

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

In re:)	
)	
Robert William Mathews,)	
Debtor,)	
)	
)	
Oklahoma Department of Securities)	Case No. 10-6057
ex rel. Irving L. Faught, Administrator)	
Plaintiff/Appellee,)	
)	
v.)	
)	
Robert William Mathews,)	
Defendant/Appellant.)	

**RESPONSE TO THE “RECENTLY-DECIDED APPELLATE DECISIONS
RELATING TO CASES CITED IN BRIEFS” FILED BY OKLAHOMA
DEPARTMENT OF SECURITIES ON OCTOBER 26, 2011**

The case of *Oklahoma Department of Securities v. Wilcox*, 2011 WL 4790654, (Oct. 11, 2011) was issued by the Supreme Court; however, this case would only effect the appellants Wilcox as the appellant Mathews in the Case 10-6057 was not a party to this appeal, and his case has been finalized, and there were no findings that he was involved in any way in the scheme in question. In addition, the appellant in the Wilcox case filed for a rehearing on October 31, 2011, which is still pending before the Oklahoma Supreme Court, and therefore, this decision is not a final decision as to the Wilcox until the court has acted on the Petition for Rehearing filed by the appellants.

In addition, the case of *Sherman v. SEC*, 2011 658 F. 3d 1009 (9th Cir., September 19, 2011) has been decided, and that case holds in favor of the debtor finding that the plain language of Section 523(a)(19) does not bar a discharge of an individual who has not participated in Securities’ violations. The Oklahoma Department of Securities attempts to distinguish the *Sherman* case; however, the holding in the *Sherman* case is clear wherein it interprets two (2) United States Supreme Court opinions concerning discharge when the 9th Circuit holds “taken together these two basic principles suggest that exceptions to discharge should be limited to dishonest debtors seeking to abuse the bankruptcy system in order to evade the consequences of their misconduct.” *Sherman v. SEC*, 658 F.3d 1009 at 1016. The holding in the *Sherman* case is clear that in order to

deny discharge under 523(a)(19), there has to be some showing of some misconduct or dishonesty on the part of the debtor.

Respectfully submitted,

/s/ Robert N. Sheets

Robert N. Sheets, OBA #8152
PHILLIPS MURRAH, P.C.
Corporate Tower, 13th Floor
101 North Robinson
Oklahoma City, Oklahoma 73102
Telephone: 405-235-4100
Facsimile: 405-235-4133

Attorneys for Defendants/Appellants

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of November, 2011, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing. Based on the electronic records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the ECF registrants in this matter.

/s/ Robert N. Sheets

Robert N. Sheets

Gerri Kavanaugh
Amanda Cornmesser
Oklahoma Department of Securities
First National Center, Suite 860
120 North Robinson
Oklahoma City, OK 73102

Attorneys for Plaintiff/Appellee