

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

OKLAHOMA DEPARTMENT OF SECURITIES)		
ex rel. IRVING L. FAUGHT, Administrator,	)	Case No.: CJ-2008-9048
	)	
Plaintiff,	)	Judge Daniel L. Owens
	)	
vs.	)	
	)	
POWDER RIVER PETROLEUM	)	
INTERNATIONAL, INC., an Oklahoma	)	
corporation, and BRIAN FOX, an individual,	)	
	)	
Defendants.	)	

**REPLY OF DEFENDANT BRIAN FOX TO PLAINTIFF'S  
RESPONSE TO MOTION FOR CHANGE OF VENUE**

The Defendant, Brian Fox, for Reply to Plaintiff's Response to Motion for Change of Venue, files this Brief pursuant to Local Rule 37 to address the argument proposed by the Plaintiff that venue is proper in Oklahoma County as the principal place of business of the Defendant Corporation, Powder River Petroleum International, Inc. ("Powder River"), has been moved to Oklahoma County by reason of the appointment of Bruce Day as Receiver.

The Plaintiff in this action attempts to establish venue in Oklahoma County arguing that Bruce Day, an Oklahoma City attorney, as Receiver, with a law firm located in Oklahoma City, has changed the principal place of business of Powder River to Oklahoma County. This argument does not address certain facts regarding the appointment of Mr. Day as Receiver, and his role as a court appointed receiver.

First, Bruce Day was appointed as Receiver by the District Court of Tulsa County in a Tulsa County action, wherein the Plaintiff seeking his appointment alleged that

jurisdiction for the appointment of a receiver was established in Tulsa County as Powder River was located in Tulsa, Oklahoma, had an office there, a mail box there, and its registered service agent in Tulsa. Apparently convinced as to the jurisdiction and proper venue, the Court appointed Mr. Day as Receiver. Mr. Day was proposed by the Plaintiffs in the case based upon his experience and offer to reduce his hourly rate and assume the duties as Receiver and therefore became an officer of the Tulsa County District Court.

After his appointment, Bruce Day, as Receiver, did take control of books and records, and moved them to his law office in Oklahoma City. The Corporation immediately ceased doing business, and has not done business since the appointment of the Receiver on July 14, 2008. There is no order allowing the Receiver to operate the business and the Receiver has not in fact operated the business. The Receiver's actions since his appointment have simply been to collect assets, and determine the value of assets and the amount of liabilities. The office in Oklahoma City contains numerous boxes of records, and is not as alleged by the Plaintiff, an administrative office. The records of Powder River are located in Oklahoma City simply as storage.

Bruce Day, as the Receiver, is not alleged to be a *tortfeasor*, or have committed wrongful conduct alleged in this suit. This suit is one for injunction against Powder River and the individual, Brian Fox, for alleged conduct which pre-dates the Receiver's appointment and seeks to enjoin any future violations of securities laws. For convenience, the Receiver has filed an affidavit seeking to retain the case in Oklahoma County apparently for the convenience of the Plaintiff and the Receiver.

The arguments offered by the Plaintiff ignore the rights of the individual Defendant, Brian Fox. There is no allegation that Brian Fox is a resident of Oklahoma County.

Unless jurisdiction can be properly shown against a Co-Defendant (Powder River), jurisdiction and venue over Brian Fox does not lie in Oklahoma County. ***Schwartz v. Diehl***, 1977 OK 115, 568 P.2d 280; ***Oklahoma Ordinance Works Authority v. District Ct. Of Wagoner Co.***, 1980 OK 100, 613 P. 746. Plaintiff therefore has attempted by the affidavit and the appointment of the Receiver to manufacture venue in Oklahoma County.

Venue involves not only convenience, but also the constitutional rights of defendants. ***Schwartz, supra; Jones v. Brown***, 1973 OK 98, 516 P.2d 546. The individual Defendant Brian Fox cannot be properly summoned to defend this law suit in Oklahoma County if the suit was brought against Brian Fox alone. In reality, the suit now is solely against Brian Fox. The Corporate Defendant is in bankruptcy in the United States Bankruptcy Court for the Western District of Oklahoma pursuant to a Voluntary Petition filed by the Receiver, Bruce Day. A trustee has been appointed. The trustee, like the receiver, has been in control of the activities of Powder River since appointment. Meaning, that since July 14, 2008, the Corporate Defendant has absolutely no ability to issue stock, sell stock or securities, or violate securities laws. Likewise, Brian Fox, a former officer and director of Powder River, had and has no ability to sell securities of Powder River. Therefore, the relief requested by the Plaintiff pertains solely to future activities by the individual Defendant, and not Powder River.

There is no venue statute which places venue properly in Oklahoma County. Unless the Court would be persuaded by the arguments of the Plaintiff that the principal place of business has been removed to Oklahoma County, there is no venue statute standing on its own, or cumulatively, which establishes venue in Oklahoma County. No act occurred

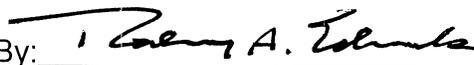
in Oklahoma County, the individual Defendant has no contact with Oklahoma County, the Corporation has no property in Oklahoma County, and there is no other compelling reason that the case be brought in Oklahoma County pursuant to specific venue statute. The venue sought to be established by the Plaintiff is therefore solely for the convenience of the Plaintiff and convenience of the Receiver.

Moreover, the Receiver now has no authority to act for the Corporate Defendant. Pursuant to 11 U.S.C. §543, the Receiver is a mere custodian whose only remaining duties are to turn over the property of the receivership estate to the Trustee and account to the Bankruptcy Court, unless the Bankruptcy Court excuses the accounting.

In conclusion, under all circumstances, venue does not properly lie in Oklahoma County and cannot be manufactured by the Plaintiff and the Receiver for convenience. Defendant Brian Fox is entitled to defend in Tulsa County, Oklahoma, where the receivership action and a pending action for money damages and equitable relief remains pending.

Respectfully Submitted,

**EDWARDS & MAILATH, L.L.P.**

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 31 day of December, 2008, I caused a true and correct copy of the above and foregoing instrument to be mailed with proper postage thereon prepaid to:

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**Bankruptcy Trustee**

Bruce W. Day, Receiver  
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