

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

IN RE:	)	
	)	
	)	
ROBERT WILLIAM MATHEWS,	)	Case No. 07-10108-TMW
	)	Chapter 7
Debtor,	)	
	)	
OKLAHOMA DEPARTMENT OF SECURITIES,	)	
Ex Rel. IRVING L. FAUGHT,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Adversary No.
	)	
ROBERT WILLIAM MATHEWS,	)	
	)	
Defendant.	)	

**COMPLAINT OBJECTING TO DISCHARGE UNDER 11 U.S.C § 727(a)(5)  
AND TO DETERMINE DISCHARGEABILITY OF DEBT  
UNDER 11 USC § 523(a)(2), (7) and (19)**

The Oklahoma Department of Securities (Department), a creditor in this Chapter 7 Bankruptcy Case, respectfully alleges:

1. This is an adversary proceeding objecting to the discharge of the Debtor pursuant to Bankruptcy Rules 4004(d) and 7001(4) and to determine the dischargeability of a debt pursuant to Bankruptcy Rules 4007 and 7001(6).
2. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. § 157.
3. On January 18, 2007, the above named debtor, defendant herein, filed a petition for relief under chapter 7 of title 11, United States Code.

## OJBECTION TO DISCHARGE

4. Although Debtor has appeared at his meeting of creditors and submitted to a 2004 examination, Debtor has failed to explain satisfactorily a deficiency of assets in the sum of \$524,826.19 at the time of filing of the petition herein, to meet the Debtor's liabilities pursuant to 11 U.S.C. § 727(a)(5).

## OBJECTION TO DISCHARGEABILITY OF DEBT

5. Debtor is indebted to Department in the sum of Five Hundred Twenty-Four Thousand Eight Hundred Twenty-Six Dollars and Nineteen Cents (\$524,826.19) and said debt is founded upon a claim that is excepted from a discharge in bankruptcy. *See* Judgment attached as Exhibit A.
6. The debt arose as follows:
  - (a) Beginning in or around January of 2000, through or around October 14, 2004, Marsha Schubert, individually and doing business as Schubert and Associates, (collectively, "Schubert"), orchestrated a securities fraud in and from Crescent, Oklahoma. Schubert, promising large financial returns, accepted funds in excess of Two Hundred Million Dollars (\$200,000,000) for purported investment (the "Purported Investment Program"). Approximately 100 persons lost in excess of Nine Million Dollars (\$9,000,000) in the Purported Investment Program.
  - (b) The securities fraud had two basic components: a) a "Ponzi" scheme in which most of the money entrusted to Schubert by participants in the

Purported Investment Program was not invested in a legitimate venture, but instead, was paid out as purported returns to other participants in the Purported Investment Program; and b) a check exchange scheme. The check exchange scheme involved a consistent movement of funds primarily between the accounts of three individuals, one of which was Debtor, and bank accounts controlled by Schubert. The scheme created a "float" that Schubert utilized to pay purported investment returns.

(c) Each month, Debtor gave Schubert physical control of multiple checks from his personal bank account that were blank except for his signature. Schubert then determined the amount of each disbursement from the account, and filled out the blank checks previously signed by Debtor, in the amounts she determined, for deposit into her bank accounts.

(d) In exchange for each of Debtor's checks, Schubert wrote checks on her bank accounts, in most cases for a greater dollar amount, that were deposited in Debtor's bank account.

(e) Between September 11, 2001 and October 6, 2004, there were over nine hundred fifty (950) transactions between Schubert and Debtor. The deposits to Schubert from Debtor totaled in excess of Eighty-Six Million Dollars (\$86,000,000). Disbursements from Schubert to Debtor totaled in excess of Eighty-Seven Million Dollars (\$87,000,000).

(f) Although these transactions were purportedly for "day trading", options trading, or other investments in securities, Debtor received no

brokerage account statements or confirmations concerning the purchase and sale of securities on his behalf.

(g) Debtor regularly picked up bundles of checks prepared by Schubert, including the checks made payable to the other two individuals involved in the check exchange scheme and the checks from the Debtor and those two individuals made payable to Schubert, and ferried them to the respective banks for deposit.

(h) On October 14, 2004, the Oklahoma Department of Securities (Department) filed suit against Schubert 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).

(i) On October 14, 2004, the Logan County Court issued a temporary restraining order, froze Schubert's assets and appointed Douglas L. Jackson as Receiver for Schubert's assets.

(j) On November 15, 2004, upon the stipulation and consent of Schubert, the Logan County District Court entered a permanent injunction against Schubert that included an order of restitution, the amount to be determined at the conclusion of the receivership. *Oklahoma Department of Securities ex rel. Irving L. Faught, Administrator v. Marsha Schubert, et al.*, CJ 2004-256.

(k) On May 5, 2005, Schubert entered a plea of guilty in the United States District Court for the Western District of Oklahoma to one count of money laundering in connection with the Purported Investment Program. Schubert was sentenced to 10 years in prison and ordered to pay restitution in the amount of Nine Million One Hundred Fourteen Thousand Seven Hundred Forty-Four Dollars (\$9,114,744.00). *United States of America v. Marsha Kay Schubert*, CR 05-078.

(l) On September 9, 2005, Schubert entered a plea of guilty in the District Court of Logan County, State of Oklahoma, to fourteen (14) counts of obtaining money by false pretenses in connection with the Purported Investment Program. Schubert was sentenced to 25 years in prison and ordered to pay restitution in the amount of Nine Million One Hundred Fourteen Thousand Seven Hundred Forty-Four Dollars (\$9,114,744.00). *State of Oklahoma v. Marsha Kay Schubert*, No. CF-2004-391. Marsha Schubert stated as the factual basis for her plea that she obtained money in a "Ponzi" scheme in which she promised that the funds would be invested but instead, used the funds to pay prior investors involved in the Purported Investment Program.

(m) On May 11, 2005, the Department sued Debtor and 157 other defendants ("Relief Defendants") who received cash and/or other property from Schubert that were the proceeds of Schubert's unlawful activity and for which the Relief Defendants gave inadequate or no consideration. Debtor was ordered by the court to disgorge Five Hundred Twenty-Four

Thousand Eight Hundred Twenty-Six Dollars and Nineteen Cents (\$524,826.19).

(n) Debtor materially aided the fraudulent securities scheme.

(o) The debt at issue is for money obtained by false pretenses, a false representation, or actual fraud and is therefore not dischargeable pursuant to 11 U.S.C. § 523(a)(2)(A).

(p) The debt at issue is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss and is therefore not dischargeable pursuant to 11 U.S.C. § 523(a)(7).

(q) The debt at issue is for the violation of state securities laws and/or common law fraud, deceit or manipulation in connection with the purchase or sale of a security and results from a judgment, order, consent decree, or decree entered in Federal and State judicial proceedings and is therefore not dischargeable pursuant to 11 U.S.C. § 523(a)(19).

7. Pursuant to sections 523(a)(2)(A), (a)(7) and (a)(19) of title 11, the discharge of the Debtor does not release the Debtor from the aforesaid debt in the amount of \$524,826.19.

8. Pursuant to Bankruptcy Rule 7008, the Department states that this proceeding is core.

Wherefore, the Department respectfully requests this Court for an order denying the Debtor's discharge and/or determining this debt non-dischargeable.



Gerri Stuckey OBA #16632  
Oklahoma Department of Securities  
First National Center, Suite 860  
120 N. Robinson  
Oklahoma City, Oklahoma 73102  
(405) 280-7700  
(405) 280-7742 facsimile  
Email: gls@securities.ok.gov

### CERTIFICATE OF SERVICE

I hereby certify that on this 16<sup>th</sup> day of July, 2007, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the following ECF registrants:

Jeffrey C. Trent  
P.O. Box 851530  
915 W. Main  
Yukon, OK 73099

Douglas N. Gould, Trustee  
210 W. Park Avenue, Suite 2050  
Oklahoma City, OK 73102

/s Gerri Stuckey

IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

FILED IN THE DISTRICT COURT  
OKLAHOMA COUNTY, OKLA.

DEC 12 2006

PATRICIA PRESLEY, COURT CLERK  
by \_\_\_\_\_ DEPUTY

OKLAHOMA DEPARTMENT OF SECURITIES )  
ex rel. IRVING L. FAUGHT, Administrator, et al., )

Plaintiffs, )

v. )

ROBERT W. MATHEWS, et al., )

Defendants. )

Case No. CJ-2005-3796

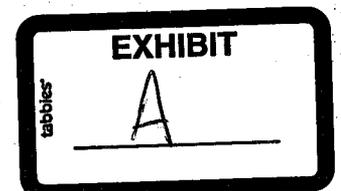
ORDER OF JUDGMENT

NOW on the 12<sup>th</sup> day of ~~November~~ December 2006, the Motion for Summary Judgment relative to Robert W. Mathews, filed by the Plaintiff, Oklahoma Department of Securities ("Department"), was decided by the Court without hearing pursuant to Rule 4(h) of the Rules of the District Courts of Oklahoma.

Based on the motions and the briefs filed, this Court finds as follows:

1. The Plaintiff/Receiver joined in the Department's Motion for Summary Judgment relative to Defendant Robert W. Mathews;
2. There is no genuine issue of material fact pertaining to Plaintiffs' unjust enrichment cause of action against Defendant Robert W. Mathews; and,
3. Plaintiffs' Motion for Summary Judgment against Defendant Robert W. Mathews, should be and hereby is granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, that summary judgment is entered against Defendant Robert W. Mathews on Plaintiffs' unjust enrichment cause of action, and Robert W. Mathews is ordered to disgorge and/or repay to Plaintiffs the amount of \$524,826.19, plus interest accruing thereon at the statutory rate from the date this

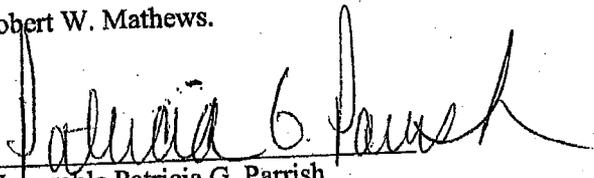


summary judgment is entered until paid in full, and costs of the action in the amount of \$55.00.

IT IS FURTHER ORDERED that Defendant Robert W. Mathews shall disgorge and/or repay the sums of money set forth above, including interest, to Plaintiff/Receiver, Douglas L. Jackson.

IT IS FURTHER ORDERED that there is no just reason for delay and the Court expressly directs the filing of a final judgment as to Robert W. Mathews.

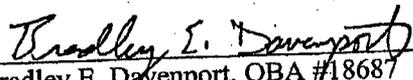
Date: 12/12/06

  
Honorable Patricia G. Parrish  
Judge of the District Court

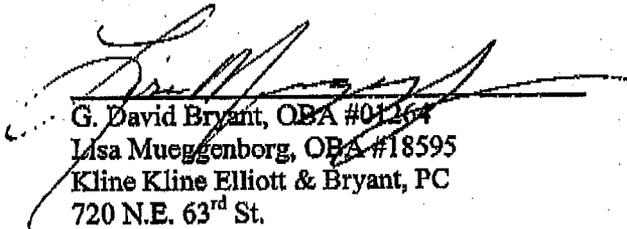
Approved as to Form:



Amanda Cornmesser, OBA #20044  
Gerri Stuckey, OBA #16732  
Melanie Hall, OBA #1209  
Oklahoma Department of Securities  
120 N. Robinson, Suite 860  
Oklahoma City, OK 73120  
(405) 280-7700 phone/(405) 280-7742  
Attorneys for Plaintiff, Oklahoma Dept. of Securities

  
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  
Attorneys for Plaintiff/Receiver, Douglas L. Jackson

Approved as to form:



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  
Attorneys for Defendant Robert W. Mathews

CERTIFICATE OF SERVICE

I hereby certify that on the 12<sup>th</sup> day of December 2006, I mailed a true and correct copy of the above and foregoing instrument, postage pre-paid to:

G. David Bryant  
Lisa Mueggenborg  
Kline Kline Elliott & Bryant, PC  
720 N.E. 63<sup>rd</sup> St.  
Oklahoma City, OK 73105  
Attorneys for Defendants Ethridge

S. Alex Yaffe  
Foshee & Yaffe  
P O Box 890420  
Oklahoma City, OK 73189  
Attorneys for Defendants Schubert



\_\_\_\_\_  
Amanda Commesser/Bradley E. Davenport

<b>ADVERSARY PROCEEDING COVER SHEET</b> (Instructions on Reverse)	<b>ADVERSARY PROCEEDING NUMBER</b> (Court Use Only)
<b>PLAINTIFFS</b> Oklahoma Department of Securities <i>ex rel.</i> Irving L. Faught, Administrator	<b>DEFENDANTS</b> Robert W. Mathews
<b>ATTORNEYS</b> (Firm Name, Address, and Telephone No.) Gerri L. Stuckey Oklahoma Department of Securities 120 N. Robinson, Ste. 860 Oklahoma City, OK 73102 (405) 280-7700	<b>ATTORNEYS</b> (If Known)
<b>PARTY</b> (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input checked="" type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee	<b>PARTY</b> (Check One Box Only) <input checked="" type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee
<b>CAUSE OF ACTION</b> (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) Denial of Discharge under § 727(a)(5) and Determination of Nondischargeability of Debt under §523(a)(2), (7), (19)	
<b>NATURE OF SUIT</b> (Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)	

**FRBP 7001(1) – Recovery of Money/Property**

- 11-Recovery of money/property - §542 turnover of property
- 12-Recovery of money/property - §547 preference
- 13-Recovery of money/property - §548 fraudulent transfer
- 14-Recovery of money/property – other

**FRBP 7001(2) – Validity, Priority or Extent of Lien**

- 21-Validity, priority or extent of lien or other interest in property

**FRBP 7001(3) – Approval of Sale of Property**

- 31-Approval of sale of property of estate and of a co-owner-§363(h)

**FRBP 7001(4) – Objection/Revocation of Discharge**

- 41-Objection / revocation of discharge - §727(c),(d),(e)

**FRBP 7001(5) – Revocation of Confirmation**

- 51-Revocation of confirmation

**FRBP 7001(6) – Dischargeability**

- 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims
- 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud

- 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny

**FRBP 7001(6) – Dischargeability (continued)**

- 61-Dischargeability - §523(a)(5), domestic support
- 68-Dischargeability - §523(a)(6), willful and malicious injury
- 63-Dischargeability - §523(a)(8), student loan
- 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support)
- 65-Dischargeability - other

**FRBP 7001(7) – Injunctive Relief**

- 71-Injunctive relief – reinstatement of stay
- 72-Injunctive relief – other

**FRBP 7001(8) Subordination of Claim or Interest**

- 81-Subordination of claim or interest

**FRBP 7001(9) Declaratory Judgment**

- 91-Declaratory judgment

**FRBP 7001(10) Determination of Removed Action**

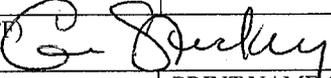
- 01-Determination of removed claim or cause

**Other**

- SS-SIPA Case – 15 U.S.C. §§78aaa *et seq*
- 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

(continued next column)

<input type="checkbox"/> Check if this case involves a substantive issue of state law	<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23
<input type="checkbox"/> Check if a jury trial is demanded in complaint	Demand \$ N/A

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES			
NAME OF DEBTOR ROBERT W. MATHEWS		BANKRUPTCY CASE NO. 07-10108	
DISTRICT IN WHICH CASE IS PENDING W.D. OK		DIVISIONAL OFFICE	NAME OF JUDGE WEAVER
RELATED ADVERSARY PROCEEDING (IF ANY)			
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.	
DISTRICT IN WHICH CASE IS PENDING		DIVISIONAL OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) 			
DATE July 16, 2007		PRINT NAME OF ATTORNEY (OR PLAINTIFF) Gerri L. Stuckey	

**INSTRUCTIONS**

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 104, the Adversary Proceeding Cover Sheet, if it is required by the court. In some courts, the cover sheet is not required when the adversary proceeding is filed electronically through the court's Case Management/Electronic Case Files (CM/ECF) system. (CM/ECF captures the information on Form 104 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

**Plaintiffs and Defendants.** Give the names of the plaintiffs and the defendants exactly as they appear on the complaint.

**Attorneys.** Give the names and addresses of the attorneys, if known.

**Party.** Check the most appropriate box in the first column for the plaintiffs and in the second column for the defendants.

**Demand.** Enter the dollar amount being demanded in the complaint.

**Signature.** This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.