

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

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

Plaintiff, )

v. )

Maier Resources, Inc., and )  
 Johnny Ray Maier, *a/k/a* )  
 John Ray Maier, )

Defendants, )

v. )

the Estate of Johnny Ray Maier, )

Relief Defendant. )

FILED IN THE DISTRICT COURT  
 OKLAHOMA COUNTY, OKLA.

JAN 12 2006

PATRICIA PRESLEY, COURT CLERK

by \_\_\_\_\_  
 Deputy

Case No.

**CJ - 2006 - 326**

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

The Oklahoma Department of Securities *ex rel.* Irving L. Faught, Administrator ("Department"), respectfully submits this application for a temporary restraining order against Defendant Maier Resources, Inc. and Relief Defendant, the Estate of Johnny Ray Maier; an order freezing the assets of Maier Resources and the Estate of Johnny Ray Maier; an order appointing a receiver for Maier Resources; and an order for an accounting by Maier Resources, pursuant to Section 1-603 of the Oklahoma Uniform Securities Act of 2004 ("Act"). This case concerns violations of the Act and the Oklahoma Securities Act ("Predecessor Act"), Okla. Stat. tit. 71, §§ 1-413, 501, 701-703 (1991 & Supp. 2003).

The Department petitions this Court to halt further violations of the Act, to protect the rights of the Department in its obligation to safeguard the public interest, to prevent any dissipation or loss of investor funds and property, and to remedy actions that Defendants have already committed.

The Department moves this Court to issue *instanter* a temporary restraining order, an order freezing assets, an order appointing receiver, and an order for an accounting until the Court may afford the parties a hearing, and additionally moves for the entry of a temporary injunction at such hearing against Defendant Maier Resources. The entry of such orders are necessary for the reasons set forth below, to preserve the *status quo* and to protect the Department's rights in enforcing the Act.

#### **I. THE DEFENDANTS**

Maier Resources, Inc. ("Maier Resources") is an Oklahoma corporation with its principal place of business in Norman, Oklahoma. Maier Resources represents that it is a company engaged in the business of exploring for and producing oil and gas. At all times material hereto, Maier Resources offered and/or sold securities in and/or from Oklahoma as described herein.

Johnny Ray Maier, *a/k/a* John Ray Maier ("Maier"), was an Oklahoma resident. At all times material hereto, Maier Resources acted under the dominion and control of Maier. At all times material hereto, Maier materially and actively participated in offers and sales of securities to investors. Maier died on January 7, 2006.

## II. NATURE OF THE CASE

This case involves violations of the Oklahoma Uniform Securities Act of 2004 ("Act"), Okla. Stat. tit. 71, §§ 1-101 through 1-701 (Supp. 2003), by Maier Resources and Maier ("Defendants"). Specifically, Defendants offered and sold unregistered securities, failed to register agents and employed unregistered agents, made false filings with the Department, perpetrated fraud in connection with the offer, sale, and/or purchase of securities and obstructed the Department's investigation of this matter.

Defendants have been previously enjoined from violating the Oklahoma Securities Act, Okla. Stat. tit. 71, §§ 1-413, 501, 701-703 (1991 & Supp. 1995) (the "Predecessor Act"). In 1996, the Department filed a petition in the District Court of Oklahoma County against Defendants relating to their offer and/or sale of securities in the form of working interests in oil and gas leases ("Working Interests") in violation of the Predecessor Act (Case No. CJ-96-1044-63, Okla. County Dist. Ct.). On July 18, 1996, Defendants were permanently enjoined by the court from further and future violations of the Predecessor Act.

Defendants have again violated the Act. Beginning in 2003, Defendants, themselves and through the use of sales agents, have offered and/or sold securities, in the nature of interests in oil and/or gas leases ("Working Interests") to investors ("Investors").

Defendants engaged in a course of business whereby they: (a) solicited money from investors to repeatedly recomplete oil and gas wells with histories of limited production; (b) solicited money from investors for the stated purpose of drilling new wells then applied such money to recomplete existing wells; (c) solicited money from investors for the stated purpose of reCompleting existing wells and then distributed that money to previous investors in other wells as production "revenue" when such other wells produced no revenue; (d) failed to file

assignments of working interests sold to investors and then resold interests in the same wells to other groups of investors; (e) provided offering documents to investors that contained materially false information and/or that omitted material information; and (f) filed documentation with the Department that contained information they know to be false at the time the filing was made.

Defendants also refused to fully comply with subpoenas issued by the Administrator of the Department and obstructed the Department's investigation of this matter by directing at least one of their employees to ignore a subpoena issued by the Administrator of the Department.

#### **A. False Filings with the Department**

Beginning in or about 2003, Defendants made, or caused to be made, numerous filings with the Administrator of the Department that contained materially false and misleading information and that omitted material information.

On March 9, 2005, Maier Resources filed a Form D, *Notice of Sale of Securities*, with the Administrator of the Department notifying the Department of its intent to claim an exemption from the registration requirements of the Act relating to the Liberty #1 oil and gas well in Noble County, Oklahoma (the "Liberty #1 Form D"). The Liberty #1 Form D falsely stated the purpose of the offering as the drilling, completion and operation of the Liberty #1 well. As described below, the offering was actually for the recompletion of an existing well rather than the drilling of a new well on the lease. The Liberty #1 Form D falsely stated the address of the principal executive offices of Maier Resources to be 914 ½ Main, Duncan, Oklahoma 73533. At the time of the filing the principal executive office of Maier Resources was in Norman, Oklahoma.

On September 13, 2005, Maier Resources filed a Form D, *Notice of Sale of Securities*, with the Administrator of the Department notifying the Department of its intent to claim an exemption from the registration requirements of the Act for an offering of securities related to

the Tracy #1 well in Garvin County, Oklahoma (the "Tracy #1 Form D"). The Tracy #1 Form D falsely stated the purpose of the offering as the drilling, completion and operation of the Tracy #1 well. As described below, the offering was actually for the recompletion of an existing well rather than the drilling of a new well on the lease. The Tracy #1 Form D omitted required information concerning the states of residence of Investors known to Defendants at the time the filing was made. Specifically, the Tracy #1 Form D omitted information concerning at least eleven Investors in seven states other than Oklahoma. The Tracy #1 Form D falsely stated the address of the principal executive offices of Maier Resources to be 914 ½ Main, Duncan, Oklahoma 73533.

#### **B. Violations of the Securities Registration Provisions**

Beginning in or about 2003, Defendants themselves, and through the use of sales agents, offered and/or sold Working Interests to Investors in violation of the securities registration provisions of the Predecessor Act and the Act. Through telephone solicitations to Investors in numerous states, Defendants offered and/or sold Working Interests in the Liberty #1, Tracy #1 and Baker #1 wells to individuals with whom they had no previous substantive business relationship.

#### **C. Untrue Statements of Material Fact and Omissions of Material Fact in Connection with the Offer and Sale of the Working Interests**

In connection with the offer and sale of the Working Interests, Defendants made untrue statements of material fact and omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

#### **Liberty #1 Well**

In connection with the offer and sale of interests in the Liberty #1 well, Defendants provided Investors with offering documents (the "Liberty Offering Materials"). The Liberty Offering Materials provided a description and history of Maier Resources and Maier and stated that the Liberty #1 well would be a new well drilled in Noble County, Oklahoma. The Liberty Offering Materials further stated that the interests in the Liberty #1 well were being offered to Investors on a "turnkey basis," meaning the costs to Investors to drill and complete the well would not exceed a stated amount. The Liberty Offering Materials stated that the well was a "minimal risk" well that Maier Resources predicted would return drilling costs within one year "and continue producing for twenty more."

The Liberty Offering Materials provided to Investors included a schedule of "Drilling Costs" in which drilling and completion costs were estimated to be Two Hundred Fifty Thousand Dollars (\$250,000). Such information was false. The Liberty #1 well involved the recompletion of an existing well with costs far less than those stated by Defendants in the Liberty Offering Materials.

In connection with the "turnkey" representations in the Liberty Offering Materials, Defendants omitted to state whether or not Maier Resources had the financial capability to complete the well if costs exceeded the amount to be charged to Investors.

In connection with the offer and sale of interests in the Liberty #1 well, Defendants omitted to state that money received from Investors in the Liberty #1 well would be used to pay Investors in other wells as purported production revenue.

In connection with the offer and sale of interests in the Liberty #1 well, Defendants omitted to state that they were the subject of numerous lawsuits and judgments relating to their oil and gas operations, including suits for failure to pay the costs of labor and materials.

Defendants further omitted to disclose a judgment against them for wrongfully withholding royalty payments due the owner of an interest in a well operated by Maier Resources.

In connection with the offer and sale of interests in the Liberty #1 well, Defendants omitted to state that Investors would be subject to joint and several liability for any obligations or liabilities incurred in connection with the completion and/or operation of the Liberty #1 well. Defendants further omitted to state the potential conflicts of interest arising from Maier Resources' additional role as the operator of the well and that there were no procedures in place to address those conflicts of interest. Finally, Defendants omitted to state whether a title opinion for the lease had been, or would be, obtained and that defects, if any, in title to the lease could result in partial or total loss of Investors' interests in the lease and/or any well thereon.

In connection with the offer and sale of interests in the Liberty #1 well, Defendants omitted to state that on February 14, 1996, the Administrator of the Department filed suit against Defendants in the district court of Oklahoma County for violating the securities registration, agent registration and anti-fraud provisions of the Predecessor Act, and that on July 18, 1996, the court permanently enjoined Defendants from further and future violations of the Predecessor Act.

#### **Tracy #1 Well**

In 2003, Defendants offered and sold working interests to Investors in a well described as the Tracy #1. Defendants represented to Investors that the Tracy #1 well was to be recompleted and that the working interests were being offered to investors on a "turnkey basis," meaning the costs to Investors to recomplete the well would not exceed a stated amount.

In 2005, Defendants again offered and sold working interests in the Tracy #1 well to Investors. In connection with the second offer and sale of interests in the Tracy #1 well,

Defendants provided Investors with offering documents (the "2005 Tracy Offering Materials"). The 2005 Tracy Offering Materials state that the interests in the Tracy #1 well are offered to Investors on a "turnkey basis," meaning the costs to Investors to recomplete the well will not exceed a stated amount. The 2005 Tracy Offering Materials state that the Tracy #1 well is producing two barrels of oil per day and twenty-five thousand cubic feet of gas per day. Such information is false. At the time the 2005 Tracy Offering Materials were provided to Investors, there was no reported production from the Tracy #1 well.

The 2005 Tracy Offering Materials describe the "Viola Formation" in which the Tracy #1 well is proposed to be recompleted with money received from Investors. The 2005 Tracy Offering Materials stated that the "Viola Formation" produces an average of "58 barrels of oil per day" in the area. The 2005 Tracy Offering Materials omitted to state the basis for such figure, including whether such figure represents initial production or current production from the other wells in the area. The 2005 Tracy Offering Materials also provided a map identifying various wells in the section, township and range in which the Tracy #1 is located. The map identified the location of the Tracy #1 and other wells in the section and stated the amount of oil per day produced in the "Viola Formation" by each well. The 2005 Tracy Offering Materials omitted to state whether these figures represented initial or current production and omitted to state that at least half of the other wells identified on the map had been plugged and abandoned for years.

In connection with the "turnkey" representations in the 2005 Tracy Offering Materials, Defendants omitted to state whether or not Maier Resources had the financial capability to complete the well if costs exceed the amount charged to Investors.

In connection with the offer and sale of interests in the Tracy #1 well, Defendants omitted to state that they were the subject of numerous lawsuits and judgments relating to their oil and gas operations, including suits for failure to pay the costs of labor and materials. Defendants further failed to disclose a judgment against them for wrongfully withholding royalty payments due the owner of an interest in a well operated by Maier Resources.

In connection with the offer and sale of interests in the Tracy #1 well, Defendants omitted to state that Investors would be subject to joint and several liability for any obligations or liabilities incurred in connection with the completion and/or operation of the Tracy #1 well. Defendants further omitted to state the potential conflicts of interest arising from Maier Resources' additional role as the operator of the well and that there were no procedures in place to address those conflicts of interest. Finally, Defendants omitted to state whether a title opinion for the lease had been, or would be, obtained and that defects, if any, in title to the lease may result in partial or total loss of Investors' interests in the lease and/or any well thereon.

In connection with the offer and sale of interests in the Tracy #1 well, Defendants omitted to state that money received from Investors would be used to pay Investors in other wells as purported production revenue.

In connection with the offer and sale of interests in the Tracy #1 well, Defendants omitted to state that on February 14, 1996, the Administrator of the Department filed suit against Defendants in the district court of Oklahoma County for violating the securities registration, agent registration and anti-fraud provisions of the Predecessor Act, and that on July 18, 1996, the court permanently enjoined Defendants from further and future violations of the Predecessor Act.

One Investor who purchased a Working Interest in the Tracy #1 well from Defendants in 2003 contacted Maier in 2004 to inquire about the status of the well and to ask why he had received no revenue from the well. Maier informed this Investor that the Tracy #1 well was producing nothing and was "dead." This same investor received an unsolicited package from Maier Resources containing the 2005 Tracy Offering Materials described above, including the representations that the Tracy #1 was producing sixty barrels of oil per month.

### **III. VIOLATIONS OF THE OKLAHOMA SECURITIES ACT**

#### **A. Violation of Section 301 of the Predecessor Act and Section 1-301 of the Act: Failure to Register Securities**

The Working Interests offered and sold in the Tracy #1 well in 2003 are securities as defined by Section 2 of the Predecessor Act. The Working Interests offered and sold in the Liberty #1 well and the Tracy #1 well in 2005 are securities as defined by Section 1-102 of the Act.

The securities offered and sold by Defendants were not registered under either the Predecessor Act or the Act and did not otherwise qualify for an exemption from registration pursuant to Section 401 of the Predecessor Act or Sections 1-201 or 1-202 of the Act. By reason of the foregoing, Defendants have violated Section 301 of the Predecessor Act and Section 1-301 of the Act and unless enjoined, may continue to violate the Act.

#### **B. Violation of Section 1-402 of the Act: Failure to Register as Agents and Employing Unregistered Agents**

Maier Resources is an issuer as defined in Section 1-102 of the Act. The sales agents employed by Maier Resources, by virtue of their efforts and activities in this state in effecting or

attempting to effect transactions in the securities of an issuer, are agents, as defined in Section 1-102 of the Act. The agents employed by Maier Resources are not, and have not been, registered as issuer agents under the Act. By reason of the foregoing, Defendants have violated, are violating, and unless enjoined, will continue to violate Section 1-402 of the Act.

**C. Violation of Section 1-501 of the Act:  
Untrue Statements of Material Fact and Omissions of Material Fact  
in Connection With Offer, Sale or Purchase of Securities**

Defendants, in connection with the offer, sale, or purchase of securities, directly and indirectly, made untrue statements of material fact as described above. Defendants, in connection with the offer, sale, or purchase of securities, directly and indirectly, omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, as described above. By reason of the foregoing, Defendants, directly and indirectly, have violated, and unless enjoined, may continue to violate Section 1-501 of the Act.

**D. Violation of Section 1-501 of the Act:  
Engaging in any Act, Practice, or Course of Business Which Operates or  
Would Operate as a Fraud or Deceit upon any Person**

Defendants, in connection with the offer, sale, or purchase of securities, and through the use of the untrue statements of material fact and the omissions of material fact described above, have engaged in an act, practice, or course of business that has operated as a fraud or deceit upon Investors. By reason of the foregoing, Defendants, directly and indirectly, have violated and unless enjoined, will continue to violate Section 1-501 of the Act.

**E. Violation of Section 1-505 of the Act:  
False and Misleading Filings under the Act**

As described above, Defendants have filed under the Act, documents that, at the time and in the light of the circumstances under which they were made, were false and/or misleading in material respects, and that omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not false or misleading. By reason of the foregoing, Defendants, directly and indirectly, have violated, are violating, and unless enjoined, will continue to violate Section 1-505 of the Act.

**III. NEED FOR TEMPORARY RESTRAINING ORDER, ASSET FREEZE,  
APPOINTMENT OF A RECEIVER, ACCOUNTING  
AND TEMPORARY INJUNCTION**

**A. Temporary Restraining Order**

Section 1-603 of the Act provides in part:

(A) If the Administrator believes that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this act or a rule adopted or order issued under this act or constituting a dishonest or unethical practice or that a person has, is, or is about to engage in an act, practice, or course of business that materially aids a violation of this act or a rule adopted or order issued under this act or a dishonest or unethical practice, the Administrator may, prior to, concurrently with, or subsequent to an administrative proceeding, maintain an action in the district court of Oklahoma County or the district court of any other county where service can be obtained to enjoin the act, practice, or course of business and to enforce compliance with this act or a rule adopted or order issued under this act.

(B) In an action under this section and on a proper showing, the court may:

1. Issue a permanent or temporary injunction, restraining order, or declaratory judgment;
2. Order other appropriate or ancillary relief, which may include:
  - a. an asset freeze, accounting, writ of attachment, writ of general or specific execution, and appointment of a receiver or conservator, that may be the Administrator, for the defendant or the defendant's assets,

- b. ordering the Administrator to take charge and control of a defendant's property, including investment accounts and accounts in a depository institution, rents, and profits; to collect debts; and to acquire and dispose of property,
  - c. imposing a civil penalty up to a maximum of Five Thousand Dollars (\$5,000.00) for a single violation or up to Two Hundred Fifty Thousand Dollars (\$250,000.00) for more than one violation; an order of rescission, restitution, or disgorgement directed to a person that has engaged in an act, practice, or course of business constituting a violation of this act or the predecessor act or a rule adopted or order issued under this act or the predecessor act, and
  - d. ordering the payment of prejudgment and postjudgment interest; or
3. Order such other relief as the court considers appropriate.

Section 406.1 of the Act provides in part:

- (a) Upon a showing by the Administrator that a person has violated or is about to violate the Oklahoma Securities Act, except under the provisions of Section 202.1 or 305.2 of this title, or a rule or order of the Administrator under the Oklahoma Securities Act or that a person has engaged or is about to engage in dishonest or unethical practices in the securities business, the Administrator, prior to, concurrently with, or subsequent to an administrative proceeding, may bring an action in the district court of Oklahoma County or the district court of any other county where service can be obtained on one or more of the defendants and **the district court may grant or impose one or more of the following appropriate legal or equitable remedies:**
  - (1) Upon a showing of a violation of the Oklahoma Securities Act or a rule or order of the Administrator under the Oklahoma Securities Act or conduct involving dishonest or unethical practices in the securities business:
    - (i) a temporary restraining order, permanent or temporary prohibitory or mandatory injunction, or a writ of prohibition or mandamus;
    - (ii) a civil penalty up to a maximum of Five Thousand Dollars (\$5,000.00) for a single violation or of Fifty Thousand (\$50,000.00) for multiple violations in a single proceeding or a series of related proceedings;
    - (iii) a declaratory judgment;
    - (iv) restitution to investors;
    - (v) the appointment of a receiver or conservator for the defendant or the defendant's assets, and

(vi) other relief the court deems just (*emphasis added*).

The authority to grant or deny an injunction as an equitable remedy is governed by principles of equity. *Wichita Wire, Inc. v. Lenox*, 11 Kan. App. 2d 459, 461 (1986). The purpose of a temporary injunction is to prevent injury to a claimed right pending a final determination of the controversy on its merits. *Id.* A temporary injunction merely preserves the status quo until a final determination of a controversy can be made. Title 12 O.S.1981 § 1382 authorizes a district court to issue temporary injunctions and restraining orders to achieve precisely that outcome. *Westinghouse Electric Corporation v. Grand River Dam Authority*, 720 P.2d 713 OK (1986).

Defendants have engaged in acts and practices in violation of the Act and the Predecessor Act and have, as a result of these activities, received a substantial amount of money from numerous Investors. It is unknown how the Defendants, or their successors or assigns, may handle any existing accounts, oil or gas wells, and any other assets, therefore, it is necessary to preserve the status quo until a final determination can be made. Issuing a temporary restraining order is in the public interest and the Department must safeguard the public interest.

#### **B. Asset Freeze and Accounting**

Section 1-603 of the Act specifically grants this Court the power to issue appropriate equitable relief to provide effective enforcement of the Act and the Predecessor Act. Once the equity powers of the court are invoked, the court possesses the power to fashion appropriate interim remedies. *SEC v. Manor Nursing Centers*, 458 F. 2d 1082, 1103 (2<sup>nd</sup> Cir. 1972). Within this power is the authority to grant effective equitable relief by temporarily freezing specific assets. *SEC v. General Refractories Co.*, 400 F.Supp. 1248, 1259 (D.D.C. 1975); *SEC v. International Swiss Investments Corp.*, 895 F.2d 1272, 1276 (9<sup>th</sup> Cir. 1990); *SEC v. Manor*

*Nursing Centers*, 458 F.2d at 1105-06 (upholding district court's order freezing assets in part because "...at the time the court's order was entered, a great deal of uncertainty existed with respect to the total amount of proceeds received and their location.") Within the equity power of the court is the authority to order an accounting by the Defendants. *SEC v. R.J. Allen & Associates*, 386 F. Supp. 866, 880 (S.D.N.Y. 1974); *SEC v. Manor Nursing Centers*, *supra* at 1103-1104.

Defendants made use of untrue statements of material fact and omitted to state material facts as alleged in Plaintiff's verified petition, in violation of Section 1-501 of the Act. The whereabouts of the money raised by Defendants through violations of the Act and the Predecessor Act is not known at this time. These circumstances make it necessary that the Court freeze assets to preserve the status quo, to prevent the dissipation of assets, and to account for the money raised through violations of the Act and the Predecessor Act so as to protect Investors and to provide effective relief.

### **C. Appointment of a Receiver**

The violations of the Act and the Predecessor Act, as described above, give the Department the right to seek one or more of the remedies available by statute and in equity. *Oklahoma Securities Commission v. CFR International, Inc.*, 622 P.2d 293,295 (Okla. Ct. App. 1980). One such remedy is that of the appointment of a receiver. In *SEC v. American Bd. Of Trade, Inc.*, 830 F.2d 431 (2d Cir. 1987), the court, quoting *SEC v. Manor Nursing Centers, Inc.* 458 F.2d 1082, 1105 (2d. Cir, 1972), stated that the primary purpose of the appointment of a receiver is to help "preserve the status quo while the various transactions were unraveled" so that an accurate picture of what happened could be formulated. *Id.* at 436.

In circumstances of egregious fraud where the interests of public investors are in substantial jeopardy, it has been recognized that the appointment of a receiver is necessary to prevent "diversion or waste of assets to the detriment of those for whose benefit, in some measure, the injunction action is brought." *Securities and Exchange Commission v. Capital Counselors, Inc.*, 332 F. Supp. 291, 304 (S.D. N.Y. 1971). The form and quantum of evidence required is a matter of judicial discretion. *U.S. v. O'Connor*, 291 F.2d 520 (2d Cir. 1961); *Haase v. Chapman*, 308 F.Supp. 399 (W.D.Mo. 1969). Here, the evidence is admissible and compelling that Defendants have engaged in a fraudulent course of business to induce the public to purchase unregistered securities. It is critical that a receiver be appointed to prevent further dissipation of Investor assets and to prevent continued violations of the law. There is no definitive list of facts by which the Court must abide; however, the Sixth Circuit in *Tennessee Pub. Co. v. Carpenter*, 100 F.2d 728 (6<sup>th</sup> Cir. 1938), identified factors which can be considered, each of which is applicable here and justify the appointment of a receiver for the Defendants:

Factors typically influencing the district court's exercise of discretion include the existence of a valid claim by the moving party; the probability that fraudulent conduct has occurred or will occur to frustrate the claim; imminent danger that property will be lost, concealed, or diminished in value; inadequacy of legal remedies; lack of a less drastic equitable remedy; and the likelihood that appointment of a receiver will do more harm than good. *at* 732.

#### **D. Temporary Injunction**

Once the Plaintiff has shown the Defendants' past conduct is in violation of the Act and/or the Predecessor Act, the proper test for the issuance of a statutory injunction is whether there is a reasonable expectation of future violations by Defendants. *SEC v. Manor Nursing Centers, Inc.*, 458 F.2d 1082 (2d Cir. 1975); *SEC v. Culpepper*, 270 F.2d 241, 249 (2d Cir. 1959). In considering this issue, past illegal conduct is strong support for the likelihood of future violations. *Oklahoma Securities Commission v. CFR International, Inc.*, *supra*. Here, the

Defendants have violated the Act and the Predecessor Act which creates a presumption of likelihood of future violations. Because the Plaintiff has conclusively demonstrated the existence of past violations, injunctive relief is appropriate and the burden of showing there is no reasonable expectation of future violations will shift to the Defendants and their burden "is a heavy one." *SEC v. Culpepper*, 270 F.2d 241, 249 (2d Cir. 1959); *Oklahoma Securities Commission v. CFR International, Inc.*, 622 P.2d 293, 295 (Okla. Ct. App. 1980).

Unlike private actions for injunctions, the Department's action is based on statute and no showing of irreparable injury or the inadequacy of other remedies is required. *Oklahoma Securities Commission v. CFR International, Inc.*, 622 P.2d 293, 295 (Okla. Ct. App. 1980) (citing *Bradford v. SEC*, 278 F.2d 566 (9<sup>th</sup> Cir. 1960)). Although not required, the Department has also shown that the public will suffer irreparable injury if Defendants are not enjoined from further violations of the Act.

#### **E. An Ex Parte Order Should be Issued**

While courts have been cautious with the use of *ex parte* orders, they are approved in appropriate cases. *Covington, Knox Inc. v. Texas*, 577 S.W. 2d 323 (Tex. App. Houston [14<sup>th</sup> Dist.] 1979, no writ). The Department alleges facts that demonstrate a strong likelihood of ongoing violations of the Act by Defendants.

The Department is unaware of any legal representation retained by Maier and given his death the Department is unable to provide notice of this action to him. In addition, there is a great risk that the assets of Maier Resources may be dissipated by other shareholders, if any, employees and/or agents or heirs, causing irreparable injury to the Department's ability to safeguard the public interest by providing monetary redress and by preventing irreparable loss and injury to Investors. The issuance of a temporary restraining order *instanter*, an asset freeze,

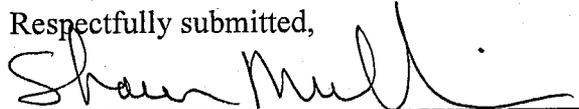
the appointment of a receiver *pendente lite*, and an order for an accounting by Maier Resources will help maximize the relief to Investors and provide protection of the public interest.

### V. Conclusion

The Department, pursuant to Section 1-602 of the Act, conducted an investigation into Defendants' activities in and/or from Oklahoma. The investigation produced evidence that clearly indicates Defendants issued, offered and/or sold unregistered securities, acted as unregistered agents, and/or employed unregistered agents. The investigation also revealed that Defendants, in connection with the offer, sale, and/or purchase of securities: (1) made and are making untrue statements of material fact; (2) omitted and are omitting to state certain material facts; and (3) engaged and are engaging in a course of business which has operated as a fraud or deceit upon Investors. Defendants have engaged in substantial violations of the Predecessor Act and have engaged in and are engaging in substantial violations of the Act, including fraudulent practices. The Department submits that the evidence firmly establishes a *prima facie* case for the issuance of a temporary restraining order, an asset freeze, the appointment of a receiver, an accounting, and a temporary injunction.

In light of the facts presented and the authorities cited, the Department respectfully requests that this Court issue a temporary restraining order, an order freezing the assets of Defendants and Relief Defendant, an order appointing a receiver for Maier Resources, and an order for an accounting, until such time as the Court may afford the parties a hearing on the Plaintiff's motion for temporary injunction, all to halt Defendants' unlawful practices and to provide effective relief to Investors and to the Department.

Respectfully submitted,



Shaun Mullins (OBA #16869)

Enforcement Attorney

Oklahoma Department of Securities

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Oklahoma City, Oklahoma 73102

Telephone (405) 280-7700

Fax (405) 280-7742

### CERTIFICATE OF MAILING

The undersigned certifies that on the 13<sup>th</sup> day of January, 2006, a true and correct copy of the foregoing was mailed via First Class Mail, postage prepaid, to the following:

Maier Resources, Inc.  
330 West Gray Street, Suite 207  
Norman, Oklahoma 73069

