IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

In re:	)
	)
Marvin Lee Wilcox and	)
Pamela Jean Wilcox,	)
Debtors,	)
	)
	)
Oklahoma Department of Securities	) Case No. 10-6056
ex rel. Irving L. Faught, Administrator,	)
Plaintiff/Appellee,	)
	)
v.	)
	)
Marvin Lee Wilcox,	)
Defendant/Appellant.	)

Recently-Decided Appellate Decisions Relating To Cases Cited in Briefs

Oklahoma Dept. of Securities v. Wilcox, 2011 WL 4790654, (Oct. 11, 2011)

The Oklahoma Supreme Court affirmed the judgment against the Wilcoxes wherein it was determined they were not innocent investors because of their participation in the Schubert Ponzi and check kiting schemes and their partnership with Schubert (referenced throughout Appellee's Jurisdiction Brief filed 11-1-2010). The Wilcoxes failed to dispute the material facts concerning their involvement with Schubert and were not honest individuals merely caught up in a Ponzi scheme. The facts underlying the Wilcox judgment were virtually identical to those presented by the Department in its motions for summary judgment against the Wilcoxes and Robert Mathews in the bankruptcy adversary proceedings. The Wilcoxes and Mathews failed to dispute the facts in that forum as well.

Sherman v. SEC, 2011 WL 4347025 (9th Cir., September 19, 2011)

The Ninth Circuit Court of Appeals ruled that a debt owed by an individual not responsible for the securities violation is dischargeable despite the plain language of Section 523(a)(19) (overturning the lower court

decision cited in Appellee's Brief, pages 13-23). The majority acknowledged that it was a close decision. The dissenting judge believed that the majority applied an uncommon definition of "for" that distorted and enlarged the statutory structure of Section 523(a)(19). The dissenting judge noted that the debtor never earned the money, but only held it in trust. Therefore, had the debtor retained the funds, that money would not have been property of the debtor's estate available for distribution to his creditors. As such, there is no conflict between securities and bankruptcy policy because payment would not harm an honest debtor's "fresh start". Further, the facts of the Wilcox and Mathews cases differ significantly from those of the *Sherman* case. Unlike the Wilcoxes and Mathews, Sherman was not an investor in a Ponzi scheme who bore responsibility for his predicament by accepting returns that were so unreasonable as to put him on notice of the fraud. Further, there was no evidence that Sherman significantly contributed to the fraud such as allowing his bank account to be used in a check-kiting scheme.

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CERTIFICATE OF SERVICE

I hereby certify that on the 25th of October, 2011, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the following ECF registrants:

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