IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

OKLAHOMA DEPARTMENT OF SECURITIES *Ex rel.* IRVING L. FAUGHT, Administrator, and DOUGLAS L. JACKSON, in his capacity as the court appointed receiver for the investors and creditors of Schubert & Assoc. and for the assets of Marsha Schubert, individually, and doing business as Schubert & Associates, and for Schubert & Associates,	
Plaintiffs/Appellees,	
vs.	Case No. CJ-2005-3796 Consolidated with Case No. CJ-2005-3299
ROBERT W. MATHEWS, MARVIN L. WILCOX, PAMELA J. WILCOX, DETRIA J. OWENS, KATHLEEN GIBSON, SHERYL MERCER, FRANK WARD, ALICE SUE WARD, BEN J. ALLEN, SHARON A. ALLEN, MICHAEL ROGERS, BOB E. HUDSON, JANICE FAGG, EDWARD G. STANTON, KENNETH LARUE, ELLA CARR, MARTIN W. MATHEWS, BETH ARMER, individually, and as trustee for the BETH ARMER REVOCABLE TRUST, SHANNA KINSLOW, ROY E. LANDWEHR, VICKI L. LANDWEHR, SCOTT A. WILCOX, RYAN E. LANDWEHR, LINDSEY LANDWEHR, JOHN PUMPHREY, CAROLYN PUMPHREY, JUSTIN R. TARRANT, JEFFREY L. WILCOX, JACQUELYN BOUNDS, STEVEN R. ESPOLT, PHILLIP YENZER, GLENDA YENZER, LOYD R. JONES, RICHARD BRANDON SCHUBERT, HILLARY MICHELLE SCHUBERT, GARRETT LEE SCHUBERT, JACK D. SIMPSON, SUE J. SIMPSON, ROBERT J. OWENS, CHAD JOHNSON, SONNY HARMON RODNEY J. MARTIN, WANDA MARTIN, K.R. LARUE, DANA LARUE, KENNETH YOUNG, LESLIE A. YOUNG, ALEXANDER YOUNG, DEAN CUE, CLAUDETTE CUE, THERESA PITTMAN, DANIEL JACKSON, CRYSTAL JACKSON, JERALD WAYNE DRAKE, REGINA KRAUS, LARRY E. BERRY, ROBERT E. PROCTOR, if living, individually and as trustee for the PROCTOR	Supreme Court No. 104004 **RESPONSE TO PETITION IN ERROR**

11.

FAMILY REVOCABLE TRUST, and if deceased,]
his unknown successors, BOBBY PROCTOR,]
individually and as trustee for the PROCTOR]
FAMILY REVOCABLE TRUST, SANDRA K.]
PHILLIPS, ELNORA VIEFHAUS, CHESTER J.]
WEEMS, BECKY DRAKE, CURTIS R.]
SANDERS, PAUL LEE, DANNY GREGORY,]
MARTHA GREGORY, LINDA K. JINDRA,]
JOSEPHINE WARD, KERRY LONG, RAYMOND]
C. LAUBACH, GARY L. SCOTT, JAMES W.]
POWELL, BILLIE A. VINCENT, TED A. PAYNE]
JOYCE E. PAYNE, SEAN WINN, TREY A.]
ROEHRIG, ANGELA D. EWERS, BRENDA L.]
ENOS, OLIN R. RISING, J.M. MILLER, WILLIS]
LUBER, CAROL A. LINDLEY, MAUDIE L.]
COOK, BILL HARRIS, REBECCA HONEYMAN]
WILLIAM ETHRIDGE, CHRISTOPHER LARUE]
VIOLA M. ESTES, BRIAN REINHARDT,]
TONYA REINHARDT, JAMES WYATT,]
THELMA WYATT, ARTHUR PLATT, BETTE]
MCCLURE, PHILLIP MATTHEWS, BRAD]
POLLARD, ALLEN GRIFFITH, LINDA]
ELLIOTT, LINDA STEWART, CHELSEA]
VENABLE, GAYLE VENABLE, JAMIE]
WALKER GLOVER, RICHARD LEBOEUF, E. E.]
TACKETT, TIMOTHY W. RAINS, KRISTA]
RAINS, MICHAEL L. MALLOY, RENYSSA]
WINES, MIKE BOSTICK, DON POINDEXTER,]
ANITA TARRALBO, KIRSTEN ALLARD,]
MICKE RICHEY, SHAWNA ALLEN, TIMOTHY]
JACKSON, JULIA JACKSON, BETTY LAMB,]
BILL MCCUTCHEN, BRANDI POLLARD,]
CRAIG SIMMONS, BILL D. HORN, JACK]
MCNALLY, LAURA PAYNE, MANUEL]
SEGURA, KENNETH R. WILLIAMS, BERTHA]
L. COPPER, WES PRICE, TRICIA PRICE,]
TAWNYA MERCHANT, MARGARET]
HOOLEY, JANET L. LAWHON, MARY FRATES]
BOB PRESTRIDGE, JR., GERALD D. KNIGHT,]
JIM COPELAND, MONTE PHILLIPS,]
VINCENT H. SCOTT, TRACY TARRANT,]
ELLEN CLAY BENNER, BRIAN OWENS]
LLOYD AVERY, DENISE MELOY, GARY L.]
BOUND, DONALD D. HALL, KEVIN L.]
CARNES, CECIL WILLIAMS, JEFFREY]
PALMER, MARK RICHARDS, MELINDA]

HOBBS, JODI SHARP, and BEVERLY KEGIN,]
]
Defendants,]
]
WADE TOEPFER, R. KURT BLAIR, WENDY]
B. BLAIR, NEIL SHEEHAN, ROBERT RAINS,]
]
Defendants/Appellants.]

RESPONSE TO PETITION IN ERROR OF APPELLEE/RECEIVER

Is Appellee willing to participate in an attempted settlement of the appeal by predecisional conference under Rule 1.250?

_____ YES __X__ NO

Attach as exhibit "A" appellee's statement of the case *not to exceed one "8 x 11" double spaced page* if not clearly set out by appellant in petition in error.

In accelerated appeals from orders granting motion for summary judgment or motion to dismiss **only** Appellee shall also file concurrently with response any supplement to record on accelerated appeal. See Rule 1.36.

DATE: December 6, 2006

Verified by: Bradley E. Davenport

Bradley E. Davenport, OBA 18687
Gungoll, Jackson, Collins, Box, & Devoll, P.C.
P O Box 1549
Enid, OK 73702-1549
Telephone: 580-234-0436/Fax: 580-233-1284
Attorneys for Plaintiff/Appellee,
Douglas L. Jackson, Receiver

CERTIFICATE OF MAILING TO ALL PARTIES AND COURT CLERK

I hereby certify that a true and correct copy of the *Response to Petition in Error* was mailed this 6th day of December, 2006, by depositing it in the U.S. Mails, postage pre-paid to:

Amanda Cornmesser
Gerri Stuckey
Melanie Hall
Oklahoma Department of Securities
First National Center, Suite 860
120 North Robinson
Oklahoma City, OK 73102
Attorneys for Appellee, Oklahoma Department of Securities

G. David Bryant
Lisa Mueggenborg
Kline Kline Elliott & Bryant
720 N.E. 63rd St.
Oklahoma City, OK 73105
Attorneys for Appellants/Defendants
Wade Toepfer, Kurt Blair, Wendy Blair, Neil Sheehan, Robert Rains

I further certify that on the 6th day of December 2006, a copy of the *Response to Petition in Error* was mailed to, or filed with:

Oklahoma County Court Clerk
409 County Office Bldg.
320 Robert S. Kerr Ave.
Oklahoma City, OK 73102

Bradley E. Davenport

Bradley E. Davenport

Exhibit "A" – Appellee/Receiver's Statement of the Case

Marsha Schubert, an investment representative in Crescent, OK, operated a Ponzi scheme from January 2000 through October 2004. Schubert perpetrated this scheme by paying out money she received from later investors to earlier investors in the form of fictitious profits. As a result of Marsha Schubert's operation of a Ponzi scheme, 87 victims identified by the United States District Court for the Western District of Oklahoma in Ms. Schubert's federal criminal case lost a total of $9.1 million. When it was learned that Marsha Schubert was violating securities laws, the Oklahoma Department of Securities ("Department") sought the appointment of a receiver over Marsha Schubert and Schubert and Associates, an unincorporated association through which Marsha Schubert did business.

The District Court of Logan County appointed the Appellee/Receiver as receiver for the assets of Marsha Schubert and Schubert and Associates. Subsequently, the District Court of Logan County amended its Order Appointing Receiver expressly appointing Appellee/Receiver as the receiver for the benefit of claimants and creditors of Marsha Schubert and Schubert and Associates. In this capacity, Appellee/Receiver filed the lawsuit below, in conjunction with the Department, to recover the fictitious profits that Marsha Schubert paid out to Appellants as part of her Ponzi scheme. Appellees asserted two causes of action against Appellants – (1) unjust enrichment, and (2) to set aside fraudulent transfers under the Oklahoma Uniform Fraudulent Transfer Act. Prior to the hearing on Plaintiffs/Appellees' Motions for Summary Judgment, Plaintiffs/Appellees withdrew their claim under the UFTA relative to Appellants.

Appellee/Receiver's claim for unjust enrichment against Appellants is equitable in nature and is based on them receiving a benefit at the expense of others. His claim against Appellants has nothing to do with violation(s) of the Oklahoma Securities Act, nor does the cause of action include "wrongdoing" as a required element. The evidentiary materials attached to Plaintiffs/Appellees' Motions for Summary Judgment against Appellants demonstrate that each of the Appellants paid no money whatsoever into Marsha Schubert between January 2000 and October 2004, but each of them received funds from Marsha Schubert out of her own bank accounts. The money in Schubert's accounts was simply other investors' money. In short, these Appellants received fictitious profits from Marsha Schubert without providing her any consideration and at the expense of the 87 Ponzi scheme victims.

While Appellants may have paid money to third-party brokerage firms, those payments went into their accounts with those brokerage firms. Any such payments were not made out to Marsha Schubert and were not deposited into her bank accounts. Yet, the thousands of dollars that each of the Appellants unjustly received came directly from Marsha Schubert's own bank accounts, and not from any third-party brokerage firm or Appellants' brokerage accounts. Defendants/Appellants' repeated efforts to confuse the issue on this subject are futile. Paying money into "A" does not justify receiving money from "B". The evidentiary materials attached to Plaintiffs/Appellee's Motions for Summary Judgment and Briefs in Support demonstrate that Appellants were unjustly enriched at the expense of others and that no genuine issue of material fact exits relative to that cause of action. The trial court properly entered summary judgment in favor of Plaintiffs/Appellees and against Defendants/Appellants, and that decision should stand.