirely yourself (depending on whether we used ordinary care and, if not, whether we substantially contributed to the loss). The loss could be not only with respect to items on the statement but other items with unauthorized signatures or alterations by the same wrongdoer.

You agree that the time you have to examine your statement and report to us will depend on the circumstances, but will not, in any circumstance, exceed a total of 30 days from when the statement is first sent or made available to you.

You further agree that if you fail to report any unauthorized signatures, alterations, forgeries, or any other errors in your account within 60 days of when we first send or make the statement available, you cannot assert a claim against us on any items in that statement, and as between you and us the loss will be entirely yours. This 60-day limitation is without regard to whether we used ordinary care. The limitation in this paragraph is in addition to that contained in the first paragraph of this section.

**ACCOUNT TRANSFER** - This account may not be transferred or assigned without our prior written consent.

**DIRECT DEPOSITS** - If, in connection with a direct deposit plan, we deposit any amount in an account which should have been returned to the Federal Government for any reason, you authorize us to deduct the amount of our liability to the Federal Government from the account or from any other account you have with us, without prior notice and at any time, except as prohibited by law. We may also use any other legal remedy to recover the amount of our liability.

**TEMPORARY ACCOUNT AGREEMENT** - If this option is selected, we may restrict or prohibit further use of this account if you fail to comply with the requirements we have imposed within a reasonable time.

**SETOFF** - We may (without prior notice and when permitted by law) set off the funds in this account against any due and payable debt you owe us now or in the future, by any of you having the right of withdrawal, to the extent of such persons' or legal entity's right to withdraw. If the debt arises from a note, "any due and payable debt" includes the total amount of which we are entitled to demand payment under the terms of the note at the time we set off, including any balance the due date for which we properly accelerated under the note.

This right of setoff does not apply to this account if: (a) it is an IRA or other tax-deferred retirement account, or (b) the debt is created by a consumer credit transaction under a credit card plan (but this does not affect our rights under any consensual security interest), or (c) the debtor's right of withdrawal only arises in a representative capacity. We will not be liable for the dishonor of any check when the dishonor occurs because we set off a debt against this account. You agree to hold us harmless from any claim arising as a result of our exercise of our right of setoff.

**AUTHORIZED SIGNER (Individual Accounts only)** - A single individual is the owner. The authorized signer is merely designated to conduct transactions on the owner's behalf. We undertake no obligation to monitor transactions to determine that they are on the owner's behalf.

**RESTRICTIVE LEGENDS** - We are not required to honor any restrictive legend on checks you write unless we have agreed in writing to the restriction. Examples of restrictive legends are "must be presented within 90 days" or "not valid for more than \$1,000.00."

**SOLE PROPRIETORSHIP RESOLUTION OF AUTHORITY**

CENTRAL NATIONAL BANK  
AND TRUST COMPANY OF ENID  
324 W BROADWAY AVE  
ENID, OK 73701-3838

By: SCHUBERT AND ASSOCIATES  
PO BOX 1549  
ENID OK 73702-1549

Referred to in this document as "Financial Institution"

Referred to in this document as "Proprietorship"

I, MARSHA AND RICHARD SCHUBERT, certify that I am the sole owner of the above named proprietorship, Federal Tax I.D. Number 75-2973658, engaged in business under the trade name of SCHUBERT AND ASSOCIATES

**AGENTS** Any agent listed below, subject to any written limitations, is authorized to exercise the powers granted as indicated below:

Name and Title or Position	Signature	Facsimile Signature (if used)
A. <u>DOUGLAS JACKSON RECEIVER</u>	X _____	X _____
B. _____	X _____	X _____
C. _____	X _____	X _____
D. _____	X _____	X _____
E. _____	X _____	X _____
F. _____	X _____	X _____

**POWERS GRANTED** (Attach one or more Agents to each power by placing the letter corresponding to their name in the area before each power. Following each power indicate the number of Agent signatures required to exercise the power.)

Indicate A, B, C, D, E, and/or F	Description of Power	Indicate number of signatures required
<u>A</u>	(1) Exercise all of the powers listed in this resolution.	<u>1</u>
_____	(2) Open any deposit or share account(s) in the name of the Proprietorship.	_____
_____	(3) Endorse checks and orders for the payment of money or otherwise withdraw or transfer funds on deposit with this Financial Institution.	_____
_____	(4) Borrow money on behalf and in the name of the Proprietorship, sign, execute and deliver promissory notes or other evidences of indebtedness.	_____
_____	(5) Endorse, assign, transfer, mortgage or pledge bills receivable, warehouse receipts, bills of lading, stocks, bonds, real estate or other property now owned or hereafter owned or acquired by the Proprietorship as security for sums borrowed, and to discount the same, unconditionally guarantee payment of all bills received, negotiated or discounted and to waive demand, presentment, protest, notice of protest and notice of non-payment.	_____
_____	(6) Enter into a written lease for the purpose of renting, maintaining, accessing and terminating a Safe Deposit Box in this Financial Institution.	_____
_____	(7) Other _____	_____

**LIMITATIONS ON POWERS** The following are the Proprietorship's express limitations on the powers granted under this resolution.

**EFFECT ON PREVIOUS RESOLUTIONS** This resolution supersedes resolution dated \_\_\_\_\_. If not completed, all resolutions remain in effect.

**CERTIFICATION OF AUTHORITY** I further certify that the Proprietorship has, and at the time of adoption of this resolution had, full power and lawful authority to adopt the resolutions on page 2 and to confer the powers granted above to the person named who have full power and lawful authority to exercise the same.

Optional Notarization:

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

In Witness Whereof I have subscribed my name to this document on \_\_\_\_\_ (date).

MARSHA AND RICHARD SCHUBERT  
(Type Name of Proprietor Below Signature)

As used in this agreement, "I" means the owner of the sole proprietorship designated on page one. The term "resolution" means this agreement or any other agreement granting authority to others to act on behalf of the Proprietorship. I warrant that I am the sole owner of the business whose trade name is designated on this resolution. If any other parties acquire an ownership interest in the business (for example if I were to include a partner in ownership or if I were to incorporate), or if the ownership is changed in any way and I do not notify the Financial Institution of that fact, I will remain fully liable personally in accordance with the terms of this resolution and any other agreements that I have signed. In consideration of the Financial Institution's acceptance of this account under the designated trade name, and/or for the purpose of cashing or negotiating checks, drafts or other negotiable instruments payable to the designated trade name, that I endorse in my name as owner, that are endorsed in the designated trade name, or by those authorized on page one as Agents, I agree that:

The Proprietorship named on this resolution resolves that,

- (1) The Financial Institution is designated as a depository for the funds of the Proprietorship and to provide other financial accommodations indicated in this resolution.
- (2) This resolution shall continue to have effect until express written notice of its rescission or modification has been received and recorded by the Financial Institution. Any and all prior agreements or resolutions adopted by the Proprietorship and certified to the Financial Institution as governing the operation of this proprietorship's account(s), are in full force and effect, until the Financial Institution receives and acknowledges an express written notice of its revocation, modification or replacement. Any revocation, modification or replacement of a resolution or agreement must be accompanied by documentation, satisfactory to the Financial Institution, establishing the authority for the changes.
- (3) The signature of an Agent on this resolution is conclusive evidence of their authority to act on behalf of the Proprietorship. Any Agent, so long as they act in a representative capacity as agents of the Proprietorship, is authorized to make any and all other contracts, agreements, stipulations and orders which they may deem advisable for the effective exercise of the powers indicated on page one, from time to time with the Financial Institution, subject to any restrictions on this resolution or otherwise agreed to in writing.
- (4) All transactions, if any, with respect to any deposits, withdrawals, rediscounts and borrowings by or on behalf of the Proprietorship with the Financial Institution prior to the adoption of this resolution are hereby ratified, approved and confirmed.
- (5) I agree to the terms and conditions of any account agreement, properly opened by any Agent of the Proprietorship. I authorize the Financial Institution, at any time, to charge the Proprietorship for all checks, drafts, or other orders, for the payment of money, that are drawn on the Financial Institution, so long as they contain the required number of signatures for this purpose.
- (6) I acknowledge and agree that the Financial Institution may furnish at its discretion automated access devices to Agents of the Proprietorship to facilitate those powers authorized by this resolution or other writings in effect at the time of issuance. The term "automated access device" includes, but is not limited to, credit cards, automated teller machines (ATM), and debit cards.
- (7) I acknowledge and agree that the Financial Institution may rely on alternative signature and verification codes issued to or obtained from the Agent named on this resolution. The term "alternative signature and verification codes" includes, but is not limited to, facsimile signatures on file with the Financial Institution, personal identification numbers (PIN), and digital signatures. If a facsimile signature specimen has been provided on this resolution, (or that are filed separately by the Proprietorship with the Financial Institution from time to time) the Financial Institution is authorized to treat the facsimile signature as the signature of the Agent(s) regardless of by whom or by what means the facsimile signature may have been affixed so long as it resembles the facsimile signature specimen on file. I authorize each Agent to have custody of the Proprietorship's private key used to create a digital signature and to request issuance of a certificate listing the corresponding public key. The Financial Institution shall have no responsibility or liability for unauthorized use of alternative signature and verification codes unless otherwise agreed in writing.

---

FOR FINANCIAL INSTITUTION USE ONLY

Acknowledged and received on 12/10/04 (date) by SPN (initials)  This resolution is superseded by resolution dated \_\_\_\_\_

Comments:

10349804 D

### TRUTH IN SAVINGS DISCLOSURE

Terms following a  apply only if checked.

Acct: Commercial Money Market

Acct #: 10349804

Date: DECEMBER 10, 2004

The interest rate and annual percentage yield stated below are accurate as of the date printed above. If you would like more current rate and yield information please call us at 580-233-3535.

This disclosure contains the rules which govern your deposit account. Unless it would be inconsistent to do so, words and phrases used in this disclosure should be construed so that the singular includes the plural and the plural includes the singular.

We reserve the right to at any time require not less than 7 days notice in writing before any withdrawal from an interest bearing account.

**FIXED RATE**

The interest rate for your account is \_\_\_\_\_ % with an annual percentage yield of \_\_\_\_\_ %. We will pay this rate \_\_\_\_\_ . We will not decrease this rate unless we first give you at least 30 days notice in writing.

The interest rate and annual percentage yield for your account depend upon the applicable rate tier. We will pay these rates \_\_\_\_\_ .

We will not decrease these rates unless we first give you at least 30 days notice in writing.

**VARIABLE RATE**

The interest rate for your account is \_\_\_\_\_ % with an annual percentage yield of \_\_\_\_\_ %. Your interest rate and annual percentage yield may change.

The interest rate and annual percentage yield for your account depend upon the applicable rate tier. The interest rate and annual percentage yield for these tiers may change.

**Determination of rate**

At our discretion, we may change the interest rate on your account.

The interest rate for your account \_\_\_\_\_

The fixed initial rate is not determined by this rule.

The initial interest rate on your account \_\_\_\_\_

Subsequent rates \_\_\_\_\_

**Frequency of rate change**

We may change the interest rate on your account \_\_\_\_\_ at any time

Your initial interest rate will not change \_\_\_\_\_

We may change the interest rate on your account at that time and \_\_\_\_\_ thereafter.

**Limitations on rate changes**

The interest rate for your account will not \_\_\_\_\_ by more than \_\_\_\_\_ each \_\_\_\_\_ .

The interest rate will not be less than \_\_\_\_\_ % or more than \_\_\_\_\_ %.

The interest rate will not \_\_\_\_\_

\_\_\_\_\_ the interest rate initially disclosed to you.

**Minimum Balance Requirements**

*To open the account.* You must deposit at least \$ 100.00 to open this account.

*To avoid imposition of fees.*

To avoid the imposition of the \_\_\_\_\_ you must meet \_\_\_\_\_ following requirements:

A \_\_\_\_\_ of \$ \_\_\_\_\_ will be imposed every \_\_\_\_\_

if the balance in the account falls below \$ \_\_\_\_\_ any day of the \_\_\_\_\_ .

A \_\_\_\_\_ of \$ \_\_\_\_\_ will be imposed every \_\_\_\_\_

if the average daily balance for the \_\_\_\_\_ falls below \$ \_\_\_\_\_ . The average daily balance is calculated by adding the principal in the account for each day of the period and dividing that figure by the number of days in the period.

The period we use is \_\_\_\_\_ .

To avoid the imposition of the \_\_\_\_\_ you must meet \_\_\_\_\_ following requirements:

A \_\_\_\_\_ of \$ \_\_\_\_\_ will be imposed for \_\_\_\_\_

transaction (withdrawal, check paid, automatic transfer or payment out of your account) if the balance in the account

falls below \$ \_\_\_\_\_ any day of the \_\_\_\_\_ .

A \_\_\_\_\_ of \$ \_\_\_\_\_ will be imposed for \_\_\_\_\_

transaction (withdrawal, check paid, automatic transfer or payment out of your account) if the average daily balance for the \_\_\_\_\_ falls below

\$ \_\_\_\_\_ . The average daily balance is calculated by adding the principal in the account for each day of the period and dividing that figure by the number of days in the period.

The period we use is \_\_\_\_\_ .

*To obtain the annual percentage yield disclosed.*

You must maintain a minimum balance of \$ \_\_\_\_\_ in the account each day to obtain the disclosed annual percentage yield.

You must maintain a minimum average daily balance of \$ \_\_\_\_\_ to obtain the disclosed annual percentage yield. The average daily balance is calculated by adding the principal in the account for each day of the period and dividing that figure by the number of days in the period.

The period we use is \_\_\_\_\_ .

**Compounding and Crediting**

Frequency - Interest will \_\_\_\_\_ be compounded monthly. Interest will be credited every month

Effect of closing an account - If you close your account before interest is credited, you will receive the accrued interest.

**Balance Computation Method**

Daily Balance Method. We use the daily balance method to calculate the interest on your account. This method applies a daily periodic rate to the principal in the account each day.

Average Daily Balance Method. We use the average daily balance method to calculate interest on your account. This method applies a periodic rate to the average daily balance in the account for the period. The average daily balance is calculated by adding the principal in the account for each day of the period and dividing that figure by the number of days in the period.

The period we use is \_\_\_\_\_

**Accrual of interest on noncash deposits**

Interest begins to accrue no later than the business day we receive credit for the deposit of noncash items (for example, checks).

Interest begins to accrue \_\_\_\_\_

\_\_\_\_\_ you deposit noncash items (for example, checks).

**Bonuses**

You will \_\_\_\_\_ as a bonus \_\_\_\_\_

You must maintain a minimum \_\_\_\_\_ of \$ \_\_\_\_\_ to obtain the bonus.

To earn the bonus, \_\_\_\_\_

**Transaction Limitations**

The minimum amount you may deposit is \$ \_\_\_\_\_

The minimum amount you may withdraw is \$ \_\_\_\_\_

You may only make 6 transfers from your account each month - 3 by checks to third parties and unlimited transfers in person or by ATM

The minimum withdrawal is \$ \_\_\_\_\_

You may only make \_\_\_\_\_ deposits into your account each statement cycle.

You may only make \_\_\_\_\_ ATM \_\_\_\_\_ your account each statement cycle.

You may only make \_\_\_\_\_ preauthorized transfers \_\_\_\_\_ your account each statement cycle.

**ADDITIONAL TRUTH IN SAVINGS DISCLOSURES**

DAILY BALANCES	RATE	APY
\$ 2,500.00 OR MORE	.5000	.50
\$ 2,499.99 OR LESS	.5000	.50

FOR ASSOCIATED ACCOUNT FEES, SEE "SCHEDULE OF FEES AND SERVICES".

**ACTIVITY SERVICE CHARGE:**

YOU MAY MAKE ONLY THREE (3) OF THE FOLLOWING COMBINATION OF TYPES OF TRANSFERS OR WITHDRAWALS FROM YOUR ACCOUNT EACH STATEMENT CYCLE WITHOUT INCURRING AN ACTIVITY SERVICE CHARGE OF \$5.00 FOR EACH ADDITIONAL TRANSFER OR WITHDRAWAL OF THESE SAME TYPES: BY CHECK, DRAFT, ACH TO THIRD PARTIES, BY ATM OR CHECK/DEBIT MADE IN PERSON. THERE IS NO MONTHLY ACTIVITY SERVICE CHARGE FOR OTHER TYPES OF TRANSFERS AND WITHDRAWALS.

1 IN THE DISTRICT COURT OF LOGAN COUNTY  
2 STATE OF OKLAHOMA  
3

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

6 Plaintiff, )

7 vs. )

) CASE NO. CJ-2004-256

8 MARSHA SCHUBERT, an individual )  
and dba SCHUBERT & ASSOCIATES; )

9 RICHARD L. SCHUBERT, an )  
individual and dba SCHUBERT & )

10 ASSOCIATES; and SCHUBERT & )  
ASSOCIATES, an unincorporated )

association, )

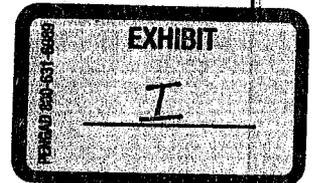
11 Defendant. )

12 \* \* \* \* \*

13 DEPOSITION OF RICHARD SCHUBERT  
14 taken on behalf of the  
15 Plaintiff  
16 on January 18, 2005  
17 in Stillwater, Oklahoma

18 \* \* \* \* \*

19  
20 WORD FOR WORD REPORTING, L.L.C.  
21 2220 FIRST NATIONAL CENTER  
120 NORTH ROBINSON AVENUE  
OKLAHOMA CITY, OKLAHOMA 73102



22 Reported by: MARTI M. MARTIN, C.S.R.  
23  
24  
25

COPY

1 Q Okay. Were you aware that Marsha purchased  
2 a 1969 Roadrunner for you?

3 A Yes.

4 Q Tell me about that.

5 A Well, her and her client -- she had a client  
6 that restored vehicles.

7 Q Who was the client?

8 A Hudson from Kingfisher.

9 Q Is it Bob Hudson?

10 A Bob Hudson, yeah.

11 Q Okay.

12 A He went in there and -- like I said, he was  
13 a client. This is what she told me. He wanted to know  
14 what kind of vehicle I had when I was in high school, and  
15 Marsha told him. He said, Well, we need to try to find one  
16 then and restore it for Richard. He said he would help her  
17 out for what she'd done for him, you know. That's how that  
18 all got started. That's the reason they purchased that.

19 Q Okay. So did she tell you that Mr. Hudson  
20 was helping her only find the car or was he helping to make  
21 payments for the restoration?

22 A Well, she didn't really say. I don't really  
23 know who made the payments.

24 Q You were aware that a car had been found?

25 A Right. Yeah.

1 Schubert signed or your children purportedly signed. Did  
2 you ever care for or take care of any cattle other than  
3 cattle that you personally purchased?

4 A No.

5 Q Is the attorney's name that prepared the  
6 trust James G. Warren?

7 A Yeah, I believe that's it.

8 Q In Oklahoma City?

9 A Yeah.

10 Q Had you ever met him before the day that you  
11 were asked to go to Marsha's office to sign the trust?

12 A Never had.

13 Q You were asked about a Roadrunner  
14 automobile. Did you ever receive that automobile?

15 A No.

16 Q Do you own such an automobile?

17 A No. It was put in my son's name. I don't  
18 know why that was done. It wasn't ever even put in my  
19 name.

20 Q Does your son have a Roadrunner automobile?

21 A No.

22 Q To your knowledge, did your wife or your  
23 children ever place any cattle on any of the lands that you  
24 either lease or own?

25 A No.

C E R T I F I C A T E

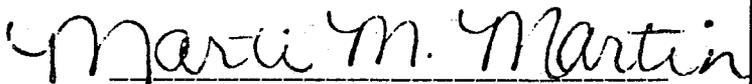
1  
2 STATE OF OKLAHOMA )  
3 )  
4 COUNTY OF McCLAIN )

5 I, MARTI M. MARTIN, Certified Shorthand Reporter  
6 within and for the State of Oklahoma, do hereby certify  
7 there came before me the deponent herein, namely RICHARD  
8 SCHUBERT, who was by me duly sworn to testify to the truth  
9 and nothing but the truth concerning the matters in this  
10 case.

11 I further certify that the foregoing transcript is  
12 a true and correct transcript of my original stenographic  
13 notes.

14 I further certify that I am neither attorney or  
15 counsel for, nor related to or employed by any of the  
16 parties to the action in which this deposition is taken; and  
17 furthermore, that I am not a relative or employee of any  
18 attorney or counsel employed by the parties hereto or  
19 financially interested in the action.

20 IN WITNESS WHEREOF, I have hereunto set my hand  
21 and affixed my seal this 27th day of January, 2005.

22  
23 

MARTI M. MARTIN, C.S.R.

24 CSR # 01730

25 Marti Martin  
Oklahoma Certified Shorthand Reporter  
Certificate No. 1730  
Exp. Date: December 31, 2005 

Print  
5/20/03

SCHUBERT AND ASSOCIATES  
TAX ID: 752973858  
P.O. BOX 502 - PH. 405-969-3700  
CRESCENT, OK - 73028

88-413/1031  
0010347477

2717

DATE 5-15-03

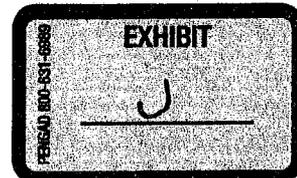
PAY TO THE ORDER OF Miracle Car \$ 500<sup>00</sup>

Five Hundred + no/100 DOLLARS

FARMERS & MERCHANTS BANK  
CRESCENT GUTHRIE  
OKLAHOMA

MEMO Produce J. Michael Schubert

⑆ 103104133⑆ 2717 001034747⑆



9/11/03

SCHUBERT AND ASSOCIATES

TAX ID. 752973658  
P.O. BOX 902 PH. 405-959-9700  
CRESCENT, OK 73028

88-413/1031  
0010347477

2945

DATE 9-3-03

PAY TO THE  
ORDER OF

*J. D. Jusco Corp*

\$5300.00

*Five Thousand Three Hundred & No*

DOLLARS



FARMERS &  
MERCHANTS BANK  
CRESCENT • GUTHRIE  
OKLAHOMA

*M. Schubert*

MEMO

⑆103104133⑆ 2945 0010347477⑈

SCHUBERT AND ASSOCIATES  
 TAX ID. 752973858  
 P.O. BOX 502 PH. 406-969-3700  
 CRESCENT, OK 73028

88-413/1031  
 0010347477

3002

DATE 10-7-03

PAY TO THE ORDER OF Muscle Car Restoration

SCHUBERT AND ASSOCIATES  
 TAX ID. 752973858  
 P.O. BOX 502 PH. 406-969-3700  
 CRESCENT, OK 73028

88-413/1031  
 0010347477

3084

DATE 11-5-03

PAY TO THE ORDER OF Muscle Car Restoration \$5540<sup>16</sup>

Five Thousand Five Hundred Forty & 16/100 DOLLARS

FARMERS & MERCHANTS BANK  
 CRESCENT - GUTHRIE  
 OKLAHOMA

MEMO 69 Roadrunner Mark Schubert

⑆103104133⑆ 3084 0010347477⑆

12/1/52

SCHUBERT AND ASSOCIATES

TAX ID. 75207388P  
P.O. BOX 502 PH. 405-948-3700  
CRESCENT, OK 73022

36-11871001  
0116947677

3508

DATE 12-1-52

PAY TO THE ORDER OF

*Wanda Car Lubrication* \$ *9.45* 00  
*Five Hundred Twenty Five & 45/100* DOLLARS 00



FARMERS & MERCHANTS BANK  
CRESCENT, OKLAHOMA

MEMO

*Wanda Car Lubrication*

120310-411F 1888 6010171 710



2/14/04

SCHUBERT AND ASSOCIATES

TAX ID: 752979868

P.O. BOX 502 PH. 405-889-3700  
CRESCENT, OK 73028

86-41071031  
0010347477

3414

DATE 2-4-04

PAY TO THE  
ORDER OF

Muscle Car Restoration \$6,117.78  
~~Sup. Thermal Dry Nerdied Sweater 28~~



FARMERS &  
MERCHANTS BANK  
CRESCENT COUNTRY  
OKLAHOMA

MEMO

Hub

Theresa Schubert

⑆103104133⑆ 3414 0010347477⑈

SCHUBERT AND ASSOCIATES

TAX ID. 752973858  
P.O. BOX 502 PH. 405-989-3700  
CRESCENT, OK 73028

86-413/1031  
001034747

3213

DATE 3-10-04

PAY TO THE  
ORDER OF

Muscle Car Restoration \$ 6,469.53  
Six Thousand Four Hundred Sixty Nine and 53/100 DOLLARS



FARMERS &  
MERCHANTS BANK  
CRESCENT • GUTHRIE  
OKLAHOMA

MEMO

Maureen Schubert

⑆103104133⑆ 3213 001034747⑈

POSTED

SCHUBERT AND ASSOCIATES  
TAX ID. 752973858  
P.O. BOX 502 PH. 405-669-3700  
CRESCENT, OK 73028

66-413/1031  
0010347477

3802

DATE 5-30-74

422

PAY TO THE ORDER OF

Muscle Car Restoration \$8868.18  
Eight Thousand Eight Hundred Sixty Eight and 18/100



FARMERS &  
MERCHANTS BANK  
CRESCENT • GUTHRIE  
OKLAHOMA

MEMO

Mauro Schubert

⑆ 103104133⑆ 3802 0010347477⑈

SCHUBERT AND ASSOCIATES

85-413/1031  
B010347477

3720

TAX ID. 752973658  
P.O. BOX 502 PH. 405-869-3700  
CRESCENT, OK 73028

*6-10-04*

PAY TO THE  
ORDER OF

*Museo Car Restoration \$ 9806) 77*  
*One Thousand Eight Hundred Sixty + 77/100 DOLLARS*



FARMERS &  
MERCHANTS BANK  
CRESCENT • GUTHRIE  
OKLAHOMA

MEMO

*Maisha Schubert*

⑆ 103104133⑆ 3720 0010347477⑈

*6/15*

85 4 1 1000 20 1 7

4165

88-413/1031  
0010347477

DATE 7-13-04

**SCHUBERT AND ASSOCIATES**  
TAX ID. 752973868  
P.O. BOX 602 PH. 405-969-3700  
CRESCENT, OK 73029

PAY TO THE  
ORDER OF

Mr. Donald E. Ford Trustee \$6184.96  
Missile Car Restorations 96/00  
One Hundred Eighty Four DOLLARS



**FARMERS &  
MERCHANTS BANK**  
CRESCENT • GUTHRIE  
OKLAHOMA

*Donald Schubert*

MEMO

⑆103104133⑆ 4165 0010347477⑈

520

**SCHUBERT AND ASSOCIATES**  
 TAX ID: 752973859  
 P.O. BOX 802 PH. 405-968-9700  
 CRESCENT, OK 73628

DATE: 8-23-01

MEMO: *Missola Car*

Pay to the order of: *Seven Hundred Thirty Eight & 00/100*

**FARMERS & MERCHANTS BANK**  
 CRESCENT, OKLAHOMA

MEMO: *Alberto Schu...*

⑆10570433⑆ 457 0058 471 27⑆

SCHUBERT AND ASSOCIATES

TAX ID. 752973658  
P.O. BOX 502 PH. 405-969-3700  
CRESCENT, OK 73028

86-413/1031  
0010347477

4882

DATE 9-14-04

PAY TO THE ORDER OF

Muscle Car  
Six Thousand One Hundred Thirty Four \$ 6134 <sup>33</sup>/<sub>100</sub>



FARMERS &  
MERCHANTS BANK  
CRESCENT - GUTHRIE  
OKLAHOMA

MEMO

Masha Schubert

⑆103104133⑆ 4882 0010347477⑈

Westlaw.

C.R.S.A. § 38-8-101

**C**  
West's Colorado Revised Statutes Annotated Currentness  
Title 38. Property--Real and Personal (Refs & Annos)  
    \* Frauds--Statute of Frauds  
    \* Article 8. Fraudulent Transfers (Refs & Annos)

→ § 38-8-101. Short title

This article shall be known and may be cited as the "Colorado Uniform Fraudulent Transfer Act".

**CREDIT(S)**

Added by Laws 1991, H.B.91-1080, § 1, eff. July 1, 1991.

**HISTORICAL AND STATUTORY NOTES**

2000 Main Volume

Section 5 of Laws 1991, H.B.91-1080, provides:

"Effective date--applicability. This act shall take effect July 1, 1991, and shall apply to acts committed on or after said date."

**Uniform Law:**

This section is similar to § 12 of the Uniform Fraudulent Transfer Act. See 7A Uniform Laws Annotated, Master Edition.

**LAW REVIEW AND JOURNAL COMMENTARIES**

Colorado's New Fraudulent Transfer Statute. Mark H. Boscoe and Matthew G. Olsen, 20 Colo.Law. 1815 (1991).

Twenty-Six Reasons for Caution in Using Revocable Trusts. Clifton B. Kruse, Jr., 21 Colo.Law. 1131 (1992).

**RESEARCH REFERENCES**

2005 Electronic Pocket Part Update

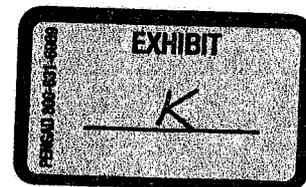
**Treatises and Practice Aids**

5A Colorado Practice Series § 1760, Section 1760. Attachment.

12 Colorado Practice Series § 56.21, Motion For Summary Judgment, With Authorities.

5 Colorado Practice Series R 102, Rule 102. Attachments.

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C.R.S.A. § 38-6-101

- 9 Colorado Practice Series § 2.17, Administration Of The Estate.
- 9 Colorado Practice Series § 5.81, Fraudulent Conveyances-In General.
- 9 Colorado Practice Series § 5.82, Fraudulent Conveyances Of Real Property.
- 9 Colorado Practice Series § 5.83, Fraudulent Conveyances Of Real Property-Colorado Vs. Federal Law.
- 9 Colorado Practice Series § 5.84, Fraudulent Conveyances Of Real Property-Creditors Affected.
- 9 Colorado Practice Series § 5.85, Fraudulent Conveyances Of Real Property-Title.
- 9 Colorado Practice Series § 5.86, Fraudulent Conveyances Of Real Property-Effect On Heirs, etc.
- 9 Colorado Practice Series § 5.87, Fraudulent Conveyances Of Real Property-Among Related Parties.
- 9 Colorado Practice Series § 5.88, Fraudulent Conveyances Of Real Property-Statute Of Limitations.
- 9 Colorado Practice Series § 5.89, Fraudulent Conveyances Of Personal Property.
- 9 Colorado Practice Series § 5.90, Self-Settled Trusts.
- 9 Colorado Practice Series § 5.91, Form-Complaint On Claim For Debt And To Set Aside Fraudulent Conveyance.
- 9 Colorado Practice Series § 6.36, Fraudulent Conveyances.
- 9 Colorado Practice Series § 5.151, Colorado Uniform Fraudulent Transfer Act.
- 1 Colorado Practice Series § 6.6, Preliminary Evaluation.

## NOTES OF DECISIONS

**Construction and application 1.5**

**Damages 4**

**Fraudulent intent 3**

**Good faith 2**

**Validity 1**

### 1. Validity

Even assuming that "constructive fraud" provisions of bankruptcy fraudulent transfer statute and Colorado fraudulent conveyance law, as invoked by Chapter 7 trustee to recover sums which debtors had tithed to church, substantially burdened debtors' religious practices under the Religious Freedom Restoration Act (RFRA), this burden was justified by compelling governmental interests, including government's interest in providing equitable system for payment of creditor claims, and was least restrictive means of achieving that interest, such that "constructive fraud" provisions did not violate the RFRA. In re Bloch, 1997, 207 B.R. 944. Bankruptcy 2650(2); Civil Rights ⇨ 1032; Fraudulent Conveyances ⇨ 2.1

### 1.5. Construction and application

C.R.S.A. § 38-8-101

Modern fraudulent transfer law, like the Colorado Uniform Fraudulent Transfer Act (CUFTA), has dispensed with the requirement that a lien has to be filed against the property transferred before a legal wrong can occur, focusing instead on the debtor's intent to frustrate the creditor once its claim is made known. *Double Oak Const., L.L.C. v. Cornerstone Development Intern., L.L.C.*, App.2003, 97 P.3d 140, certiorari denied 2004 WL 1813933. *Fraudulent Conveyances* ⇨ 241(3)

Colorado Uniform Fraudulent Transfer Act (CUFTA) does not provide for a creditor to set aside a transaction based on an agent's breach of fiduciary duty to a principal; instead, a creditor's right to impeach a transfer depends on a finding of its fraudulent character. *Schempp v. Lucre Management Group, LLC*, App.2003, 75 P.3d 1157. *Fraudulent Conveyances* ⇨ 240

## 2. Good faith

Evidence sustained finding that partner did not hinder, delay, or defraud creditors by implementing plan in which some partners and new investors contributed \$1 million to capitalize financially-troubled bank owned by partnership, in exchange for the lessor's and lessee's interests in bank property and the bank business; plan was entered into in good faith and was reasonable business decision to protect partnership assets by avoiding probable dire consequences of takeover of bank by Federal Deposit Insurance Corporation (FDIC). *Silverberg v. Colantuno*, App.1998, 991 P.2d 280, rehearing denied, certiorari granted, certiorari denied as improvidently granted. *Partnership* ⇨ 121

## 3. Fraudulent intent

Current version of Colorado fraudulent transfer statute has abrogated former rule placing burden of proof on spouses to show lack of fraudulent intent in challenged transfer between husband and wife; under current statute, burden of proof now lies with plaintiff creditor to prove each element of fraudulent transfer under statute before defendant spouses must come forward to prove defense of good faith and reasonably equivalent value. In re *Thomason*, 1996, 202 B.R. 768. *Fraudulent Conveyances* ⇨ 278(2)

## 4. Damages

Punitive damages are unavailable on a fraudulent conveyance claim under Colorado's Uniform Fraudulent Transfers Act. *Morris v. Askeland Enterprises, Inc.*, App.2000, 17 P.3d 830. *Fraudulent Conveyances* ⇨ 314

Judgment creditor was not entitled to award of attorney fees in action against judgment debtor and its sole officer, shareholder, and director under Colorado's Uniform Fraudulent Transfers Act, as there was no third-party litigation resulting from a party's wrongful conduct. *Morris v. Askeland Enterprises, Inc.*, App.2000, 17 P.3d 830. *Corporations* ⇨ 548(11)

C. R. S. A. § 38-8-101, CO ST § 38-8-101

Current through Chapter 116 of the First Regular Session of the 65th General Assembly.

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