

DISTRICT COURT OF LOGAN COUNTY  
STATE OF OKLAHOMA

STATE OF OKLAHOMA  
LOGAN COUNTY SS  
FILED FOR RECORD

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REJEANIA ZMEK  
COURT CLERK

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

OKLAHOMA DEPARTMENT OF )  
SECURITIES, *ex rel.* Irving Faught, )  
Administrator )

Plaintiff, )

v. )

Case No. CJ 2004-256

MARSHA SCHUBERT, an )  
Individual, and *dba* SCHUBERT AND )  
ASSOCIATES, *et al.* )

Defendants. )

**INTERVENTION OF PARTY AND MOTION TO TRANSFER AND  
CONSOLIDATE THIS MATTER**

COMES NOW Richard LeBoeuf, Plaintiff in Oklahoma County case against the same parties as this case, involving the same nucleus of operative fact (improper acts by Marsha Schubert) and pursuant to 12 Okla. Stat. Ann. § 2024 requests that this Court transfer and consolidate this case with Case Number CJ 2005-3299 in Oklahoma County, currently set before Judge Patricia Parrish.

**ISSUES OF LAW AND FACT SUPPORTING TRANSFER AND  
CONSOLIDATION**

1. The Department of Securities and the Receiver have requested, through their pleadings, that the Oklahoma County District Court, Honorable Patricia Parrish, preside over their consolidated matters, and have asked that such disputes *NOT* be heard before this Court in Logan County. EXHIBIT A pp. 7-9, EXHIBIT B pp.15-17. The Department and Receiver have thus voiced a preference for venue in Oklahoma County.

600a

2. Multiple matters have already been consolidated in Oklahoma County, involving approximately 150 defendants, and the Honorable Patricia Parrish has voluntarily accepted the consolidated issues of law and fact before other judges, to be heard before her in case number CJ-2005-3299.

3. Marsha Schubert, a party in this above-styled case, has become a necessary and proper party in the Oklahoma County consolidated matter, as she is the only party able to explain key issues of fact. Ms. Schubert has only recently been served to appear in the Oklahoma County consolidated matter CJ-2005-3299. EXHIBIT C.

4. The Receiver appointed in this case, Douglas Jackson, is attempting to enforce the Order Appointing Receiver from this case, by having sued approximately 150 Defendants in the Oklahoma County consolidated matter.

5. The legal limitations of the Order Appointing receiver are currently at issue for review in Oklahoma County under case CJ-2005-3299, as the Receiver Jackson has apparently sued numerous parties that may be innocent, without first utilizing the administrative remedies available for the Department of Securities to conduct investigations under 71 Okla. Stat. Ann. § 1-602. In fact, the Department of Securities has agreed that Intervenor LeBoeuf has not violated the Oklahoma Securities Act (EXHIBIT D), thus calling into question the Receiver Jackson's ability to utilize Department of Securities remedies against Intervenor LeBoeuf. Under information and belief, Receiver's massive lawsuit has caused numerous poor citizens, many of whom were innocently defrauded by Ms. Schubert, to find attorneys to represent them and defend them. One issue before Judge Parrish is whether an administrative investigation

should have occurred prior to the Receiver's filing a massive lawsuit, thus utilizing existing free state resources at the Department of Securities.

6. The Department has in fact initiated an administrative investigation into this matter on December 10, 2004, and issues of dispute under that investigation may be submitted to the Oklahoma County District, *per* the organic statute for the Department. See Exhibit E and attached statute. However, neither the Department nor the Receiver have performed due diligence prior to filing the massive suit, to separate innocent investors from the rest. It thus appears that the massive lawsuit initiated by Receiver Jackson and the Department could have been avoided through careful and meticulous administrative investigation.

7. In following protocol for District Courts under Rule 5, service upon all parties in this case is currently being attempted.

8. Judicial efficiency and speedy resolution of issues would result if transfer and consolidation of this case with Oklahoma County Case CJ 2005-3299 occurred.

#### **CONCLUSION AND PRAYER**

A consolidation of the issues in this matter has occurred in Oklahoma County under cause number CJ-2005-3299, and the Honorable Judge Parrish has volunteered to hear such massive lawsuit. Also, the organic statute of the Department of Securities states that lawsuits be brought in Oklahoma County for purposes of venue. Lastly, due to the fact that the Order Appointing Receiver in this Logan County case has come under direct scrutiny and a declaratory judgment action has been filed to judicially determine the extent of its enforceability, this case should be transferred and consolidated with CJ-2005-3299. Expert witnesses are expected to testify in the Oklahoma County matter in

upcoming hearings. Plaintiff LeBoeuf has requested a stay of Receiver's activities, pending the transfer of this case to Oklahoma County. At this time, this Court should set aside the Order Appointing Receiver, and transfer the matter to Oklahoma County for purposes of efficiency.

WHEREFORE, Intervening party LeBoeuf respectfully requests that this Court Transfer this case and consolidate it with CJ-2005-3299, and that this Court set aside its Order Appointing Receiver until such time as the matter may be revisited in Oklahoma County, before Judge Parrish, where the limits of its enforceability shall be adjudicated.

Respectfully Submitted,



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Alexander L. Bednar, Esq., OBA # 19635  
3030 Bank One Center  
100 N. Broadway  
Oklahoma City, OK 73102  
Telephone: (405) 239-3300  
Facsimile: (405) 235-3352  
COUNSEL FOR PLAINTIFF  
RICHARD LEBOEUF

**CERTIFICATE OF SERVICE**

On this 7<sup>th</sup> day of July, 2005, a true and correct copy of the foregoing pleadings was properly served upon:

Douglas Jackson  
323 West Broadway  
Post Office Box 1549  
Enid, OK 73702

Mack Martin  
Suite 360  
119 N. Robinson Ave.  
Oklahoma City, OK 73102

Bradley Davenport  
323 West Broadway  
Post Office Box 1549  
Enid, OK 73702

Gerri Stuckey  
120 N. Robinson  
Suite 860  
Oklahoma City, OK 73102

Dept of Securities  
C% Irving Faught  
Administrator  
120 N. Robinson  
Suite 860  
Oklahoma City, OK 73102



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Alexander Bednar



constitutes reasonably equivalent value and whether a transfer was made with intent to defraud. *Id.* at 2. Therefore, bankruptcy court cases that hold an investor receives a fraudulent conveyance, if he is in receipt of monies greater than his original investment, are convincing. In *Sender*, the more generally accepted position since *Johnson*, the Court found that any amounts received in excess of an original investment in a “Ponzi” scheme, were fraudulent transfers under the Bankruptcy Code. *Sender* at 1290. In *Merrill*, the bankruptcy court found: “To allow an [investor] to enforce his contract to recover promised returns in excess of his [investment] would be to further the debtors’ fraudulent scheme at the expense of other [investors].” *Merrill* at. 857.

## **II. Venue in Oklahoma County is proper and convenient.**

Movants ask to transfer this case from the District Court of Oklahoma County to the District Court of Logan County under the doctrine of *forum non conveniens*. The facts in this case and Oklahoma statutes and case law support venue as proper and convenient in Oklahoma County.

Movants cite *Gulf Oil Company v. Woodson*, 505 P.2d 484, 490, 1972 OK 164, for the proposition that when there is more than one county where venue is proper, a court may refuse to exercise its jurisdiction when the case could be more appropriately and justly tried in another location. Legislative enactments since 1972, and more recent case law, weaken the ruling in *Gulf Oil Company*.

Venue statutes allow a plaintiff a choice of forums to bring an action. 12 O.S. 2001 §§ 134, *et seq.* A plaintiff’s choice of forum should be disturbed only in exceptional cases. *Conoco Inc. v. Agrico Chemical Company*, 2004 WL 2522726 (Okla. 2004).

The *Conoco* court in determining whether to transfer venue, considered whether transfer of venue would make the trial of the case less burdensome, more convenient, and nearer the

sources of proof. *Id.* at 3. Unless the balance of interests tilts heavily in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed. *Id.*

Movants argue that the issues in this case would be more appropriately and justly decided in the District Court of Logan County, Oklahoma.<sup>2</sup> Using the *Conoco* criteria and the venue statutes, in Oklahoma County is proper and convenient.

Defendants are centrally located to Oklahoma County as opposed to Logan County making the forum more convenient for them as witnesses. One hundred fifty-eight (158) Defendants were named in the Petition. Only 27% of those Defendants reside in Logan County. The remaining 73% of the Defendants reside throughout the states of Oklahoma and Texas. More specifically, only 38% of the Movants reside in Logan County. The remaining 62% live in Oklahoma County or a surrounding county thereto. The attorneys for the 61 movants are located in Oklahoma County. The Oklahoma County District Court is therefore centrally located to the Defendants and is more convenient to the Department, the Defendants and the Defendant's counsel. Venue is clearly convenient in Oklahoma County.

According to the office of the Honorable Donald Worthington, District Court Judge in and for Logan County, Oklahoma, the earliest trial date before Judge Worthington would be March of 2006. However, this date is unrealistic if the case is first set on a civil pretrial docket. Conversely, the office of the Honorable Patricia Parrish, District Court Judge in and for Oklahoma County, Oklahoma, stated that trials before Judge Parrish were being set as early as October of 2005. All parties would benefit from an expeditious process and the Department believes the possibility of delay is great if the case is transferred to Logan County.

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<sup>2</sup> Movants incorrectly argue that the equitable lien claims filed by the Receiver against real estate are in various counties other than Oklahoma County. As described in the Petition ¶ 23 (a), Defendants Ben and Sharon Allen purchased property in Oklahoma County, in whole or in part, with unearned investor assets. Therefore, pursuant to 12 O.S. § 131, venue is appropriate.

In *Conoco*, the interest of being near the source of proof occurs when a site must be visited during trial making it more convenient for the jury. *Id* at 3. In this case, the primary sources of proof are bank records that can easily be made available in Oklahoma County. Therefore, this element of *Conoco* is irrelevant to this case. Trying this case in Oklahoma County would be less burdensome and more convenient for all the parties.

**III. Plaintiffs have standing to bring this lawsuit.**

Standing is the judicial doctrine that determines whether the plaintiff is the proper party to invoke the Court's jurisdiction. *Shourek v. Stirling*, 621 N.E.2d 1107 (Ind. 1993). To have standing, the plaintiffs must demonstrate a personal stake in the outcome of the lawsuit and must show that he or she sustained or was in immediate danger of sustaining some direct injury as a result of the conduct at issue. *Toxic Waste Impact Group, Inc. v. Leavitt*, 890 P.2d 906, 911 (OK 1994). To have standing, a plaintiff must have suffered an injury in fact, there must be a causal connection between the injury and the conduct complained of, and it must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision." *Id.* Here, the Petition alleges that the Defendants are in possession of assets that belong to other individuals who were Schubert and Associates investors. As stated in the Petition, it would be inequitable for such persons to retain the benefit of the monies or other assets received in excess of the amount of funds they transferred to Schubert and Associates.

In filing the Petition, the Department is acting as a public agency enforcing public policy. For a governmental agency to bring suit under its statutes, that it has a duty to enforce, a regulatory agency need not be itself the victim. *State ex rel. Goettsch v. Diacide Distributors, Inc.*, 561 N.W.2d 369, 375 (1997) (a case brought by the Iowa Superintendent of Securities under the Iowa Uniform Securities Act). The State sued on behalf and for the benefit of



Plaintiff Receiver is expressly authorized by 12 O.S. §1554 to bring suit on behalf of the defrauded investors in his own name. Therefore, Plaintiff Receiver has sufficiently established, at the pleading stage, his standing as a plaintiff in this case.

**IV. The wrongful acts of Marsha Schubert are not imputed to the Receiver.**

The Defendants' assertions in their Motion/Brief that Plaintiff Receiver's causes of action are barred and he lacks standing because the wrongdoing or inequitable conduct of Marsha Schubert is imputed to him, as her receiver, must fail. In Federal Deposit Insurance Corporation v. O'Melveny & Myers, the Ninth Circuit Court of Appeals held that generally any defense good against the "original" party is generally good against that party's receiver. 61 F.3d 17, 19 (9th Cir. 1995). The Court went on to state, however, that "this rule is subject to exceptions; defenses based on a party's unclean hands or inequitable conduct do not generally apply against that party's receiver." Id. The Court reasoned that "while a party may itself be denied a right or defense on account of its misdeeds, there is little reason to impose the same punishment on a trustee, receiver or similar innocent entity that steps into the party's shoes pursuant to court order or operation of law." Id.; Accord Scholes v. Lehmann, 56 F.3d 750, 754-55 (7<sup>th</sup> Cir. 1995). Based on the above case law and the fact that such a defense does not directly relate to the legal sufficiency of Plaintiffs' Petition, the court should not take it into account when deciding the Motion to Dismiss.

**V. Oklahoma County is a Proper Venue for this Case.**

A significant number of the Relief Defendants are residents of Oklahoma County. See Petition at ¶5. One of the tracts of real property against which Plaintiff Receiver asserts an equitable lien is located in Oklahoma County. See Petition at ¶23. Under Oklahoma law, a party is required to bring an action for the recovery of real property, or the determination of

a right or interest therein, in the county where the property is located. See 12 O.S. §131. However, the Oklahoma legislature also provided for instances in which one tract of land is situated in two or more counties, or where several tracts of property located in more than one county are at issue. See 12 O.S. §132. Specifically, 12 O.S. §132 provides in pertinent part as follows:

If real property, the subject of an action, be an entire tract, and situated in two or more counties, **or if it consists of separate tracts, situated in two or more counties**, the action may be brought in any county in which any tract, or part thereof, is situated, unless it be an action to recover possession thereof....

Here, Plaintiff Receiver has not asserted an action to recover physical possession of any real property, but is seeking an equitable lien against the identified property. Therefore, because one of the tracts of real property at issue in this case is situated in Oklahoma County, it is a proper venue for this case pursuant to 12 O.S. §132.

Based on the venue statutes concerning real property addressed immediately above, Defendants' request that the case be transferred to Logan County must fail. None of the real property at issue in this case is situated in Logan County. As such, Logan County would not be a proper venue in which to try this case under either §131 or §132 of Title 12. Therefore, the cases cited by Defendants for the proposition that a court can refuse to exercise its jurisdiction when the case could more appropriately and justly be tried at another location is of no avail to them.

Finally, the Plaintiffs filed the instant case in Oklahoma County both because of the venue statutes concerning real property and because of its central location, not to vex or harass the Defendants as they assert. Regarding the Plaintiff Security Department's case pending in Logan County and through which the Plaintiff Receiver was appointed, nothing has prevented or now prevents the Defendants from entering an appearance in that case as

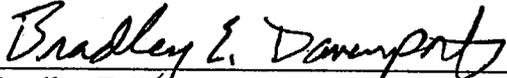
interested parties and/or creditors for the purpose of challenging that court's orders. Therefore, Plaintiff Receiver respectfully requests that this Court deny Defendants' Alternate Motion for Change of Venue.

**Conclusion**

Douglas L. Jackson is the court-appointed receiver for the investors and creditors of Schubert and Associates. Being placed in their shoes, he has standing to bring claims on their behalf, as receiver. When the court takes as true all of the allegations in Plaintiffs' Petition together with all reasonable inferences which may be drawn from them, Plaintiffs have stated claims against these Defendants upon which relief can be granted. Therefore, Plaintiff Receiver respectfully requests that this Court deny Defendants' Motion to Dismiss in its entirety.

Finally, Oklahoma County is a proper venue for this case because of the real property involved. For the same reason, Plaintiffs contend that Logan County would not be a proper venue because none of the real property at issue is situated there. Therefore, Plaintiff Receiver respectfully requests that this Court deny Defendants' Alternate Motion for Change of Venue.

Respectfully submitted,

  
\_\_\_\_\_  
Bradley E. Davenport, OBA #18687  
GUNGOLL, JACKSON, COLLINS, BOX & DEVOLL, P.C.  
Post Office Box 1549  
Enid, Oklahoma 73702-1549  
(580) 234-0436 phone number  
(580) 233-1284 facsimile number  
Attorney for Douglas L. Jackson, Receiver

IN THE DISTRICT COURT OF OKLAHOMA COUNTY JUN 21 2005  
STATE OF OKLAHOMA

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

RICHARD LEBOEUF,  
An Individual, )  
 )  
 )  
 Plaintiff )

v. )

Case No. CJ-2005-3299

GUNGOLL, JACKSON, COLLINS,  
BOX & DEVOLL, P.C. as a )  
Professional Corporation, )  
DOUGLAS L. JACKSON, both )  
Individually and as Receiver for )  
Schubert Receivership Estate, SCHUBERT )  
and ASSOCIATES, an unincorporated )  
association, MARSHA SCHUBERT, an )  
Individual, RICHARD SCHUBERT, an )  
Individual, and the OKLAHOMA )  
DEPARTMENT OF SECURITIES, a )  
State Department )  
 )  
 Defendants )

Judge Patricia Parrish

SUMMONS

TO: Above-named Defendants

You have been sued by the above-named Plaintiff, and you are directed to file a written Answer to the attached Petition for Declaratory Relief in the Court at the above address within twenty (20) days after service of this Summons upon you, exclusive of the day of service. Within the same time, a copy of your Response must be delivered or mailed to the attorney for Plaintiff.

Unless you answer the Petition within the time stated, judgment will be rendered against you with costs of the action.

Issued this 16 day of June, 2005

Patricia Presley, COURT CLERK

(SEAL)

By: [Signature]  
Deputy Court Clerk

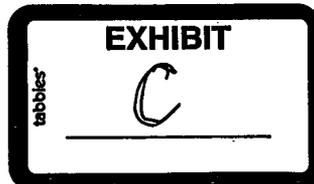
Attorney for Plaintiff:

Alexander L. Bednar, OBA #  
100 N. Broadway Ave., Suite 2730  
Oklahoma City, OK 73102  
405-235-3800

This Summons was served on 6-16-05

[Signature]  
Service Agent

YOU MAY SEEK THE ADVICE OF AN ATTORNEY ON ANY MATTER CONNECTED WITH THIS SUIT OR YOUR ANSWER. SUCH ATTORNEY SHOULD BE CONSULTED IMMEDIATELY SO THAT AN ANSWER MAY BE FILED WITHIN THE TIME LIMIT STATED IN THE SUMMONS.



DAVID DICK  
PRIVATE PROCESS SERVER  
P.O. BOX 94032  
OKLAHOMA CITY, OKLAHOMA 73143  
Office: (405) 601-4444 Cell: (405) 209-4673

RETURN OF SERVICE

David Dick, of lawful age, being first duly sworn upon oath, deposes and states: That I am a Private Process Server, pursuant to 12 O.S., Section 158.1; that I received the following process for service, to-wit:

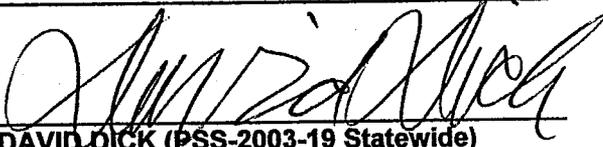
- |   |   |
|---|---|
| <input checked="" type="checkbox"/> Summons with Petition or Complaint  | <input type="checkbox"/> Citation for Contempt    |
| <input type="checkbox"/> Order & Application to Appear and Answer as to Assets  | <input type="checkbox"/> Motion to Modify         |
| <input type="checkbox"/> Small Claims Affidavit & Order   | <input type="checkbox"/> Interrogatories          |
| <input type="checkbox"/> F.E.D. Summons with Petition or Affidavit  | <input type="checkbox"/> Request for Production   |
| <input type="checkbox"/> Subpoena or Subpoena Duces Tecum   | <input type="checkbox"/> Order for Hearing        |
| <input type="checkbox"/> Application for Temporary Order  | <input type="checkbox"/> Witness fee\$ _____      |
| <input type="checkbox"/> Notice of Application for Tax Deed   | <input type="checkbox"/> Application for Citation |
| <input type="checkbox"/> Application for Emergency Temporary Order  | <input type="checkbox"/> Emergency T. O.          |
| <input type="checkbox"/> Garnishment Summons, Affidavit, Garnishee's Answer, Claim for Exemptions & Request for Hearing and Notice of Garnishment and Exemptions. |   |

Other: \_\_\_\_\_

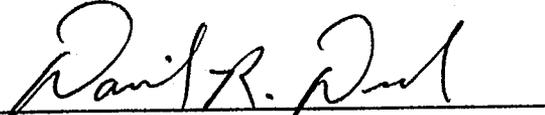
THAT SAID PROCESS WAS SERVED AS FOLLOWS:

On Shubert & Associates by serving  
said process to Marsha Shubert, he being an officer, a managing  
or general agent, or agent appointed by law to receive service of process, at 10 Trenton  
Terrace, Yukon, OK, on the 16 day of JUNE, 2005.

NOTES: \_\_\_\_\_

  
DAVID DICK (PSS-2003-19 Statewide)

SUBSCRIBED AND SWORN TO before me this 20 day of JUNE, 2005.

  
NOTARY PUBLIC

 DANIEL R. DICK  
Cleveland County  
Notary Public in and for  
State of Oklahoma  
Commission # 02008819 Expires 5/15/06

IRVING L. FAUGHT  
ADMINISTRATOR



BRAD HENRY  
GOVERNOR

STATE OF OKLAHOMA  
DEPARTMENT OF SECURITIES

April 22, 2005

*Hand Delivered*

Alex Bednar  
Kirschner Law Firm  
100 North Broadway, Suite 3030  
Oklahoma City, Oklahoma 73102

Re: Richard LeBoeuf

Dear Mr. Bednar:

As you know, the Oklahoma Department of Securities has sued Marsha Schubert and Schubert and Associates, Inc. in Logan County District Court for violations of the Oklahoma Securities Act (Act). In connection with that case, a number of individuals were unjustly enriched through the receipt of funds derived from Mrs. Schubert's illegal activities. The Department does not have any information indicating that your client, Mr. Richard LeBoeuf, violated the Act and does not plan to take any action against him for violations of the Act. Nevertheless, the Department does believe that Mr. LeBoeuf received funds from Mrs. Schubert to which he has no legitimate claim and will continue to pursue recovery of those funds.

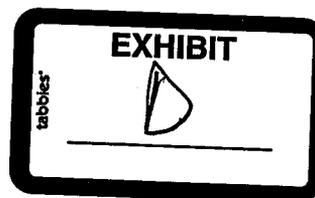
If you have any questions, do not hesitate to contact me at (405) 280-7721 or [gls@securities.ok.gov](mailto:gls@securities.ok.gov).

Sincerely,

A handwritten signature in black ink that reads "Gerri Stuckey".

Gerri Stuckey  
Enforcement Attorney

cc: Brad Davenport



Department of Securities  
State of Oklahoma

\*1 IN THE MATTER OF: MARSHA K. SCHUBERT, AXA ADVISORS, LLC, AND WILBANKS  
SECURITIES, INC.  
ODS File No. 05-031  
December 10, 2004

ORDER INITIATING INVESTIGATION

It has come to the attention of the Administrator of the Oklahoma Department of Securities (Department) that certain violations of the Oklahoma Securities Act (Act), Okla. Stat. tit. 71, § 1 [-413](http://www.westlaw.com/Find/Default.wl?rs=dfa1.0&vr=2.0&DB=1000165&DocName=OKSTT71S1&FindType=L) [, 501](http://www.westlaw.com/Find/Default.wl?rs=dfa1.0&vr=2.0&DB=1000165&DocName=OKSTT71S413&FindType=L) [, 701](http://www.westlaw.com/Find/Default.wl?rs=dfa1.0&vr=2.0&DB=1000165&DocName=OKSTT71S501&FindType=L) [-703](http://www.westlaw.com/Find/Default.wl?rs=dfa1.0&vr=2.0&DB=1000165&DocName=OKSTT71S701&FindType=L)  [\(2001 and Supp. 2003\), the Oklahoma Uniform Securities Act of 2004 \(2004 Act\), Okla. Stat. tit. 71, §§ 1-101](http://www.westlaw.com/Find/Default.wl?rs=dfa1.0&vr=2.0&DB=1000165&DocName=OKSTT71S703&FindType=L)  [through 1-701 \(Supp. 2003\)](http://www.westlaw.com/Find/Default.wl?rs=dfa1.0&vr=2.0&DB=1000165&DocName=OKSTT71S1-101&FindType=L) [, and/or the Rules of the Oklahoma Securities Commission and the Administrator of the Department of Securities \(Rules\) occurred in connection with transactions effected by Marsha K. Schubert, formerly registered as an agent of AXA Advisors, LLC and Wilbanks Securities, Inc.](http://www.westlaw.com/Find/Default.wl?rs=dfa1.0&vr=2.0&DB=1000165&DocName=OKSTT71S1-701&FindType=L)

Section 1-602 of the 2004 Act provides in part:

A. The Administrator may:

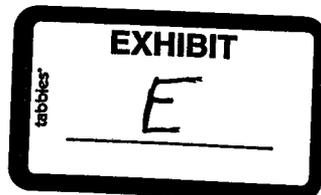
1. Conduct public or private investigations within or outside of this state which the Administrator considers necessary or appropriate to determine whether a person has violated, is violating, or is about to violate this act or a rule adopted or order issued under this act, or to aid in the enforcement of this act or in the adoption of rules and forms under this act;

2. Require or permit a person to testify, file a statement, or produce a record, under oath or otherwise as the Administrator determines, as to all the facts and circumstances concerning a matter to be investigated or about which an action or proceeding is to be instituted; and

3. Publish a record concerning an action, proceeding, or an investigation under, or a violation of, this act or a rule adopted or order issued under this act if the Administrator determines it is necessary or appropriate in the public interest and for the protection of investors.

B. For the purpose of an investigation or proceeding under this act, the Administrator or its designated officer may administer oaths and affirmations, subpoena witnesses, seek compulsion of attendance, take evidence, require the filing of statements, and require the production of any records that the Administrator considers relevant or material to the investigation or proceeding[.]

Based upon the information received, and in light of the provisions of the Act and the



2004 Act, the Administrator has determined it to be necessary and in the public interest to conduct an investigation to aid in the enforcement of the 2004 Act.

IT IS THEREFORE ORDERED that an investigation be commenced by the Department relating to the activities of Marsha K. Schubert while an agent of AXA Advisors, LLC, Wilbanks Securities, Inc., and/or any associated or affiliated entities or individuals, to aid in the enforcement of the 2004 Act.

If the Administrator determines that violations of the Act, the 2004 Act, and/or the Rules have occurred by AXA Advisors, LLC, Wilbanks Securities, Inc., and/or any associated or affiliated entities or individuals, the Administrator may pursue any of the courses of action authorized by law. If, however, the facts indicate that no corrective action by the Administrator is warranted, the investigation will be closed.

\*2 Witness my Hand and the Official Seal of the Oklahoma Department of Securities this 10th day of December, 2004.

Irving L. Faught

Administrator of the Oklahoma Department of Securities

END OF DOCUMENT

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**Oklahoma Statutes Citationized****Title 71. Securities****Chapter 1****Oklahoma Uniform Securities Act of 2004****Article Article 6 -- Administration and Judicial Review****Section 1-602 - Administrator - Powers**

Cite as: 71 O.S. § 1-602 (OSCN 2005), Oklahoma Uniform Securities Act of 2004

**A. The Administrator may:**

1. Conduct public or private investigations within or outside of this state which the Administrator considers necessary or appropriate to determine whether a person has violated, is violating, or is about to violate this act or a rule adopted or order issued under this act, or to aid in the enforcement of this act or in the adoption of rules and forms under this act;
2. Require or permit a person to testify, file a statement, or produce a record, under oath or otherwise as the Administrator determines, as to all the facts and circumstances concerning a matter to be investigated or about which an action or proceeding is to be instituted; and
3. Publish a record concerning an action, proceeding, or an investigation under, or a violation of, this act or a rule adopted or order issued under this act if the Administrator determines it is necessary or appropriate in the public interest and for the protection of investors.

**B. For the purpose of an investigation or proceeding under this act, the Administrator or its designated officer may administer oaths and affirmations, subpoena witnesses, seek compulsion of attendance, take evidence, require the filing of statements, and require the production of any records that the Administrator considers relevant or material to the investigation or proceeding.**

**C. If a person does not appear or refuses to testify, file a statement, produce records, or otherwise does not obey a subpoena as required by the Administrator under this act, the Administrator may apply to the district court of Oklahoma County or the district court in any other county where service can be obtained or a court of another state to enforce compliance. The court may:**

1. Hold the person in contempt;
2. Order the person to appear before the Administrator or an officer designated by the Administrator;
3. Order the person to testify about the matter under investigation or in question;
4. Order the production of records;
5. Grant injunctive relief, including restricting or prohibiting the offer or sale of securities or the providing of investment advice;
6. Impose a civil penalty up to a maximum of Five Thousand Dollars (\$5,000.00) for a single violation or Two Hundred Fifty Thousand Dollars (\$250,000.00) for multiple violations in a single proceeding or a series of related proceedings; and
7. Grant any other necessary or appropriate relief.

**D. This section does not preclude a person from applying to the district court of Oklahoma County or a court of another state for relief from a request to appear, testify, file a statement, produce records, or obey a subpoena.**

**E. An individual is not excused from attending, testifying, filing a statement, producing a record or other evidence, or obeying a subpoena of the Administrator or a designated officer under this act or in an action or proceeding instituted by the Administrator under this act on the ground that the required testimony, statement, record, or other evidence, directly or indirectly, may tend to incriminate the individual or subject the individual to a criminal fine, penalty, or forfeiture. If the individual refuses to testify, file a statement, or produce a record or other evidence on the basis of the individual's privilege against self-incrimination, the**

Administrator may apply to the district court of Oklahoma County to compel the testimony, the filing of the statement, the production of the record, or the giving of other evidence. The testimony, record, or other evidence compelled under such an order may not be used, directly or indirectly, against the individual in a criminal case, except in a prosecution for perjury or contempt or otherwise failing to comply with the order.

F. At the request of a law enforcement or another governmental or regulatory agency or a self-regulatory organization, the Administrator may provide assistance if the requesting entity states that it is conducting an investigation to determine whether a person has violated, is violating, or is about to violate a law or rule of the other state or foreign jurisdiction relating to securities matters that the requesting entity administers or enforces. The Administrator may provide the assistance by using the authority to investigate and the powers conferred by this section as the Administrator determines is necessary or appropriate. The assistance may be provided without regard to whether the conduct described in the request would also constitute a violation of this act or other law of this state if occurring in this state. In deciding whether to provide the assistance, the Administrator may consider whether the requesting entity is permitted and has agreed to provide assistance reciprocally within its state, federal or foreign jurisdiction to the Administrator on securities matters when requested; whether compliance with the request would violate or prejudice the public policy of this state; and the availability of resources and employees of the Administrator to carry out the request for assistance.

### **Historical Data**

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Added by Laws 2003, SB 724, c. 347, § 40, eff. July 1, 2004.

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### **Citationizer® Summary of Documents Citing This Document**

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None Found.

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### **Citationizer: Table of Authority**

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