

intervene. The Movants appear to recognize this requirement by the fact that they include a motion to intervene in footnote 1 of their Motion.

The Motion filed on behalf of the Movants seeks to circumvent the procedure mandated in 12 O.S. §2024 by requesting affirmative relief from the Court and setting their 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 the Movants' failure to comply with the above-quoted statutory procedure is an improper and invalid intervention in the case, which deprives the current parties of their statutory time to respond to a substantive pleading without even knowing whether or not leave to intervene will be granted. See 12 O.S. §2024(C).

Furthermore, the stated purpose of Movants' request to intervene is to ask the Court to vacate the Court's Order Amending Authority of Receiver entered on December 10, 2004, which appointed Mr. Jackson "receiver for the investors and creditors of Schubert and Associates." There are 71 individuals comprising the Movants herein. See Movants' Exhibit 1 and the two Joinder pleadings filed 8-03-05 and 8-05-05. Of the 71 Movants, 46 of them did not pay any money whatsoever into Schubert and Associates, but nonetheless were paid money out Schubert and Associates' bank accounts. Compare list of "Non-investor Movants" attached as *Exhibit A* with the "Money In" and "Money Out" columns of BKD accounting summary for Movants attached as *Exhibit B*. Given these facts, the 46 "Non-investor" Movants are neither investors

nor creditors of Schubert and Associates. As such, this Court's December 10, 2004 Order did not appoint Mr. Jackson as the receiver over these 46 Movants, their property, or their interests. Because these 46 Movants are neither investors nor creditors of Schubert and Associates, they lack both a factual basis and the legal standing to intervene in this Logan County case for the sole purpose of attacking a Court Order that does not pertain to them.

The remaining 25 individual Movants all have a net long position, meaning that they did pay some money into Schubert and Associates, but received payments out of Schubert and Associates' bank accounts in excess of the amount(s) they each paid into Schubert and Associates. Compare list of Movants with Net Long Position attached as *Exhibit C* with the BKD accounting summary attached as *Exhibit B*. Based on the accounting showing each of these 25 Movants to have a net long position, they are not creditors of Schubert and Associates. Furthermore, these 25 Movants have not attached any documentation to their motion to establish themselves as creditors of Schubert and Associates by having provided goods, services or labor to Schubert and Associates.

Finally, while these 25 Movants and others who actually paid money into Schubert and Associates no doubt believed they were making investments, the analysis of Marsha Schubert's and Schubert and Associates' financial records demonstrates that their money was not invested. As a result, whether people ended up with a net long or net short position, no investments were made, and as a matter of fact, these people were not truly investors. Because these 25 Movants are also not creditors for the reasons stated in the paragraph above, the Court's December 10, 2004 Order did not appoint Mr. Jackson as receiver over them, their property, or their interests. Therefore, these 25 Movants lack both a factual basis and legal standing to intervene in this case for the sole purpose of attacking the December 10, 2004 Order Amending Authority of Receiver.

At the very least, a fact issue is presented on their basis and ability to intervene, and testimony and evidence should be received at the hearing to determine whether leave to intervene should be granted to these 25 Movants.

Based on the foregoing facts and legal authority, the Receiver respectfully requests the following: (1) that the Court first hear the Movants' Motion to Intervene; (2) that the Court deny both the "Non-investor" Movants' and "Long" Movants' Motion to Intervene; and, (3) alternatively, should the Court grant either the "Non-investor" Movants' and/or "Long" Movants' Motion to Intervene, the Receiver requests that he be granted 20 days from the date leave to intervene is granted to respond to the Movants' substantive pleading as expressly provided in 12 O.S. §2024(C).

II. Alternatively, should the Court hear the non-party Movants' substantive motion to vacate in addition to the motion to intervene, the Court had both the power and discretion to enter the Order Amending Authority of Receiver on December 10, 2004, and that Order should not be vacated.

A. The December 10, 2004 was entered in the official course of the proceedings of the above-styled case, and was not presented or entered in an *ex parte* fashion or proceeding.

Approximately one month after the Oklahoma Department of Securities ("Department") initiated this action in Logan County, it filed a Motion to Amend Authority of Receiver on November 15, 2004. According to the certificate of service, a copy of the Motion was served on all attorneys of record at that time and the court-appointed receiver. The Motion was published on the Oklahoma Supreme Court Network website. See excerpt of OSCN docket for this case attached as *Exhibit D*. The Motion was published on the website of the Department. See excerpt of printout from Department's website attached as *Exhibit E*. The Motion came on for hearing at this Court's December 10, 2004 motion docket. The Department's Motion was granted and the Order Amending Authority of Receiver was entered in open court on the December 10th docket.

The circumstances described above pertaining to the Department's Motion to Amend Authority of Receiver, the hearing thereon, and entry of the Order during the December 12th motion docket do not constitute an *ex parte* communication, proceeding or order under Oklahoma law. First, Rule 3.5(b) of the Rules of Professional Conduct provides the following regarding communication with a judge:

A lawyer shall not:

...

(b) in an adversary proceeding, communicate or cause another to communicate as to the merits of the cause, with a judge or an official before whom the proceeding is pending except:

- (1) in the course of the official proceeding in the cause;
- (2) in writing if the lawyer promptly delivers a copy of the writing to the opposing counsel or to the adverse party if not represented by a lawyer;
- (3) orally upon notice to opposing counsel or to the adverse party if not represented by a lawyer; and
- (4) as otherwise authorized by law;

See OKLA. STAT. ANN. TIT. 12, Ch. 1, App. 3-A, Rule 3.5(b).

Here, the Department filed its Motion with the Logan County Court Clerk to Amend the Receiver's Authority. The motion came on for hearing at the Court's regular, monthly, motion docket on December 10, 2004. In the course of that official proceeding, the Order was presented to and entered by the Honorable Donald L. Worthington. Furthermore, regarding subparagraphs (2) and (3) of Rule 3.5(b) cited above, these non-party Movants do not fall into the category or definition of "opposing counsel" or the "adverse party" to whom a lawyer is required to provide a copy of written communications with the judge or notice of oral communications to take place with the judge. Therefore, the Court's Order entered on December 10, 2004 is not an *ex parte* Order pursuant to Rule 3.5 of the Rules of Professional Conduct.

Similarly, the Local Court Rules adopted by the Ninth Judicial District sets out the requirements 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.

Here, the signature pages on the December 10, 2004 Order Amending Authority of Receiver demonstrate that the Department complied with the above Local Rule and obtained the approval and signatures of all attorneys of record before presenting that Order to the Court. Again, none of these non-party Movants were parties to this case or attorneys of record. Therefore, the Court's Order entered on December 10, 2004 is not an *ex parte* Order, but was presented and entered in accordance with Local Court rules.

B. The evidence before the Court does not support the Movants' Due Process claim.

The Movants' argument that they were deprived of their due process rights by not receiving notice of the hearing on the Department's Motion to Amend Authority of Receiver must fail. The Department's Motion did not ask the Court to appoint Mr. Jackson as receiver over the property and/or assets of the investors and creditors of Schubert and Associates. See 11/15/04 Motion at pg. 2, ¶1 (Movants' Exhibit 3). More importantly, the Court's December 10, 2004 Order Amending Authority of the Receiver does not appoint Mr. Jackson as receiver over the property and/or assets of the investors and creditors of Schubert and Associates as the Movants' erroneously state in their Motion. See 12/10/04 Order at pg. 2 (Movants' Exhibit 2). The Order provides that, "Douglas L. Jackson ("Receiver"), be appointed receiver for the investors and creditors of Schubert and Associates...." Id. at pg.2. This language is patently

distinguishable from the next phrase of the Order, which provides that Mr. Jackson will "continue to serve as **Receiver for the assets of Defendants** as provided in the Temporary Restraining Order" Id. at pg. 2 (emphasis added). The plain language of the December 10, 2004 Order refutes the Movants' contention the Court's Order of December 10, 2004, in and of itself, deprived Movants of a "protected property interest" without due process.

Oklahoma law provides that the threshold determination to be made in a due process claim is whether there is in fact a protected liberty or property interest at issue. 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)). In Stern, the Oklahoma Court of Appeals provided that property interests are not created by the due process clause, but arise from "independent sources such as a state or federal statute, a municipal charter or ordinance, or an implied or express contract." See id. (*citing Carnes v. Parker*, 922 F.2d 1506 (10th Cir. 1991)). The Court in Sterns further stated that "[t]o have a property interest in a benefit, a person must have a legitimate claim of entitlement to it." See id. (*citing Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972); Wood, 661 P.2d at 894).

In the instant case, neither the Court, nor the Department, nor the Receiver have deprived Movants of a protected property interest through the entry of the December 10, 2004 Order Amending Authority of Receiver. First, the Court has never ordered or instructed any of the investors or creditors to deliver their property to the Receiver, while it did make such an order relative to the Defendants in the October 14, 2004 Temporary Restraining Order. Second, a review of the docket sheet in this case demonstrates that the Receiver has never asked the Court for authorization or approval to seize property or assets of the investors and creditors of Schubert

and Associates pursuant to the December 10, 2004 Order. Third, the Receiver has not, in fact, frozen any bank account(s), seized any real estate, seized automobiles or any other property or assets of the investors and creditors of Schubert and Associates. Fourth, there is nothing in the Court's Order of December 10, 2004 that prevents the investors and creditors of Schubert and Associates from filing a lawsuit or claim against Marsha Schubert or any other party. In fact, counsel for the Movants has filed a class action suit on behalf of one Bennie Schnorr and an "Investor Class" against Marsha Schubert, Richard Schubert, Schubert and Associates, AXA Advisors, LLC, and Wilbanks Securities, Inc., which upon information and belief includes several Movants as class members. See excerpt of original class action petition filed 2/17/05 attached as *Exhibit F*. Likewise, Barry Pollard filed a lawsuit in Logan County naming Marsha Schubert and Schubert and Associates, among others, as defendants. See excerpt of Pollard petition filed 3/4/05 attached as *Exhibit G*. These facts all beg the question of what protected property interest(s) the non-party Movants claim to have been deprived of without due process, a question which is not answered or addressed by Movants in Part A of their Brief pertaining to their due process argument.

Based on the above facts and legal authority, the Movants have not established the evidence sufficient to meet the threshold determination that a protected property interest is at stake. See Stern, 841 P.2d at 1170. Therefore, the Movants' argument concerning due process must fail, and a ruling should be made in favor of the Department and Receiver on this issue.

C. The Department has the authority to seek and the Court has the authority to appoint Mr. Jackson as receiver for the investors and creditors of Schubert and Associates.

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.

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 things the court may do include 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 “Order 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, the Movants acknowledge the existence of 1-603(B)(3), but wholly fail to address that provision in the context of this case. Specifically, the Movants ignore this broad discretionary provision as 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, the Movants cite 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 the Movants. Rather, the broad discretionary authority of section 1-603(B)(3) of title 71 provided 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 authorized the Receiver to bring an action against individuals such the 46 Movants 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 authorized the Receiver to bring an action against individuals such as the remaining 25 Movants, 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 benefits 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 the Movants 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.

The Movants rely on the United States District Court for the District of Colorado case of Johnson v. Studholme to support its 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 H*. This is another, critical distinguishing factor from the instant case.

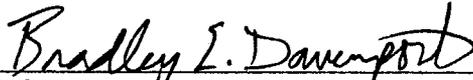
Finally, the U.S. District Court for the District of Colorado has itself addressed the non-binding nature of its 20-year old opinion in Johnson v. Studholme. In Lyons v. Jefferson Bank & Trust, the District Court, addressing Johnson, stated as follows:

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 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 Movants' Motion to Vacate the Order Amending Authority of Receiver.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on the 11th 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
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Amanda Commesser
First National Center, Suite 860
120 N. Robinson
Oklahoma City, OK 73102

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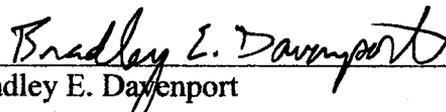
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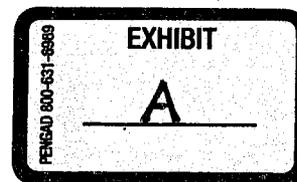
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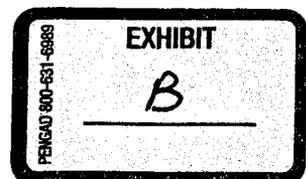
Non-Investor Movants

1. Blair, R. Kurt
2. Blair, Wendy
3. Carr, Ella
4. Cook, Maudie L.
5. Cue, Dean
6. Cue, Claudette
7. Espolt, Steven R.
8. Etheridge, William
9. Ewers, Angela D.
10. Gregory, Danny
11. Gregory, Martha
12. Harman, Melvin E. "Sonny"
13. Harris, Bill
14. Jones, Loyd R.
15. Kinslow, Shanna
16. Lamb, Betty
17. LaRue, Christopher
18. LaRue, K. R.
19. Laubach, Raymond C.
20. Lindley, Carol A.
21. Long, Kerry
22. Luber, Willis
23. Mathews, Martin W.
24. Palmer, Jeffrey
25. Payne, Ted A.
26. Payne, Laura
27. Pittman, Theresa
28. Platt, Arthur
29. Rains, Timothy W.
30. Rains, Krista
31. Rains, Robert
32. Rogers, Michael
33. Sanders, Curtis R.
34. Scott, Gary L.
35. Segura, Manuel
36. Sheehan, Neil
37. Stanton, Edward G.
38. Tackett, E. E.
39. Tarrant, Justin R.
40. Toephfer, Wade
41. Viefhaus, Elnora
42. Vincent, Billie A.
43. Wilcox, Jeffrey L.
44. Winn, Sean
45. Yenzen, Glenda
46. Yenzen, Phillip



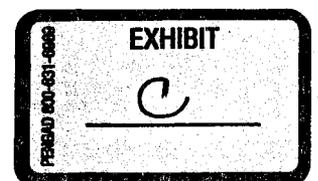
EXHIBIT

NAME	MONEY IN 2000-2004	MONEY OUT 2000-2004	MONEY IN CROSS-DEP CKS	MONEY OUT CROSS-DEP CKS	NET POSITION
Allen, Ben & Sharon	\$ 140,000	\$ 310,899			\$ (170,899)
Armer, Beth	\$ 75,892	\$ 153,172			\$ (77,280)
Blair, Kurt		\$ 24,500			\$ (24,500)
Bounds, Jackie	\$ 31,000	\$ 75,723			\$ (44,723)
Carr, Ella		\$ 99,051			\$ (99,051)
Cook, Maude		\$ 11,000			\$ (11,000)
Cue, Dean & Claudette		\$ 31,948			\$ (31,948)
Espolt, Steve		\$ 44,510			\$ (44,510)
Ethridge, William(Jim) & Betty		\$ 9,163			\$ (9,163)
Ewers, Angela		\$ 12,860			\$ (12,860)
Fagg, Jan	\$ 76,805	\$ 197,914			\$ (121,109)
Gibson, Kathleen	\$ 789,341	\$ 1,099,091			\$ (309,750)
Gregory, Danny		\$ 13,797			\$ (13,797)
Gregory, Martha		\$ 10,200			\$ (10,200)
Harmon, Melvin (Sonny)		\$ 39,039			\$ (39,039)
Harris, Bill		\$ 10,300			\$ (10,300)
Honeyman, Becky	\$ 20,000	\$ 30,000			\$ (10,000)
Hudson, Bob	\$ 30,000	\$ 193,378			\$ (163,378)
Jackson, Crystal	\$ 10,000	\$ 41,120			\$ (31,120)
Jones, Loyd		\$ 43,097			\$ (43,097)
Kinslow, Shanna		\$ 64,462			\$ (64,462)
Lamb, Betty		\$ 4,000			\$ (4,000)
Larue, Chris		\$ 11,038			\$ (11,038)
Larue, Ken	\$ 9,000	\$ 107,821			\$ (98,821)
Larue, KR & Dana		\$ 31,646			\$ (31,646)
Laubach, Raymond		\$ 18,346			\$ (18,346)
Lindley, Carol		\$ 11,010			\$ (11,010)
Long, Kerry		\$ 19,300			\$ (19,300)
Luber, Willis		\$ 11,415			\$ (11,415)
Martin, Rod & Wanda	\$ 38,143	\$ 72,185			\$ (34,042)
Mathews, Bob	\$ 77,853	\$ 74,155	\$ 86,842,653	\$ 87,371,178	\$ (524,827)
Mathews, Marty		\$ 91,520			\$ (91,520)
Mercer, Sheryl	\$ 20,000	\$ 254,050			\$ (234,050)
Owens, Detria	\$ 200,000	\$ 637,780	\$ 30,000	\$ 33,789	\$ (441,569)
Owens, Robert Jr	\$ 27,500	\$ 63,651			\$ (36,151)
Palmer, Jeff		\$ 510			\$ (510)
Payne, Laura		\$ 3,000			\$ (3,000)
Payne, Ted & Joyce		\$ 16,675			\$ (16,675)
Phillips, Sandy	\$ 30,000	\$ 127,986	\$ 175,000	\$ 104,505	\$ (27,491)
Pittman, Teresa		\$ 31,396			\$ (31,396)
Platt, Art & Yvonne		\$ 36,157			\$ (36,157)
Rains, Rob		\$ 31,200			\$ (31,200)
Rains, Tim & Krista		\$ 7,075			\$ (7,075)
Rogers, Mike (MKR Prop)		\$ 165,993			\$ (165,993)
Sanders, Curtis & Martha		\$ 25,728			\$ (25,728)
Scott, Gary		\$ 18,000			\$ (18,000)
Segura, Manuel		\$ 3,000			\$ (3,000)
Sheehan, Neil		\$ 32,200			\$ (32,200)
Stanton, Ed		\$ 104,029			\$ (104,029)
Tackett, E E Trust		\$ 7,080			\$ (7,080)
Tarrant, Justin		\$ 49,939			\$ (49,939)
Toepfer, Wade		\$ 137,909			\$ (137,909)
Viefhaus, Elnora		\$ 27,264			\$ (27,264)
Vincent, Billy		\$ 17,000			\$ (17,000)
Wilcox, Jeff		\$ 46,070			\$ (46,070)
Wilcox, Marvin & Pamela	\$ 96,020	\$ 214,393	\$ 77,643,726	\$ 78,034,858	\$ (509,505)
Wilcox, Scott		\$ 58,496			\$ (58,496)
Winn, Sean		\$ 16,594			\$ (16,594)
Yenzer, Phillip		\$ 40,583			\$ (40,583)
Yenzer, Glenda		\$ 2,950			\$ (2,950)
Young, Ken	\$ 50,000	\$ 78,091			\$ (28,091)
Young, Leslie		\$ 2,500			\$ (2,500)
Young, Alexandra		\$ 1,000			\$ (1,000)
	\$ 1,721,554				\$ (4,357,356)



Movants With Net Long Position

1. Allen, Ben J.
2. Allen, Sharon A.
3. Armer, Beth (Individually and as Trustee for Revocable Trust)
4. Bounds, Jacquelyn
5. Fagg, Janice
6. Gibson, Kathleen
7. Honeyman, Rebecca
8. Hudson, Bob E.
9. Jackson, Crystal
10. Jackson, Daniel
11. LaRue, Kenneth
12. Martin, Rodney J.
13. Martin, Wanda
14. Mathews, Robert W.
15. Mercer, Sheryl
16. Owens, Robert J.
17. Owens, Detria J.
18. Payne, Joyce E.
19. Phillips, Sandra K.
20. Wilcox, Scott A.
21. Wilcox, Marvin L.
22. Wilcox, Pamela J.
23. Young, Alexandra
24. Young, Kenneth
25. Young, Leslie A.





Home Courts Court Dockets Legal Research Calendar Help

DISCLAIMER: The information on this page is NOT an official record. Do not rely on the correctness or completeness of this information. Verify all information with the official record keeper. The information contained in this report is provided in compliance with the Oklahoma Open Records Act, 51 O.S. § 24A.1. Use of this information is governed by this act, as well as other applicable state and federal laws.

IN THE DISTRICT COURT IN AND FOR LOGAN COUNTY, OKLAHOMA

Oklahoma Department of Securities ex rel. Irving L. Faught, Administrator vs 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	No. CJ-2004-256 (Civil relief more than \$10,000) Filed: 10/14/2004 Judge: Worthington, Donald L.
---	--

Parties

Cornmesser, Amanda Mavis, ATTORNEY
 Court Appointed Receiver, Interested Party
 Farmers And Merchants Bank, Defendant
 Leboeuf, Richard, Defendant
 OKLAHOMA DEPARTMENT OF SECURITIES, Plaintiff
 Schubert, Marsha, Defendant
 Schubert, Richard L., Defendant
 Schubert And Associates, Defendant

Attorneys

Attorney
 Baker, William J(Bar # 463)
 PO Box 668
 Stillwater, OK 74076 USA
 BEDNAR, ALEXANDER L(Bar # 19635)
 1030 BANK ONE CENTER
 100 N BROADWAY
 OKLAHOMA CITY, OK 73102
 Cornmesser, Amanda(Bar #)
 Department Of Securities
 First National Center, Suite 860
 20 N. Robinson Avenue
 Oklahoma City, OK 73102
 Jackson, Douglas L(Bar # 4583)
 P.O. BOX 1549
 23 WEST BROADWAY
 MID, OK 73702
 Martin, Mack(Bar # 5738)
 19 N ROBINSON AVE SUITE 360
 OKC, OK 73102 OK
 Meyers, Charles A(Bar # 6167)
 11 S. Husband
 Stillwater, OK 74074
 Tuckey, Gerri L.(Bar # 6732)

Represented Parties

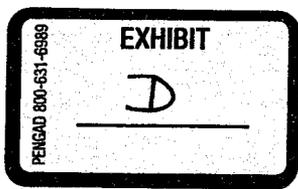
Schubert, Richard L.

 Leboeuf, Richard

 Court Appointed Receiver

 Schubert, Marsha

 OKLAHOMA DEPARTMENT OF SECURITIES



Due Dates

Ticket Code	Original Due Date	Current Due Date	Description
http://www.oscn.net/applications/ocisweb/GetCaseInformation.asp?submitted=true&			8/11/05

Events

Event	Party	Docket	Reporter
Monday, November 15, 2004 at 13:30 PM Motion Docket - Temp. Restraining Order, Order Appointing Receiver Order Freezing Assets And Order For Accounting (MOD)		Donald L. Worthington	
Monday, November 15, 2004 at 13:30 PM Motion Docket - APPLICATION BY RECEIVER FOR APPROVAL OF EMPLOYMENT OF LEGAL COUNSEL - deft's Marsha Schubert & Ricard Schubert (MOD)			
Friday, January 14, 2005 at 13:30 PM MOTION HEARING (MOT)		Donald L. Worthington	
Friday, April 8, 2005 at 13:30 PM MOTION HEARING - MOTION OF RECEIVER FOR LEAVE TO ABANDON CERTAIN PROPERTY (MOT)		Donald L. Worthington	
Friday, April 8, 2005 at 13:30 PM MOTION HEARING - Mot. for receiver For Leave to Abandon Certain Property (MOT)		Donald L. Worthington	
Friday, April 8, 2005 at 13:30 PM MOTION HEARING - Motion For Leave Of Court To Lift Injunction And Abandon Certain Secured Collateral (MOT)		Donald L. Worthington	
Friday, May 13, 2005 at 13:30 PM APPLICATION OF RECEIVER FOR AUTHORITY TO PAY INTERIM ACCOUNTING FEES APPLICATION OF RECEIVER FOR AUTHORITY TO PAY INTERIM ACCOUNTING FEES (MOT)		Donald L. Worthington	
Friday, June 10, 2005 at 13:30 PM MOTION HEARING - APPLICATION BY RECEIVER FOR AUTHORITY TO PAY INTERIM ATTORN FEES (MOT)			
Friday, June 10, 2005 at 14:30 PM DISPOSITION HEARING DOCKET (DHD)		Donald L. Worthington	
Friday, August 12, 2005 at 13:30 PM MOTION HEARING - motion to transfer and consolidate this matter (MOT)	Schubert, Marsha	Donald L. Worthington	
Friday, August 12, 2005 at 13:30 PM MOTION HEARING - To Transfer And Consolidate (MOT)		Donald L. Worthington	
Friday, August 12, 2005 at 13:30 PM MOTION HEARING Mot. To vacate Ex Parte Order Appointing Douglas L. Jackson As Reciver For Investors Of Marsha Schubert Or Alternatively, To Transfer This Motion To The Oklahoma County District court (MOT)		Donald L. Worthington	
Friday, August 12, 2005 at 13:30 PM MOTION HEARING - APPLICATION OF RECEIVER FOR AUTHORITY TO PAY INTERIM ACCOUNTING FEES (MOT)		Donald L. Worthington	
Friday, August 12, 2005 at 13:30 PM MOTION HEARING - Mot. To Intervend And Set Aside Order Appointing Receiver, And To Transfer And Consolidate This Case (MOT)	Leboeuf, Richard	Donald L. Worthington	
Friday, August 12, 2005 at 13:30 PM MOTION HEARING - Receiver's Motion To Strike, And Alternatively, Objection To Leboeuf's Intervention Of Party And Motion To Transfer And Consolidate This Matter (MOT)	Schubert, Marsha	Donald L. Worthington	
Friday, September 9, 2005 at 13:30 PM MOTION HEARING - JOINDER BY DEFENDANTS FAGG, GIBSON AND CARR IN DEFENDANTS' MOTION TO VACATE EX PARTE ORDER (MOT)		Donald L. Worthington	
Friday, September 9, 2005 at 13:30 PM MOTION HEARING - MOTION TO VACATE EX PARTE ORDER APPOINTING DOUGLAS L. JACKSON AS RECEIVER FOR INVESTORS OF MARSHA SCHUBERT OR ALTERNATIVELY, TO TRANSFER THIS MOTION TO THE OKLAHOMA COUNTY DISTRICT COURT (MOT)		Donald L. Worthington	
Friday, September 9, 2005 at 13:30 PM MOTION HEARING - Motion In Limine To Strike Plaintiff's Witness Testimony (MOT)			

Issues

For cases filed before 1/1/2000, ancillary issues may not appear except in the docket.

Issue # 1. Count as filed: INJUNCT, INJUNCTION / RESTRAINING ORDER, in violation of INJUNCT O.S. INJUNCT Issue Filed: 10/14/2004

<u>Defendant</u>	<u>Disposition Information</u>
Schubert, Marsha	Pending.
Schubert And Associates	Pending.
Schubert, Richard L.	Disposed: DISMISSED , 04/04/2005. Other. Disposed Count Code:INJUNCT
Court Appointed Receiver	Pending.
Farmers And Merchants Bank	Pending.

Docket

Date	Code	Count	Party	Serial #	Entry Date		
10/14/2004	TEXT	1		201673	Oct 14 2004 3:20:30:127PM	-	\$ 0.00
CIVIL RELIEF MORE THAN \$10,000 INITIAL FILING.							
10/14/2004	INJUNCT	-		201675	Oct 14 2004 3:20:30:750PM	Realized	\$ 0.00
INJUNCTION / RESTRAINING ORDER							
10/14/2004	DMFE	-		201676	Oct 14 2004 3:20:31:000PM	Realized	\$ 2.00
DISPUTE MEDIATION FEE(\$ 2.00)							
10/14/2004	PFE1	-		201677	Oct 20 2004 11:24:08:320AM	Realized	\$ 72.00
PETITION(\$ 72.00)							
 <u>Document Available (#1000726170)</u>							
10/14/2004	PFE7	-		201678	Oct 14 2004 3:20:31:000PM	Realized	\$ 6.00
LAW LIBRARY FEE(\$ 6.00)							
10/14/2004	OCISR	-		201679	Oct 14 2004 3:20:31:000PM	Realized	\$ 10.00
OKLAHOMA COURT INFORMATION SYSTEM REVOLVING FUND(\$ 10.00)							
10/14/2004	CCADMIN	-		201680	Oct 14 2004 3:20:31:000PM	Realized	\$ 1.00
COURT CLERK ADMINISTRATIVE FEE ON COLLECTIONS(\$ 1.00)							
0/14/2004	CHAB	-		201681	Oct 14 2004 3:20:31:000PM	Realized	\$ 10.00
C.H.A.B. STATUTORY FEE(\$ 10.00)							
0/14/2004	APLI	-		203922	Oct 20 2004 11:26:11:037AM	Realized	\$ 0.00
APPLICATION FOR TEMPORARY RESTRAINING ORDER, ORDER FREEZING ASSETS, ORDER APPOINTING RECEIVER, AND ORDER FOR ACCOUNTING							
 <u>Document Available (#1000726171)</u>							
0/14/2004	TRO	-		203923	Oct 20 2004 11:40:18:760AM	Realized	\$ 50.00
TEMPORARY RESTRAINING ORDER(\$ 50.00)							
 <u>Document Available (#1000726172)</u>							
0/14/2004	TEXT	-		201674	Oct 14 2004 3:20:30:563PM	-	\$ 0.00

OCIS HAS AUTOMATICALLY ASSIGNED JUDGE WORTHINGTON, DONALD L. TO THIS CASE.

10/15/2004	SMF	-	203924	Oct 20 2004 11:42:23:993AM	Realized	\$ 5.00
SUMMONS FEE (CLERKS FEE) MARSHA SCHUBERT(\$ 5.00)						
 Document Available (#1000726174)						
10/18/2004	NOPA	-	202680	Oct 20 2004 11:40:57:870AM	Realized	\$ 0.00
NOTICE OF PENDANCY OF ACTION						
 Document Available (#1000726173)						
10/18/2004	OAT	-	203925	Oct 21 2004 8:06:21:770AM	Realized	\$ 0.00
OATH OF RECEIVER						
 Document Available (#1001030953)						
10/21/2004	RET	-	204930	Oct 22 2004 9:25:12:097AM	Realized	\$ 0.00
RETURN - TEMPORARY RESTRAINING ORDER, ORDER APPOINTING RECEIVER, ORDER FREEZING ASSETS AND ORDER FOR ACCOUNTING - CHANGED LOCKS ON NORTH BUILDING ON 10/14/04						
 Document Available (#1000725655)						
10/25/2004	APLI	-	205957	Oct 26 2004 2:56:19:113PM	Realized	\$ 0.00
APPLICATION BY RECEIVER FOR APPROVAL OF EMPLOYMENT OF LEGAL COUNSEL						
 Document Available (#1000725792)						
10/26/2004	RESP	-	205719	Oct 26 2004 10:53:55:143AM	Realized	\$ 0.00
RESPONSE TO ORDER FOR ACCOUNTING						
 Document Available (#1000725779)						
11/03/2004	EAA	-	Schubert, Richard L. 214500	Nov 16 2004 2:28:48:580PM	Realized	\$ 0.00
ENTRY OF APPEARANCE						
 Document Available (#1001025027)						
11/03/2004	NO	-	214547	Nov 16 2004 2:37:24:210PM	Realized	\$ 0.00
NOTICE OF RECEIPT OF PERSONAL PROPERTY						
 Document Available (#1001025015)						
11/04/2004	O	-	215038	Nov 17 2004 2:59:08:627PM	Realized	\$ 0.00
ORDER - (APPROVAL FOR EMPLOYMENT OF LEGAL COUNSEL IS GRANTED)						
 Document Available (#1001025201)						
1/04/2004	AC/C	-	Schubert, Richard L. 215041	Nov 17 2004 3:02:34:857PM	Realized	\$ 0.00
ANSWER & CROSS - CLAIM						
 Document Available (#1001025209)						
1/15/2004	CTFREE	-	OKLAHOMA DEPARTMENT OF SECURITIES 214314	Nov 16 2004 11:36:35:360AM	Realized	\$ 0.00
JUDGE WORTHINGTON - THE PLAINTIFF'S APPLICATION FOR TEMPORARY RESTRAINING ORDER, ORDER FREEZING ASSETS, ORDER APPOINTING RECEIVER, AND ORDER FOR ACCOUNTING IS SUSTAINED. THE RECEIVER'S APPLICATION FOR APPROVAL OF EMPLOYMENT OF LEGAL COUNSEL IS SUTAINED.						
1/15/2004	STIP	-	216999	Nov 23 2004 3:00:25:050PM	Realized	\$ 0.00
STIPULATION AND CONSENT TO ORDER OF PERMANENT INJUNCTION						
 Document Available (#1001026220)						
1/15/2004	O	-	217000	Nov 23 2004 3:00:55:500PM	Realized	\$ 0.00
ORDER OF PERMANENT INJUNCTION						

 Document Available (#1001026216)

11/15/2004 MO - 217013 Nov 23 2004 3:05:34:480PM Realized \$ 0.00
PLAINTIFF'S MOTION TO AMEND ORDER APPOINTING RECEIVER

 Document Available (#1001026293)

11/15/2004 O - 217407 Nov 24 2004 2:20:50:770PM Realized \$ 0.00
ORDER

 Document Available (#1001026246)

11/17/2004 CER - 218859 Dec 1 2004 2:26:08:630PM Realized \$ 0.00
CERTIFICATE OF MAILING

 Document Available (#1001026521)

12/10/2004 O - 223510 Dec 13 2004 11:56:39:343AM Realized \$ 0.00
ORDER AMENDING AUTHORITY OF RECEIVER

 Document Available (#1001027147)

12/10/2004 TRO - 223511 Dec 13 2004 11:57:56:653AM Realized \$ 0.00
TEMPORARY ORDER

 Document Available (#1001027150)

12/10/2004 CTFREE - OKLAHOMA DEPARTMENT OF SECURITIES 225611 Dec 17 2004 11:39:29:657AM Realized \$ 0.00
JUDGE WORTHINGTON - THE COURT SUSTAINS THE AMENDED ORDER APPOINTING A RECEIVER AND TEMPORARY RESTRAINING ORDER AS TO RICHARD SCHUBERT ONLY.

12/13/2004 MOACC - 224664 May 6 2005 8:55:06:677AM Realized \$ 20.00
MOTION FOR INDIRECT CIVIL CONTEMPT OF COURT(\$ 20.00)

 Document Available (#1001027517)

2/13/2004 CHAB - 288117 May 6 2005 8:55:42:303AM Realized \$ 10.00
CHILD ABUSE MULTIDISCIPLINARY FEE(\$ 10.00)

2/13/2004 CCADMIN - 288118 May 6 2005 8:55:42:397AM Realized \$ 1.00
COURT CLERK ADMINISTRATIVE FEE ON COLLECTIONS(\$ 1.00)

2/13/2004 OCISR - 288119 May 6 2005 8:58:18:360AM Realized \$ 10.00
COURT CLERK ADMINISTRATIVE FEE ON COLLECTIONS(\$ 10.00)

2/15/2004 APLI - 224723 Dec 15 2004 10:23:16:573AM Realized \$ 0.00
APPLICATION BY RECEIVER FOR APPROVAL OF EMPLOYMENT OF ACCOUNTING FIRM

 Document Available (#1001027181)

2/21/2004 OCIP - 226684 Dec 21 2004 9:52:47:650AM Realized \$ 0.00
CONTEMPT CITATION AND ORDER TO APPEAR ISSUED BACK TO THE ATTORNEY FOR SERVICE

 Document Available (#1001027285)

2/22/2004 APLI - 227236 Dec 22 2004 12:07:48:017PM Realized \$ 0.00
RECEIVER'S APPLICATION FOR THE COURT TO ESTABLISH PROCEDURE TO NOTIFY CLAIMANTS TO MAKE CLAIMS

 Document Available (#1001027482)

2/27/2004 O - 228217 Dec 27 2004 3:44:17:380PM Realized \$ 0.00

ORDER

 [Document Available \(#1001029474\)](#)

12/27/2004 APLI - 228232 Dec 27 2004 3:54:39:463PM Realized \$ 0.00

APPLICATION BY RECEIVER FOR APPROVAL OF EMPLOYMENT OF AUCTIONEERS

 [Document Available \(#1001029479\)](#)

01/03/2005 OCS - 230429 Jan 3 2005 2:22:47:810PM Realized \$ 0.00

ORDER FOR CITATION AND ORDER TO APPEAR SERVED FARMERS & MERCHANTS BANK BY SERVING CHAB JOHNSON ON 12/23/04

 [Document Available \(#1001027399\)](#)

01/03/2005 AFD - 230430 Jan 3 2005 2:23:29:590PM Realized \$ 0.00

AFFIDAVIT OF SERVICE

 [Document Available \(#1001027403\)](#)

01/14/2005 RVRPT - 239509 Jan 20 2005 2:18:03:073PM Realized \$ 0.00

RECEIVER'S ACCOUNTING FOR DECEMBER 2004

 [Document Available \(#1001278300\)](#)

01/14/2005 O - 239606 Jan 20 2005 3:22:44:163PM Realized \$ 0.00

ORDER

 [Document Available \(#1001278324\)](#)

01/14/2005 O - 239607 Jan 20 2005 3:29:42:880PM Realized \$ 0.00

ORDER

 [Document Available \(#1001278328\)](#)

01/14/2005 O - 239609 Jan 20 2005 3:31:19:250PM Realized \$ 0.00

ORDER ESTABLISHING PROCEDURE TO NOTIFY CLAIMANTS TO MAKE CLAIMS

 [Document Available \(#1001278335\)](#)

01/14/2005 CTFREE - OKLAHOMA DEPARTMENT OF SECURITIES 243374 Jan 28 2005 11:11:02:093AM Realized \$ 0.00

JUDGE WORTHINGTON - THE RECEIVER'S MOTION FOR INDIRECT CIVIL CONTEMPT OF COURT IS SET FOR HEARING FEBRUARY 8, 2005, AT 9:00 A.M. THE APPLICATION BY RECEIVER FOR APPROVAL OF EMPLOYMENT OF ACCOUNTING FIRM AND APPLICATION BY RECEIVER FOR APPROVAL OF EMPLOYMENT OF AUCTIONEERS IS SUSTAINED AS PER ORDER ENTERED THIS DATE. THE RECEIVER'S APPLICATION FOR THE COURT TO ESTABLISH PROCEDURE TO NOTIFY CLAIMANTS TO MAKE CLAIMS IS GRANTED AS PER ORDER ENTERED THIS DATE.

01/24/2005 NOTC - 243239 Jan 28 2005 9:14:03:133AM Realized \$ 0.00

NOTICE TO CREDITORS AND DEADLINE TO FILE PROOF OF CLAIM

 [Document Available \(#1001279002\)](#)

01/25/2005 AFM - 243847 Jan 31 2005 9:51:54:483AM Realized \$ 0.00

AFFIDAVIT OF MAILING NOTICE TO CREDITORS

 [Document Available \(#1001279028\)](#)

2/03/2005 AFM - 248135 Feb 4 2005 3:34:10:373PM Realized \$ 0.00

AFFIDAVIT OF MAILING

 [Document Available \(#1001279534\)](#)

2/04/2005 EAA - 248246 Feb 7 2005 8:52:26:440AM Realized \$ 0.00

ENTRY OF APPEARANCE

 [Document Available \(#1001279538\)](#)

02/04/2005 RESP - 248247 Feb 7 2005 8:53:38:470AM Realized \$ 0.00
 RESPONSE TO CITATION FOR INDIRECT CIVIL CONTEMPT OF COURT

 [Document Available \(#1001279542\)](#)

02/08/2005 CTFREE - Court Appointed Receiver 249327 Feb 8 2005 11:46:18:593AM Realized \$ 0.00

JUDGE WORTHINGTON/SE: THIS CASE COMES ON FOR HEARING UPON THE CITATION FOR CONTEMPT FILED AGAINST FARMERS AND MERCHANTS BANK, CRESCENT, OKLAHOMA. THE RECEIVER APPEARS BY ITS ATTORNEY, BRADLEY E. DAVENPORT. THE RESPONDENT, FARMERS AND MERCHANTS BANK APPEARS BY ITS ATTORNEYS, BRANDON KERR AND CHARLES MEYERS. THE COURT HEARS TESTIMONY AND FINDS IN FAVOR OF RESPONDENT BANK AND THE CITATION FOR CONTEMPT IS DISMISSED.

02/15/2005 RVRPT - 253166 Feb 15 2005 11:31:42:140AM Realized \$ 0.00

RECEIVER'S ACCOUNTING FOR JANUARY 2005

 [Document Available \(#1001279390\)](#)

02/22/2005 PP - 256541 Feb 25 2005 9:13:31:330AM Realized \$ 0.00

AFFIDAVIT OF PUBLICATION - NOTCE TO CREDITORS AND DEADLINE TO FILE PROOF OF CLAIM - PUB. ON 1/23/05 & 1/30/05 - PUB. FEE \$135.68

 [Document Available \(#1001275590\)](#)

02/23/2005 PP - 256134 Feb 24 2005 9:44:28:947AM Realized \$ 0.00

AFFIDAVIT OF PUBLICATION - NOTICE TO CREDITORS AND DEADLINE TO FILE PROOF OF CLAIM - PUB. ON 1/23/05 1/30/0 -PUB. FEE \$135.68

 [Document Available \(#1001279250\)](#)

02/24/2005 AFD - 256963 Feb 25 2005 3:25:13:357PM Realized \$ 0.00

AFFIDAVIT OF PUBLICATION

 [Document Available \(#1001027676\)](#)

02/28/2005 NO - 261949 Mar 7 2005 4:30:08:590PM Realized \$ 0.00

NOTICE OF FILING - (TRANSCRIPT OF HEARING HELD ON 2/8/05)

 [Document Available \(#1001276013\)](#)

02/28/2005 TR - 261951 Mar 7 2005 4:30:51:653PM Realized \$ 0.00

TRANSCRIPT OF PROCEEDINGS HEARD ON 2/8/05 BEFORE THE HONORABLE DONALD L. WORTHINGTON

03/04/2005 MO - 260924 Mar 4 2005 10:57:59:450AM Realized \$ 0.00

MOTION OF RECIVER FOR LEAVE TO ABANDON CERTAIN PROPERTY

 [Document Available \(#1001275964\)](#)

03/07/2005 RPT - 268050 Mar 21 2005 9:28:52:660AM Realized \$ 0.00

RECEIVER'S ACCOUNTING FOR FEBRUARY 2005

 [Document Available \(#1001276604\)](#)

3/17/2005 MO - 267459 Mar 17 2005 3:50:17:727PM Realized \$ 0.00

MOTION FOR LEAVE OF COURT TO LIFT INJUNCTION AND ABANDON CERTAIN SECURED COLLATERAL

 [Document Available \(#1001276444\)](#)

3/24/2005 APLI - 270041 Mar 24 2005 12:29:33:917PM Realized \$ 0.00

APPLICATION OF RECEIVER FOR AUTHORITY TO PAY INTERIM ACCOUNTING FEES

 [Document Available \(#1001276224\)](#)

03/24/2005 RVRPT	-	270057	Mar 24 2005 12:34:35:757PM	Realized	\$ 0.00
RECEIVER'S REPORT OF SCHUBERT FINANCIAL ANALYSIS					
Document Available (#1001276232)					
03/24/2005 TEXT	-	275488	Apr 7 2005 12:19:28:930PM	Realized	\$ 0.00
EXHIBIT 1-A					
Document Available (#1001549508)					
03/24/2005 TEXT	-	275490	Apr 7 2005 12:20:22:337PM	Realized	\$ 0.00
EXHIBIT 1-B					
Document Available (#1001549584)					
03/24/2005 TEXT	-	275491	Apr 7 2005 12:21:03:867PM	Realized	\$ 0.00
EXHIBIT 1 C - R					
Document Available (#1001549580)					
04/04/2005 O	-	273421	Apr 4 2005 2:32:22:357PM	Realized	\$ 0.00
OKLAHOMA DEPARTMENT OF SECURITIES					
ORDER OF DISMISSAL					
Document Available (#1001501171)					
04/05/2005 APLI	-	275554	Apr 7 2005 3:22:43:320PM	Realized	\$ 0.00
APPLICATION FOR APPROVAL OF SALE OF REAL PROPERT					
Document Available (#1001498598)					
04/05/2005 O	-	275555	Apr 7 2005 3:23:24:180PM	Realized	\$ 0.00
ORDER APPROVING OF SALE OF REAL PROPERTY					
Document Available (#1001498596)					
04/06/2005 TEXT	-	275552	Apr 7 2005 3:23:39:270PM	Realized	\$ 0.00
RECEIVER'S ACCOUNTING FOR MARCH 2005					
Document Available (#1001498595)					
04/08/2005 CTFREE	-	277793	Apr 12 2005 1:15:12:520PM	Realized	\$ 0.00
OKLAHOMA DEPARTMENT OF SECURITIES					
JUDGE WORTHINGTON - THE MOTION OF RECEIVER FOR LEAVE TO ABANDON CERTAIN PROPERTY IS SUSTAINED AS PER JOURNAL ENTRY.					
04/08/2005 NOH	-	279333	Apr 15 2005 12:15:00:427PM	Realized	\$ 0.00
NOTICE OF HEARING					
Document Available (#1001497785)					
04/08/2005 SS	-	279687	Apr 15 2005 4:10:59:133PM	Realized	\$ 50.00
Cornmesser, Amanda Mavis					
DEPOSITION SUBPOENA SERVED : JOHN T. ANDERSON - FARMERS AND MERCHANTS BANK ON PERSON SERVED. JOHN T. ANDERSON 3/21/05(\$ 50.00)					
Document Available (#1001497816)					
4/08/2005 SS	-	279689	Apr 15 2005 4:11:06:930PM	Realized	\$ 50.00
Cornmesser, Amanda Mavis					
DEPOSITION SUBPOENA SERVED : JOHN V. ANDERSON - FARMERS AND MERCHANTS BANK ON 3/21/05(\$ 50.00)					
Document Available (#1001497820)					
4/08/2005 SS	-	279692	Apr 15 2005 4:11:18:570PM	Realized	\$ 50.00
Cornmesser, Amanda Mavis					
DEPOSITION SUBPOENA SERVED : BETH ARMERON 3/ 21/05(\$ 50.00)					
Document Available (#1001497824)					

04/08/2005	SS	-	279699	Apr 15 2005 4:12:49:553PM	Realized	\$ 0.00
DEPOSITION SUBPOENA SERVED : MICHAEL F. BRENNAN BY SERVING MICHAEL F. BRENNAN Document Available (#1001497828)						
04/08/2005	SS	-	Cornmesser, Amanda Mavis	279700	Apr 15 2005 4:13:57:413PM	Realized \$ 50.00
DEPOSITION SUBPOENA SERVED : JORDAN CARRIS ON3/2/105(\$ 50.00) Document Available (#1001497832)						
04/08/2005	SS	-	Cornmesser, Amanda Mavis	279701	Apr 15 2005 4:15:13:520PM	Realized \$ 50.00
DEPOSITION SUBPOENA SERVED: FARMERS AND MERCHANT SBANK BY SERVING JOHN T. ANDERSON ON 3/21/05(\$ 50.00) Document Available (#1001497836)						
04/08/2005	SS	-	Cornmesser, Amanda Mavis	279702	Apr 15 2005 4:17:13:720PM	Realized \$ 50.00
DEPOSITION SUBPOENA SERVED: CHAD JOHNSON ON 3/21/05(\$ 50.00) Document Available (#1001497520)						
04/08/2005	SS	-	Cornmesser, Amanda Mavis	279708	Apr 15 2005 4:18:21:063PM	Realized \$ 50.00
DEPOSITION SUBPOENA SERVED: MELISSA MOON ON 3/21/05(\$ 50.00) Document Available (#1001497524)						
04/08/2005	SS	-	279710	Apr 15 2005 4:19:25:123PM	Realized	\$ 0.00
DEPOSITION SUBPOENA SERVED: DON SPICER ON 3/25/05 Document Available (#1001497528)						
04/08/2005	SS	-	Cornmesser, Amanda Mavis	279717	Apr 15 2005 4:20:46:060PM	Realized \$ 50.00
DEPOSITION SUBPOENA SERVED: ED STANTON -OKLAHOMA STATE BANK ON 3/17/05(\$ 50.00) Document Available (#1001497532)						
04/08/2005	SS	-	279720	Apr 15 2005 4:22:28:433PM	Realized	\$ 0.00
DEPOSITION SUBPOENA SERVED : DENIS THEMER, BRANCH PRESIDENT ON 3/16/05 Document Available (#1001497536)						
04/08/2005	SS	-	279722	Apr 15 2005 4:24:08:950PM	Realized	\$ 0.00
DEPOSITION SUBPOENA SERVED: JEFF WILCON- NATIONAL BANK OF COMMERCE ON 3/16/05 Document Available (#1001497540)						
4/08/2005	NO	-	279772	Apr 18 2005 9:41:48:560AM	Realized	\$ 0.00
NOTICE TO TAKE DEPOSITION - MARSHA SCHUBERT, INDIVIDUALLY AN DBA SCHUBERT AND ASSOCIATES & RICHARD L. SCHUBERT Document Available (#1001497560)						
4/08/2005	NO	-	279773	Apr 18 2005 9:43:22:670AM	Realized	\$ 0.00
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4/08/2005	NO	-	279775	Apr 18 2005 9:46:09:213AM	Realized	\$ 0.00

NOTICE TO TAKE DEPOSITION - MARSHA SCHUBERT, INDIVIDUALLY AND DBA SCHUBERT AND ASSOCIATES
& RICHARD L. SCHUBERT

 [Document Available \(#1001497572\)](#)

04/08/2005 NO	-	279776	Apr 18 2005 9:47:05:760AM	Realized	\$ 0.00
NOTICE TO TAKE DEPOSITION - MARSHA SCHUBER, INDIVIDUALLY AND DBA SCHUBERT AND ASSOCIATES & RICHARD L. SCHUBERT					
 Document Available (#1001497576)					
04/08/2005 NO	-	279777	Apr 18 2005 9:47:51:727AM	Realized	\$ 0.00
NOTICE TO TAKE DEPOSITION - MARSHA SCHBERT, INDIVIDUALLY AND DBA SCHUBERT AND ASSOCIATES					
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 Document Available (#1001497584)					
04/08/2005 NO	-	279780	Apr 18 2005 9:51:53:393AM	Realized	\$ 0.00
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 Document Available (#1001498664)					
04/08/2005 NO	-	279781	Apr 18 2005 9:52:58:940AM	Realized	\$ 0.00
NOTICE TO TAKE DEPOSITION - MARSHA SCHUBERT, INDIVIDUALLY AND DBA SCHUBERT AND ASSOCIATES - RICHARD L. SCHUBERT					
 Document Available (#1001498668)					
04/08/2005 NO	-	279782	Apr 18 2005 9:53:59:673AM	Realized	\$ 0.00
NOTICE TO TAKE DEPOSITON - MARSHA SCHUBERT, INDIVIDUALLY AND DBA SCHUBERT AND ASSOCIATES - AND RICHARD L. SCHUBERT					
 Document Available (#1001498672)					
04/08/2005 NO	-	279783	Apr 18 2005 9:55:16:843AM	Realized	\$ 0.00
NOTICE TO TAKE DEPOSITION - MARSHA SCHUBERT, INDIVIDUALY AND DBA SCHUBET AND ASSOCIATES - AND RICHARD L. SCHUBERT					
 Document Available (#1001498676)					
04/08/2005 O	-	281064	Apr 20 2005 8:23:52:833AM	Realized	\$ 0.00
ORDER (MOTION FOR LEAVE TO ABANDON CERTAIN PROPERTY)					
 Document Available (#1001497628)					
4/08/2005 NO	-	282834	Apr 26 2005 11:23:25:313AM	Realized	\$ 0.00
NOTICE TO TAKE DEPOSITON - TO: MARSHA SCHUBERT, INDIVIDUALLY AND DBA SCHUBERT AND ASSOCIATES & RICHARD L. SCHUBERT					
 Document Available (#1001497750)					
5/04/2005 RVRPT	-	292171	May 12 2005 1:55:55:787PM	Realized	\$ 0.00
RECEIVER'S ACCOUNTING FOR APRIL 2005					
 Document Available (#1001495319)					
5/05/2005 SUBFIL	-	294567	May 17 2005 3:18:16:370PM	Realized	\$ 0.00
SUBPOENA DUCEAS TECUM : TO FARMERS & MERCHANTS BANK					
 Document Available (#1001495337)					

05/05/2005	SUBFIL	-	294572	May 17 2005 3:19:15:523PM	Realized	\$ 0.00
SUBPOENA DUCES TECUM : TO NATIONAL BANK OF COMMERCE Document Available (#1001495341)						
05/05/2005	SUBFIL	-	294573	May 17 2005 3:20:03:210PM	Realized	\$ 0.00
SUBPOENA DUCES TECUM : TO ED STANTON Document Available (#1001495345)						
05/05/2005	SUBFIL	-	294574	May 17 2005 3:21:22:520PM	Realized	\$ 0.00
DEPOSITION SUBPOENA : TO JIM TALKINGTON, VICE CHAIRMAN , NATIONAL BANK OF COMMERCE Document Available (#1001495349)						
05/05/2005	NO	-	294575	May 17 2005 3:23:19:990PM	Realized	\$ 0.00
NOTICE TO TAKE DEPOSITON - TO: MARTHA SCHUBERT & RICHARD L. SCHUBERT Document Available (#1001495353)						
05/13/2005	CTFREE	-	294479	May 17 2005 2:34:06:920PM	Realized	\$ 0.00
OKLAHOMA DEPARTMENT OF SECURITIES JUDGE WORTHINGTON - THE APPLICATION OF RECEIVER FOR AUTHORITY TO PAY INTERIM ACCOUNTING FEES IS GRANTED AS PER ORDER ENTERED THIS DATE.						
05/13/2005	O	-	297142	May 23 2005 3:34:33:310PM	Realized	\$ 0.00
ORDER Document Available (#1001495851)						
05/24/2005	APLI	-	297741	May 24 2005 10:36:38:020AM	Realized	\$ 0.00
APPLICATION BY RECEIVER FOR AUTHORITY TO PAY INTERIM ATTORNEY FEES Document Available (#1001496004)						
06/03/2005	RVRPT	-	303292	Jun 6 2005 3:25:56:850PM	Realized	\$ 0.00
RECEIVER'S ACCOUNTING FOR MAY 2005 Document Available (#1001496097)						
06/09/2005	O	-	305486	Jun 9 2005 2:42:37:097PM	Realized	\$ 0.00
ORDER TO MODIFY ORDER FREEZING ASSETS Document Available (#1001773836)						
06/10/2005	CTFREE	-	309484	Jun 17 2005 1:27:07:290PM	Realized	\$ 0.00
OKLAHOMA DEPARTMENT OF SECURITIES JUDGE WORTHINGTON - THE APPLICATION OF THE RECEIVER IS GRANTED AND IS APPROVED AS PER ORDER.						
06/10/2005	CTFREE	-	311045	Jun 21 2005 2:37:05:570PM	Realized	\$ 0.00
OKLAHOMA DEPARTMENT OF SECURITIES JUDGE WORTHINGTON - THIS CASE COMES ON FOR HEARING ON THE DISPOSITION DOCKET. THE COURT STRIKES THIS CASE FROM THE DOCKET.						
6/10/2005	O	-	313917	Jun 28 2005 12:19:59:410PM	Realized	\$ 0.00
ORDER Document Available (#1001909113)						
7/08/2005	RECV	-	321246	Jul 12 2005 3:47:34:217PM	Realized	\$ 0.00
RECEIVER'S ACCOUTING FOR JUNE 2005 Document Available (#1001912721)						

07/08/2005	MO	-	321261	Jul 12 2005 4:21:15:997PM	Realized	\$ 0.00	
INTERVENTION OF PARTY AND MOTION TO TRANSFER AND CONSOLIDATE THIS MATTER Document Available (#1001912725)							
07/15/2005	NOH	-	325356	Jul 20 2005 4:03:18:920PM	Realized	\$ 0.00	
NOTICE OF HEARING Document Available (#1001912597)							
07/15/2005	EAA	-	Leboeuf, Richard	325371	Jul 20 2005 4:26:31:850PM	Realized	\$ 0.00
ENTRY OF APPEARANCE OF ALEXANDER L. BEDNAR, ESQ Document Available (#1001912601)							
07/26/2005	MOCO	-	OKLAHOMA DEPARTMENT OF SECURITIES	329590	Jul 29 2005 2:52:52:020PM	Realized	\$ 0.00
OKLAHOMA DEPARTMENT OF SECURITIES MEMORANDUM IN OPPOSITION TO RICHARD LEBOEUF'S MOTION TO CONSOLIDATE Document Available (#1001914263)							
07/27/2005	MO	-	328672	Jul 27 2005 12:16:29:200PM	Realized	\$ 0.00	
MOTION TO VACATE EX PARTE ORDER APPOINTING DOUGLAS L. JACKSON AS RECEIVER FOR INVESTORS OF MARSHA SCHUBERT OR ALTERNATIVELY, TO TRANSFER THIS MOTION TO THE OKLAHOMA COUNTY DISTRICT COURT Document Available (#1001912848)							
07/27/2005	APLI	-	328733	Jul 27 2005 2:35:57:143PM	Realized	\$ 0.00	
APPLICATION OF RECEIVER FOR AUTHORITY TO PAY INTERIM ACCOUNTING FEES Document Available (#1001912877)							
07/28/2005	NOH	-	329202	Jul 28 2005 2:54:00:683PM	Realized	\$ 0.00	
NOTICE OF HEARING Document Available (#1001914286)							
07/28/2005	MO	-	329244	Jul 28 2005 3:45:55:987PM	Realized	\$ 0.00	
MOTION TO INTERVENE AND SET ASIDE ORDER APPOINTING RECEIVER, AND TO TRANSFER AND CONOLIDATED THIS CASE, WITH BRIEF IN SUPPORT Document Available (#1001914306)							
07/29/2005	MO	-	329488	Jul 29 2005 12:18:23:480PM	Realized	\$ 0.00	
RECEIVER'S MOTION TO STRIKE, AND ALTERNATIVELY, OBJECTION TO LEBOEUF'S INTERVENTION OF PARTY AND MOTION TO TRANSFER AND CONSOLIDATE THIS MATTER Document Available (#1001914325)							
08/01/2005	NOH	-	330768	Aug 2 2005 3:45:13:333PM	Realized	\$ 0.00	
NOTICE OF HEARING Document Available (#1001913007)							
08/05/2005	MOVAC	-	332520	Aug 5 2005 12:14:08:967PM	Realized	\$ 20.00	
JOINDER BY DEFENDANTS FAGG, GIBSON AND CARR IN DEFENDANTS ' MOTION TO VACATE EX PARTE ORDER APPOINTING DOUGLAS L. JACKSON AS RECEIVER, ETC(\$ 20.00) Document Unavailable (#1001909533)							
8/05/2005	OCISR	-	332521	Aug 5 2005 10:02:24:890AM	Realized	\$ 10.00	
OKLAHOMA COURT INFORMATION SYSTEM REVOLVING FUND(\$ 10.00)							

08/05/2005	CCADMIN	-	332522	Aug 5 2005 10:02:24:907AM	Realized	\$ 1.00
COURT CLERK ADMINISTRATIVE FEE ON COLLECTIONS(\$ 1.00)						
08/05/2005	CHAB	-	332523	Aug 5 2005 10:02:24:920AM	Realized	\$ 10.00
C.H.A.B. STATUTORY FEE(\$ 10.00)						
08/05/2005	MOVAC	-	332674	Aug 5 2005 12:11:43:050PM	Realized	\$ 20.00
JOINDER IN MOVANTS MOTION TO VACATE EX PARTE ORDER APPOINTING DOUGALS L. JACKSON AS RECEIVER FOR INVESTORS OF MARSHA SCHUBERT OR ALTERNATIVELY, TO TRANSFER THIS MCOTION TO THE OKLAHOMA COUNTY DISTRICT COURT(\$ 20.00)						
 Document Available (#1001909529)						
08/05/2005	OCISR	-	332675	Aug 5 2005 12:11:43:130PM	Realized	\$ 10.00
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COURT CLERK ADMINISTRATIVE FEE ON COLLECTIONS(\$ 1.00)						
08/05/2005	CHAB	-	332677	Aug 5 2005 12:11:43:160PM	Realized	\$ 10.00
C.H.A.B. STATUTORY FEE(\$ 10.00)						
08/05/2005	ACCOUNT	-	332525	Aug 5 2005 10:04:11:700AM	-	\$ 0.00
RECEIPT # 2005-34735 ON 08/05/2005. PAYOR: THE MATTINGLY LAW FIRM TOTAL AMOUNT PAID: \$ 41.00. LINE ITEMS: CJ-2004-256: \$41.00 ON AC01 CLERK FEES.						
08/08/2005	SII	-	334651	Aug 10 2005 3:10:06:973PM	Realized	\$ 0.00
SUBPOENA ISSUED BACK TO THE ATTORNEY FOR SERVICE ON CORENE ABERNATHY						
 Document Unavailable (#1001914424)						
08/08/2005	SII	-	334652	Aug 10 2005 3:10:42:377PM	Realized	\$ 0.00
SUBPOENA ISSUED BACK TO THE ATTORNEY FOR SERVICE ON LENARD BRISCOE						
 Document Unavailable (#1001914428)						
08/08/2005	SII	-	334654	Aug 10 2005 3:11:44:110PM	Realized	\$ 0.00
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 Document Unavailable (#1001914432)						
08/08/2005	SII	-	334655	Aug 10 2005 3:12:28:510PM	Realized	\$ 0.00
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08/08/2005	SII	-	334657	Aug 10 2005 3:15:16:660PM	Realized	\$ 0.00
SUBPOENA ISSUED BACK TO THE ATTORNEY FOR SERVICE ON RICHARD LEOEUF						
 Document Unavailable (#1001914440)						
08/08/2005	SII	-	334658	Aug 10 2005 3:16:05:190PM	Realized	\$ 0.00
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8/08/2005	SII	-	334659	Aug 10 2005 3:16:51:767PM	Realized	\$ 0.00
SUBPOENA ISSUED BACK TO THE ATTORNEY FOR SERVICE ON JAMES PHILLIPS						
 Document Unavailable (#1001914448)						

08/08/2005	SII	-	334666	Aug 10 2005 3:18:09:170PM	Realized	\$ 0.00
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08/08/2005	SII	-	334668	Aug 10 2005 3:18:41:683PM	Realized	\$ 0.00
SUBPOENA ISSUED BACK TO THE ATTORNEY FOR SERVICE ON ROBERT L. POURCHOT  Document Unavailable (#1001914456)						
08/08/2005	SII	-	334669	Aug 10 2005 3:19:18:057PM	Realized	\$ 0.00
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08/08/2005	SII	-	334682	Aug 10 2005 3:21:16:707PM	Realized	\$ 0.00
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08/08/2005	SII	-	334683	Aug 10 2005 3:21:50:597PM	Realized	\$ 0.00
SUBPOENA ISSUED BACK TO THE ATTORNEY FOR SERVICE ON BOBBY J. WALKER  Document Unavailable (#1001914472)						
08/08/2005	SII	-	334684	Aug 10 2005 3:23:19:670PM	Realized	\$ 0.00
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08/08/2005	SII	-	334685	Aug 10 2005 3:23:50:137PM	Realized	\$ 0.00
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08/09/2005	MO	-	334120	Aug 9 2005 12:53:30:010PM	Realized	\$ 0.00
MOTION IN LIMINE TO STRIKE PLAINTIFF'S WITNESS TESTIMONY  Document Available (#1001909471)						
8/09/2005	RECV	-	334122	Aug 9 2005 12:58:12:090PM	Realized	\$ 0.00
RECEIVERS ACCOUNTING FOR JULY 2005  Document Available (#1001909495)						
8/09/2005	ACCOUNT	-	333733	Aug 9 2005 10:17:55:380AM	-	\$ 0.00

RECEIPT # 2005-34858 ON 08/09/2005.

PAYOR: KLINE, KLINE, ELLIOTT TOTAL AMOUNT PAID: \$ 41.00.

LINE ITEMS:

CJ-2004-256: \$41.00 ON AC01 CLERK FEES.

Report Generated by The Oklahoma Supreme Court Network at August 11, 2005 09:39:40.

End of Transmission.

IN THE DISTRICT COURT OF KINGFISHER COUNTY
JUDICIAL DISTRICT FOUR, STATE OF OKLAHOMA

BENNIE SCHNORR, For Himself and All
Others Similarly Situated,

Plaintiff(s),

vs.

MARSHA SCHUBERT, an individual and
d/b/a SCHUBERT & ASSOCIATES;
RICHARD SCHUBERT, an individual and
d/b/a SCHUBERT & ASSOCIATES;
AXA ADVISORS, LLC, a Delaware limited
liability company; AXA EQUITABLE LIFE
INSURANCE COMPANY, a New York corporation,
f/k/a THE EQUITABLE LIFE ASSURANCE
SOCIETY OF THE UNITED STATES;
PERSHING, LLC, a Delaware limited liability company;
RAYMOND, JAMES & ASSOCIATES, INC.,
a Florida corporation; and WILBANKS
SECURITIES, INC., an Oklahoma corporation,

Defendants.

Case No. CJ-2005-54

Kingfisher County, Oklahoma
FILED

FEB 17 2005

YVONNE DOW, COURT CLERK
BY _____
DEPUTY

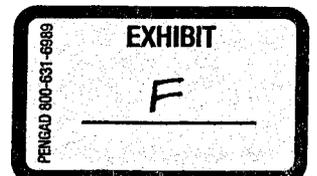
PETITION
(Class Action)

COMES NOW PLAINTIFF, Bennie Schnorr, on his own behalf and on behalf of all other
similarly situated persons (hereinafter "Investor Class"), and for his causes of action against
Defendants, alleges and states as follows:

PROCEDURAL HISTORY AND PARTIES

JURISDICTION AND VENUE

1. This lawsuit includes, but is not limited to, persons (a/k/a "Investor Class") living
in Kingfisher County, Oklahoma. Accordingly, venue is proper in this district.



RESERVATION TO AMEND

Pursuant to the authority of 12 O.S. §2015, Plaintiff reserves the right to amend his Petition and to assert further facts and claims for relief and recovery against the Defendants as discovery proceeds, and in order to conform with the evidence in this matter and proof at trial.

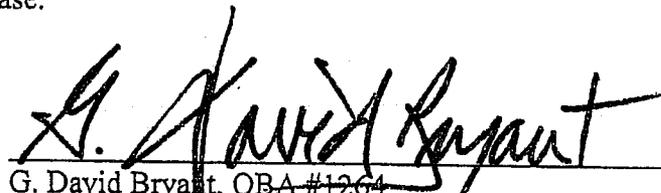
PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against all of the Defendants, and each of them, as applicable on each Count, in the amount of the actual damages suffered by the Plaintiff and the Investor Class, including pain and suffering, mental anguish, pre- and post-judgment interest, costs, attorney fees, punitive damages, and such other and further relief as the court deems just and proper.

JURY TRIAL DEMAND

Plaintiff requests a jury trial in this case.

ATTORNEY LIEN CLAIMED



G. David Bryant, OBA #1264
Lisa Mueggenborg, OBA #18595
KLINE, KLINE, ELLIOTT & BRYANT, P.C.
720 N.E. 63rd Street
Oklahoma City, OK 73105-6405
Telephone: (405) 848-4448
Facsimile: (405) 842-4539

ATTORNEYS FOR PLAINTIFF

Est

IN THE DISTRICT COURT OF LOGAN COUNTY
STATE OF OKLAHOMA

BARRY L. POLLARD,

Plaintiff,

vs.

MARSHA SCHUBERT d/b/a
SCHUBERT & ASSOCIATES,
AXA ADVISORS LLC, a Delaware
Limited Liability Company; and AXA
EQUITABLE LIFE INSURANCE
COMPANY, f/k/a EQUITABLE LIFE
ASSURANCE SOCIETY OF THE
UNITED STATES

Defendants.



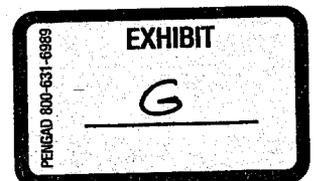
Case No. Cy. 2005-71

PETITION

COMES NOW, the Plaintiff, Barry L. Pollard, and for his causes of action against the Defendant alleges and states as follows:

GENERAL ALLEGATIONS

1. Defendant Marsha Schubert is an individual and d/b/a Schubert & Associates, and regularly conducted business in Garfield and Logan Counties, Oklahoma, hereinafter referred to as "Schubert".
2. Defendant, AXA Advisors, LLC, is a Delaware limited liability company registered to do business in Oklahoma, hereinafter referred to as "AXA".
3. Defendant, AXA Equitable Life Insurance Company f/k/a The Equitable Life Assurance Society of the United States, is a New York Corporation, conducting business in Oklahoma, though not registered with the Oklahoma Secretary of State, hereinafter referred to as "AXA Equitable".
4. Marsha Schubert was licensed as a securities registered representative with the following AXA and AXA Equitable for time periods as follows:



40. As a direct and proximate result of the Defendant's wrongful actions and/or omissions, Plaintiff has been damaged and is therefore entitled to actual and punitive damages.

COUNT V

RESTITUTION

41. Plaintiff realleges all relevant allegations contained herein above.
42. By reason of unlawful and improper acts of Defendants, said Defendants have been unjustly enriched at the expense of the Plaintiff.
43. As a direct and proximate result of Defendants' unjust conduct, Plaintiff is entitled to restitution of monies paid.

COUNT VI

COSTS AND ATTORNEY FEES

44. Plaintiff realleges all relevant allegations contained herein above.
45. Plaintiff has been required to employ the services of an attorney to pursue this action and therefore should be awarded his costs, including a reasonable attorney fee.

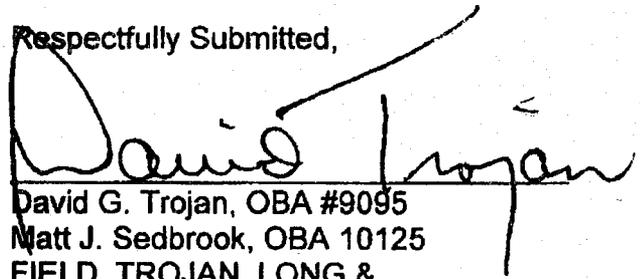
COUNT VII

DAMAGES

46. Plaintiff realleges all relevant allegations contained herein above.
47. Plaintiff has suffered actual and punitive damages in an amount excess of \$10,000.00 as a result of the Defendants actions herein.

WHEREFORE, Plaintiff prays for judgment against all the Defendants and each of them as applicable on each Count in the amount of the actual damages suffered which continue to accrue by Plaintiff and well as punitive damages, his costs and reasonable attorney fees, and such other and further relief as the Court deems just and proper.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "David Trojan". The signature is written in a cursive style with a large initial "D" and a long horizontal stroke extending to the right.

David G. Trojan, OBA #9095
Matt J. Sedbrook, OBA 10125
FIELD, TROJAN, LONG &
SEDBROOK, P.C.

P. O. Box 5676
Enid, Oklahoma 73702
(580) 233-4625
Attorney for Plaintiff

Westlaw.

Page 1

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

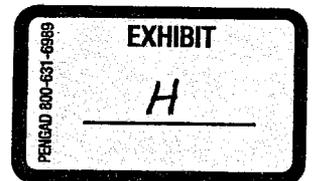
Treatises and Practice Aids

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. § 38-8-101

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. Comerstone 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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