

**IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA**

OKLAHOMA DEPARTMENT OF)
SECURITIES ex rel. IRVING L.)
FAUGHT, ADMINISTRATOR,)
)

Plaintiff,)

Case No. CJ-2005-3799
Hon. Vicki Robertson

v.)

BARRY POLLARD AND)
ROXANNE POLLARD,)

Defendants and Third Party)
Plaintiffs,)

v.)

AXA ADVISORS, LLC, a Delaware)
Limited Liability Company; and AXA)
EQUITABLE LIFE INSURANCE)
COMPANY, f/k/a EQUITABLE LIFE)
ASSURANCE SOCIETY OF THE)
UNITED STATES,)

Third Party Defendants.)

**AXA EQUITABLE LIFE INSURANCE COMPANY'S RESPONSE AND OBJECTION
TO THIRD PARTY PLAINTIFFS' MOTION TO ENTER NEW SCHEDULING ORDER**

Third Party Defendant AXA Equitable Life Insurance Company ("AXA") objects to Third Party Plaintiffs', Barry and Roxanne Pollards' (the "Pollards") Motion to Enter New Scheduling Order as to AXA because the Pollards' claims against AXA are derivative of the Oklahoma Department of Securities' (the "Department") claims against the Pollards, and because the Pollards agreed that its third party claims and discovery should be bifurcated and stayed until the Department's claims are resolved. In support, AXA states as follows:

FACTS AND OBJECTION TO REQUESTED RELIEF

1. On May 11, 2005, the Department filed its Petition against the Pollards asserting claims for unjust enrichment and fraudulent transfer. In its claims, the Department seeks recovery of certain funds transferred to the Pollards in connection with an alleged securities fraud perpetrated by Marsha Shubert. On January 26, 2006, the Pollards filed their answer and a third party complaint against AXA.

2. On August 8, 2006, AXA Advisors, LLC and AXA Equitable Life Insurance filed a Motion to Compel Arbitration, which was renewed by Motion dated February 16, 2007.

3. On March 30, 2007, the Court entered its Order granting in part the Motion to Compel Arbitration, directing that the Pollards' claims against AXA Advisors, LLC be submitted to arbitration. No arbitration has been filed.¹

4. On April 9, 2007, the Pollards filed their Amended Third Party Petition asserting derivative claims against AXA for fraud, agency, negligent supervision, negligence, bad faith, breach of contract, and unjust enrichment related to actions of Marsha Schubert.

5. On July 17, 2007, AXA filed its Answer to the Pollards' Third Party Petition.²

6. On January 18, 2008, AXA and the Pollards filed an Agreed Motion to Bifurcate Trial (the "Motion to Bifurcate"). In the Motion to Bifurcate, the Pollards agreed "the Pollards' claims against AXA are derivative of the claims asserted by the Department against the Pollards and the scope of the claims of the Pollards against AXA will be based upon the damages, if any, awarded to the Department on its claims against the Pollards. Thus, the outcome of the

¹ Of course, an immediate filing of an arbitration demand would not have been appropriate since the Department's action against the Pollards has not yet been resolved.

² AXA filed a Motion to Dismiss and Request for Reconsideration of Renewed Motion to Compel Arbitration on May 9, 2007, which tolled AXA's time to answer the Third Party Petition.

Department's claims against the Pollards will at least narrow and may eliminate the issues involved in the Third Party Claims." Motion to Bifurcate at ¶10.

7. On January 18, 2008, the Court entered an Agreed Order Bifurcating Third Party Claims (the "Agreed Order").

8. The Agreed Order provides,

IT IS FURTHER ORDERED that all discovery and proceedings on the Third Party Claims are hereby held in abeyance until such time as the Department's claims against the Pollards are finally resolved, whether by judgment or settlement and at the conclusion of the Department's case against the Pollards, this Court will set a scheduling conference to consider a new scheduling order for the bifurcated Third Party Claims.

IT IS FURTHER ORDERED that any party may at any time file an application with this Court seeking leave to enter a new scheduling order as to the Third Party Claims.

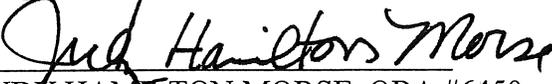
9. The Department's claims against the Pollards have not been finally resolved, and a new scheduling order should await their resolution. Because the Pollards' claims against AXA are derivative of the Department's claims, it is premature to enter a scheduling order with regard to the Pollards' third party claims against AXA.

10. Moreover, the Pollards recognized in the Motion to Bifurcate that their claims are derivative and that the scope of their claims against AXA will be determined by the damages awarded to the Department (if any).

11. Accordingly, setting a new scheduling order at this point in time as requested by the Pollards serves no purpose but will prematurely impose deadlines, including discovery deadlines, on AXA, which may be unnecessary. Such deadlines are unwarranted where, depending on the success of the Department's claims, the Pollards may have no claims whatsoever against AXA.

WHEREFORE, AXA objects to the Pollards Motion to Enter New Scheduling Order and requests entry of an order denying such Motion and granting all other such relief this Court deems necessary and just.

Respectfully submitted,


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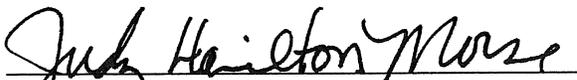
ATTORNEYS FOR AXA EQUITABLE LIFE
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 8th day of September, 2010, a true and correct copy of the foregoing document was mailed, postage pre-paid to:

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