

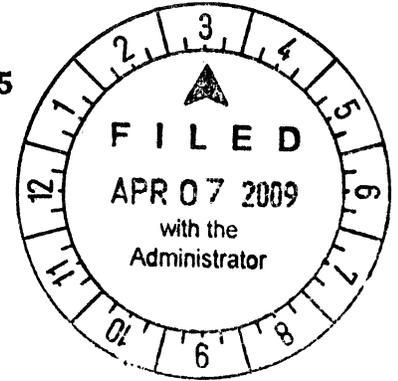
**BEFORE THE STATE OF OKLAHOMA
DEPARTMENT OF SECURITIES**

In the matter of:

**MERRICK ENERGY DEVELOPMENT, LLC
MERRICK OPERATING COMPANY, INC.
JEFF A. BERLIN
BRUCE J. SCAMBLER, and
their Representatives or Agents**

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ODS File # 05-055



Respondents

REQUEST FOR HEARING

Respondents Bruce J. Scambler, ("Respondent Scambler") and Merrick Operating Company, Inc. (MOC) through their counsel, Mark Robertson of Robertson & Williams responds to the Notice of Opportunity for Hearing and intent to invoke Administrative Sanctions under the Oklahoma Securities Act and requests a formal adjudicatory hearing as follows:

Allegations of Fact

1. Paragraph 1 is admitted, except that while MED was formed in Oklahoma, the allegation claimed that MED "was terminated" in March 2005 is denied.
2. Paragraph 2 is admitted in that MED was formed in Oklahoma, but not admitted as to other points in that MOC never accepted or received any correspondence with MED regarding being appointed the "manager of MED". Berlin also never relinquished control of the field operations and "Access assets". MED similarly never appointed "MOC as manager".
3. Respondent Scambler admits he was President and a director of MOC, but denies he acted in concert with Berlin. The remainder of the allegations relating to

Respondent Scambler are denied.

4. Paragraph 4 is denied.

5. Paragraph 5 is admitted, only in that "Jeff A. Berlin" in or after September 2003, solicited existing Access Energy 3 LLC and Access Energy 5 LLC Members as owners of the assets, subject to the Access asset sale contract to fund the required workovers to the Access wells. That Jeff A. Berlin began "offering and/or selling" initial membership interests in MED ("Units") in and/or from the state of Oklahoma where he lived was of his own motivation and design, and was based on terms he made up that were not in accordance with the offering document being prepared, nor disclosed to MED or MOC until long after "funding". Scambler, denies making any calls to buyers, or any solicitations, or any offer with Access Members, nor any other person. Scambler denies offers were made in Oklahoma.

6. Paragraph 6 is admitted.

7. Paragraph 7 is admitted in part only that the private placement memorandum dated March 15, 2004 ("PPM") was created and used by Berlin to solicit units, excepting that Respondents Scambler did not solicit with nor distribute to prospective investors said private placement memorandum dated March 15, 2004 ("PPM"). The PPM speaks for itself.

8. The Paragraph 8 is admitted.

9. Paragraph 9 is admitted as a statement for respondent Berlin, and that according to the PPM, Berlin was previously the corporate manager of AOC the seller of the Access assets.

10. Paragraph 10 is admitted, except that clearly as set out in the PPM specified

"organizers and initial founders of MED" as those individuals who provided formation capital to MED, and funds and services to sustain the wells and were listed and to be referred to as "Initial Members". These "Initial Members" included Bronson, Fitzgerald, and supposedly Thompson all as of March 15, 2004 represented confirmed and agreed by Berlin as being per page 8 of Exhibit H to PPM "Initial Members".

11. Paragraph 11 is admitted.

12. Paragraph 12 is admitted.

13. Paragraph 13 is admitted.

14. In response to the allegations of paragraph 14, Respondent Scambler's denies this is a true inference of the facts.

15. Paragraph 15 is admitted as to Berlin meeting with Fitzgerald, who was already invested in Access Energy 5. LLC., all negotiations with Fitzgerald to be an Initial Member were with Berlin only, and funds provided were used to maintain operations of the Access assets per the contract. Respondent Scambler's and MED had no knowledge of an investment of \$55,000 under a "subscription agreement" until after Berlin was dismissed. Further the information provided by Berlin was that Fitzgerald was paying for 0.5 units and receiving 1.5 Class a units. Fitzgerald mailed the Subscription Agreement to the Oklahoma address of MED being Berlins office and Berlin determined the use of funds. It is denied that it is "unclear whether Fitzgerald was intended to be an Initial Member or Investor Member" as the PPM clearly has Dan Fitzgerald as an Initial Member.

16. It is admitted per paragraph 16 that as of February 20, 2004 and March 1, 2004, ("Thompson" under "Thompson Investments" per PPM), remitted funds of \$25,000 and \$10,000 to MED by wiring funds into the MED bank account at BancFirst in Oklahoma. No paperwork or detail as to the reason for Thompson's funds was ever provided to Respondent Scambler other than by Berlin claiming before 15th March 2004 that "Thompson Investments" were as initial members. There was no correspondence with Thompsons until 3 months after Berlin was dismissed. Respondent Scambler admits that \$25,000 was wired to MED's BancFirst account, but states that he was not aware the funds were from the Thompsons. Respondent Scambler was advised by Berlin that the money was from Berlin, his family and "friends" to enable the Access Energy 5 LLC 25-0-1 well pump to be repaired. The asset Access Asset Purchase Contract ("8 Dec 2003") between

Access Energy and Merrick provided that Access Energy was selling well 25-0-1 and further provided the seller agreed to transfer the well using reasonable commercial efforts to provide working wells on transfer. The funds wired were used by Access Energy to maintain its well operation as part of its contract obligations and normal business. In further answering Respondent Scambler states the \$25,000 check funds were all used directly and immediately to pay the vendor to repair the pump on well 25-0-1, not as a subscription for a yet to be made offering. Respondent Scambler further had no knowledge of any arrangement between the Thompsons and their acting as "unregistered and unlicensed brokers" in offering the Berlin deal to "Koener", where in \$10,000 came from a person known to Thompsons but not Scambler. Respondent Scambler admits that \$10,000 was wired into Merrick's BancFirst account on March 1, 2004, but states that he was not aware the funds were from the Thompsons or Koener. The wire notification reviewed at a later date did not name the Thompsons. No Subscription Agreement was sent at that time. In further answering, Respondent Scambler states that MED hired attorneys to facilitate a private placement offering to be commenced on March 15, 2004. In further answering, Respondent Scambler states that the Private Placement Memorandum ("PPM") was not completed or authorized for use until March 15, 2004. Further the only printed dated and bound memorandums, 50 copies thereof, were produced at Kinkos (now FedEx Office) on 18th March 2004. No other copies of the memorandum were ever produced. Respondents Scambler, MED and MOC had no knowledge of any "PPM" being provided to the Thompsons. All contact with the Thompsons was conducted through Berlin. Berlin and the Thompsons had a long-standing, close, personal friendship dating to college and before. If the Thompsons were provided a purported PPM it was in early draft and an incomplete form of offer, not authorized by MED and not an offer of the MED class A membership units. Respondent Scambler admits that the Merrick PPM was conducted on the initial member terms described, but states that it had no knowledge until March 15, 2004.

17. Paragraph 17 is admitted subject to Respondent Scambler stating that he had no knowledge of Tannahills investment or Berlin's use of the funds and consequently as a direct cause of Berlin's misappropriations, legal and accounting fees and expenses incurred in the offering were actually greatly in excess of \$60,000, and in fact more than any amounts contributed for whatever reason.

18. Paragraph 18 is admitted and in further answering, Respondent Scambler states that he had been informed Bronsons investment would be as an initial member for a full unit value \$55,000 receiving \$165,000 of class A units. Respondent Scambler states that he had no information on Berlin's use of the \$25,000 of funds and consequently as a direct cause of Berlin's misappropriations, legal and accounting fees and expenses incurred in the offering were actually greatly in excess of \$60,000, and in fact more than any amounts contributed for whatever reason. The claims per contract with MED had cause against MED, and have been discharged in CH7.

19. Paragraph 19 is admitted except that the MED BancFirst records show Merrick received a total of \$25,000 from Scambler for the contract deposit, \$50,000 from Berlin's brother as an 18%+ loan, and \$125,500.00 from Initial Members. Funds spent on the Access Wells, field operations and misappropriated by Berlin depleted the accounts.

20. Paragraph 20 is denied. The contract was not specific as to who could terminate it, however it was specific as to the allowable reasons. from MED (and MOC), for cause including proven theft of Access (and thus MED) property, Such cause as stealing funds due to the company from gas and oil sales, using false identities, stealing funds due to Oklahoma royalty owners, unauthorized sales of company assets were not actions contemplated by the independent contractor contract. Ending the contract did end Berlins rights to claim monthly draws, and did end the need for Berlin to be in MED office. Dismissal did not result in litigation. The litigation was over not fulfilling the warranties on the transfer of property, thus rendering the properties much less valuable in sales price. A settlement returned assets to Access Energy 3, LLC and Access Energy 5, LLC to the resulting exclusion of Berlin, who in addition to misappropriation from Access Energy 3, LLC and Access Energy 5, LLC was also found in his subsequent CH7 and 341 Hearings to have stolen over \$100,000 from Access Energy 2 LLC another company he managed.

21. Paragraph 21 is denied. The MED offering was ended on June 3, 2004.

22. Over 15 Class A units had been contracted to be sold.

23. Respondents MED admits paragraph 23 at factual.

24. Respondents MED admits no refunds were made.

Allegations of Law as Authorities

1. Paragraph 1 is applicable, in that all acts and matters relating to this matter prior to March 23rd 2004 are more than 5 years prior to this action being served as of March 23rd 2009. Investigator Shamas was advised of these issues by respondent Scambler in and around August 2004. Specifically Respondent Scambler would question the application of this statute and the 5 years dates as follows:

- A The binding contract as the root of the cause of action was entered in to 8th November 2003 which is more than 5 years prior to this action being maintained. Access Members Bronson ("Bronson"), a Missouri resident Fitzgerald, Tannahill and Thompson et al. were all from 2002/2003 Access Members. In buying all of the Access assets 8th November 2003 these persons became initial members on or prior to March 15th 2004.
- B The offering as of 15th March 2004 which names Bronson Tannahill Fitzgerralls and Thompson as Initial Members fully subscribed and contracted as of that date, and is the sole cause, which is more than 5 years prior to this civil action being maintained with order of Administrator being 20th March 2009. Initial Members as of March 15th 2004 are over 5 years out from date of publication and their prior agreement to be Initial Members.
- C Initial Member Fitzgerald per Section 1-701(A) of the Act provides that a civil action may not be maintained to enforce any liability under the predecessor act unless instituted within any period of limitation that applied when the cause of action accrued or within five (5) years after the effective date of this act, whichever is earlier but that Fitzgerrall invested his funds on or before January 26th 2004. These funds were invested per a single page contract agreement made with Berlin. Signing of the "subscription agreement" did not novate that initial agreement and was not a condition precedent to the initial provision of funds. Fitzgerralls contract is over 5 years prior to the cause of action being filed. There was no act or cause by respondent Scambler or MED after the funds were remitted under the "Initial Member" that were within 5 years that relate to the matters raised herein.
- D Investor Members Thompson per Section 1-701(A) of the Act which provides

that a civil action may not be maintained to enforce any liability under the predecessor act unless instituted within any period of limitation that applied when the cause of action accrued or within five (5) years after the effective date of this act, whichever is earlier but that Thompson invested his funds on or before March 1, 2004. These funds were invested per a single page contract agreement made with Berlin. There was never any signing of the "subscription agreement" or any other "agreement" which is still under the 5 years prior to the cause of action being filed. There was no act or cause by respondent Scambler or MED after the funds were remitted. Berlin claimed Thompson was to be the "Initial Member". The Thompsons denied this claiming a loan. No subscription was ever received.

E Further and specifically Respondent Scambler did not solicit the Initial Member Bronson ("Bronson"), a Missouri resident, and this contract was agreed and in the PPM prior to March 15th 2004. Bronson had funded Access in 2003 over \$50,000, and these funds were in addition to those funds as negotiated between Berlin and Bronson. That on or about April 8, 2004, Bronson sent in \$25,000 in to MED via a cashier's check (that was endorsed by Berlin and deposited into the MED BancFirst account in Oklahoma) was a subsequent event to the contract date. Bronson's signing a Subscription Agreement on April 24, 2004 was a subsequent form but not the original contract date to be an initial member.

2. Respondent Scambler denies that Section 2 of the Predecessor Act is applicable to the facts relating to respondent.

3. Respondent Scambler denies that Section 1-102 of the Act is applicable to the facts relating to respondent.

4. Respondent Scambler denies that Section 101 of the Predecessor Act is applicable to the facts relating to respondent as Respondent did not solicit or contract with or make any untrue statement of material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, and did not engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

5. Respondent Scambler denies that Section 1-501 of the Act is applicable to the facts relating to respondent as Respondent did not solicit employ any device, scheme, or artifice to defraud; or make an untrue statement of material fact or to omit to state a material fact necessary in order to make the statement made, in the light of the circumstances under which it is made, not misleading; nor engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

6. Respondent Scambler denies that the referenced authorities in paragraphs 6 through 17 are applicable to the facts relating to Respondent.

Allegations of Conclusions of Law as Authorities

1. Respondent Scambler denies that Section 2 is applicable for any action by Respondent Scambler.

2. Further that Respondent Scambler, assert that in that all acts and matters relating to this matter by Respondent Scambler prior to March 23rd 2004 these are more than 5 years prior to this action being served as of March 23rd 2009.

3. Respondent Scambler denies Paragraph 2 as to the Initial Members, who were owners of the Assets subject to the contract prior to the issue of the PPM and who were active and a part of the business prior to the offering.

4. Respondent Scambler denies Paragraph 3 that he made any offers or solicitations or sales.

5. Respondent Scambler denies Paragraph 4 that any offers or solicitations or sales were made to Oklahoma Residents. Respondent Scambler denies he has knowledge of offers ever being made in Oklahoma.

6. Respondent Scambler denies Paragraph 5 that he made any solicitations or untrue statements.

7. Respondent Scambler admits Paragraph 6 as a factual statement.

8. Respondent Scambler admits Paragraph 7 as to Berlin and denies as to Respondent Scambler.

Facts in Response and Mitigation

Respondent Scambler affirmatively alleges the following facts in response and mitigation of the claims alleged in the Notice of Intent.

1. Respondent Scambler entered in to a contract with Access Energy 3, LLC and Access Energy 5, LLC which by proxy vote was accepted by all the members of Access Energy 3, LLC and Access Energy 5, LLC. Respondent Scambler

- a) was not as of 3/13/2004 the "majority" owner of MED
- b) Berlin was the "CEO" and day to day manager
- c) Berlin and Babb claimed also to be "operators" of the well albeit Merrick operating company handled the accounting and payment for well operations
- d) All persons Berlin approached were insiders to the deal and Access Energy 3, LLC and Access Energy 5, LLC members with ongoing obligations and rights to the wells under the contract.
- e) All persons Berlin approached were as Access Energy 3, LLC and Access Energy 5, LLC members to gain personally by well enhancements
- f) All persons Berlin approached were as Access Energy 3, LLC and Access Energy 5, LLC members, insiders, and designated as Initial Members subscribing under deals arranged with Berlin.
- f) Berlin arranged special deals and then withdrew over 50% of the funds deposited, for unauthorized Management fees and unvouched expenses. The remainder was spent on well enhancements and offering and other expenses all under control of Berlin.

2. Respondent Scambler has been a licensed and practicing and certified public accountant CPA since 1997 in Oklahoma. Respondent Scambler is certified in financial forensics CFF and has per www.cpataxcounselors.com been active in investigations of dishonest oil and gas promoters since 2000.

3. Respondent Scambler was approached by the creditors of Access Energy, many of whom he did business with, and later some of the Access Energy investors to undertake a restructuring and turnaround of Access Energy. Thereafter, beginning in January of 2003, Scambler undertook active management through initially administration of Access Petroleum Corp in Ch7, and then as "CFO" of Access Operating . Scambler and

companies managed by him put in over \$145,000 of investment in to Access in funding support and including a \$25,000 deposit on the Access contract. During 2003 the Access Energy companies were forced into Chapter 7 by creditors. Access Energy3 LLC and Access Energy 5. LLC were the only survivors by virtue only of invoices being directed to "Access Energy" rather than Access Energy 3 LLC and Access Energy 5. LLC. Support from access Members by cash calls provided \$75,718 from Bronson, \$6,000 from relations of Berlin, and \$59,000 from other members. Of these funds, Berlin removed over \$88,400 in cash drawings, during 2003 as what he called "management fee" and more by ATM cash, all without support of vouchers or contracts. Berlin owed over \$150,000 on cash calls from his interests but made no payments. Berlin continued this theft from Access Energy 3, LLC and Access Energy 5, LLC members through 2004.

4. All of the funding Access Energy 3 LLC and Access Energy 5. LLC members contributed were under side deals with Berlin, and it was Berlin who represented terms to these persons who he was the manger for their previous investment in "his" company.

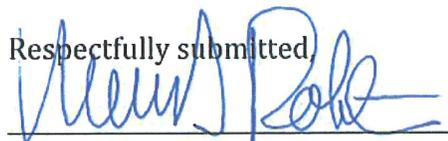
5. Respondent Scambler did not solicit or contract with Access Members and did not make an offering a potential investor.

CONCLUSION

Respondents request a hearing on this matter and that the matter be dismissed as being beyond the statute of limitations and alternatively, that no cease and desist order be entered or civil penalties be assessed against them.

Dated this 7th day of April, 2009.

Respectfully submitted



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 7th day of April, 2009, a true and correct copy of the above and foregoing Request for Hearing was hand-delivered to:

Terra Shamas Bonnell, OBA 20838
Amanda Cornmesser, OBA 20044
Oklahoma Department of Securities
120 North Robinson Avenue, Suite 860
Oklahoma City, Oklahoma 73102



Mark A. Robertson