

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

FILED IN DISTRICT COURT
OKLAHOMA COUNTY

APR 17 2014

TIM RHODES
COURT CLERK

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Oklahoma Department of Securities,)
ex rel. Irving L. Faught, Administrator,)
)
Plaintiff,)
)
v.)
)
2001 Trinity Fund, L.L.C. and)
Robert Arrowood,)
)
Defendants.)

Case No. CJ-2012-6164

**DEFENDANT ROBERT ARROWOOD'S REPLY TO PLAINTIFF'S RESPONSE AND
SUPPLEMENT TO RENEWED MOTION FOR SUMMARY JUDGMENT**

Defendant Robert Arrowood hereby submits his Reply to Plaintiff Oklahoma Department of Securities *ex rel.* Irving L. Faught, Administrator's ("ODS") Response to Defendant's Renewed Motion for Summary Judgment, and his Supplement to the Renewed Motion. Defendant Arrowood asserts that ODS has raised nothing in its Response to contradict the undisputed facts as set forth in Defendant Arrowood's Renewed Motion, which clearly establish that the promissory notes issued by Mr. Arrowood and his company are not securities as a matter of law. Defendant Arrowood also submits that newly produced documentation from Plaintiff ODS further supports his contentions in this regard. As a result, Defendant Arrowood asserts that Plaintiff ODS has no jurisdiction over the transactions at issue in this case, and the instant action should be dismissed by this Court.

As an initial matter, Plaintiff ODS is unsuccessful in its attempt to create disputed issues regarding Defendant Arrowood's Statement of Undisputed Facts. For example, ODS makes much of the fact that some of the note holders entered the word "investment" on the memo line

of their checks to the Defendant, and asserts that this fact establishes that the promissory notes were in fact securities. [Response to Defendant's Undisputed Fact No. 7]. ODS is incorrect on this issue. The promissory notes were "investments" for the note holders because they received a very favorable interest rate on the money – much above what would be paid by a bank or a certificate of deposit, for example. Every "investment" in this sense is not a security under established precedent. As the Supreme Court acknowledged in *Reves v. v. Ernst & Young*, 494 U.S. 56, 110 S.Ct. 945, 108 L.Ed.2d 47 (1990), notes "are used in a variety of settings, not all of which involve investments." 494 U.S. 62. In this case, the promissory notes were not an investment in Mr. Arrowood's business operations in any sense, as ODS acknowledges in its response to Defendant' Undisputed Fact No. 6, and the fact that some of the note holders referred to them as investments as a result of the interest rate does not transform the notes into investments subject to the jurisdiction of Plaintiff ODS. Plaintiff ODS' argument to the contrary is unavailing and should be rejected by this Court.

The same can be said about Plaintiff ODS's response to Defendant Arrowood's Undisputed Fact No. 8, in which ODS dismisses the note holders' characterization of the transactions with Mr. Arrowood as merely a fact for the Court to consider. To the contrary, the case law has made clear that the perception of the investing public is crucial to the analysis. As the Louisiana court stated in *Lebrun v. Kuswa*, 24 F.Supp.2d 641 (E.D. La. 1998), a case directly analogous to the case at bar, the note holders' "reasonable expectations were nothing more than the payment of the notes, plus the specified high interest," which the court determined to weigh against a finding that the notes were securities. *Id.* at 648. The same is clearly and undisputedly

true in this case, and the same result should be reached by this Court.¹

In an attempt to avoid this conclusion, Plaintiff ODS raises numerous so-called “other relevant facts” in support of its Response. Most of those facts have been a consistent theme of Plaintiff ODS and have been previously addressed and refuted by Defendant Arrowood. Moreover, none of those allegedly relevant facts has any negative impact on the issues presented in Defendant Arrowood’s Motion, and many of those facts actually *support* the position asserted by Mr. Arrowood. For example, ODS sets forth the following facts in support of its Response:

- “Defendant told prospective Note holders that he was in the business of purchasing oil and gas leases and selling them for a profit, or as he described it, ‘flipping leases.’” [Fact No. 1].
- “Defendant made it a practice not to tell the prospective Note holders the names of the specific leases he would be purchasing.” [Fact No. 2].
- “Note holders have stated they were not in the oil and gas business and not in the business of making loans.” [Fact No. 13].
- “Note holders were given very little detail about how their money would be spent.” [Fact No. 14].

Despite the contentions of ODS, the above facts unequivocally support Defendant Arrowood’s contention that the promissory notes were never designed or considered to be investments in Mr. Arrowood’s oil and gas business, which is the first factor set forth by the

¹ While *Lebrun* is discussed in Defendant Arrowood’s Renewed Motion, it should be reemphasized that the case also involved promissory notes sold to family and friends of the plaintiff to finance the plaintiff’s general business operations, just as were Defendant Arrowood’s promissory notes. The district court found the notes not to be securities, not only because of the expectations of the note holders as set forth above, but because there was no marketing of the notes to the general public. Again, the facts in this case present the very same scenario and mandate the same result.

Supreme Court in *Reves*. As the note holders indicate, Defendant Arrowood informed them as to the general nature of his oil and gas business, but did not indicate that the funds from the promissory notes would be used to purchase any specific leases, or that the proceeds from the sale of those leases would be used to repay the notes. The note holders admit that they did not know and were not otherwise privy to the details of Mr. Arrowood's business. This is completely consistent with Mr. Arrowood's statement in his Renewed Motion for Summary Judgment that: "Defendant Arrowood never represented that the promissory notes constituted an investment in his oil and gas operations." [Renewed Motion at 4, ¶ 7].

Also consistent with Defendant Arrowood's representations, the promissory notes were entered into by the note holders simply to obtain a higher interest rate than offered by other investments. Again, the additional facts proffered by Plaintiff ODS support this conclusion.

- "The Notes carried extremely high rates of interest and in most cases were in excess of thirty-nine percent (39%)." [Fact No. 3].
- "According to Statistical Releases issued by the Federal Reserve, the bank prime loan rate from August 2008 to September 2009 ranged from 5% downward to 3.25% annualized interest." [Fact No. 4].
- "Some Note holders considered the interest rate to be the primary reason for investing their money with the Defendant." [Fact No. 5].
- "Defendant recognizes that he offered a 'favorable' interest rate that motivated people to give him money." [Fact No. 6].
- "The Note holders who provided Defendant with affidavits state that the interest rates they were receiving were 'more favorable' than a routine commercial loan." [Fact No. 7].

- “Several of the Note holders who provided affidavits to Defendant stating that they considered the money given to Defendant to be routine commercial loans, wrote on the memo line of their checks, contemporaneously with receiving their notes, the word ‘investment.’” [Fact No. 9].

The note holders thus consistently state that their motivation in entering into the transactions with Mr. Arrowood was to obtain a better interest rate than was available through more traditional vehicles. Importantly, none of the above facts allege or otherwise indicate that this more favorable interest rate was to come from the production of or profit from Mr. Arrowood’s oil and gas enterprise, which is the key factor in determining whether the note should be considered a security. The reality is that Mr. Arrowood’s lenders may have considered the note an “investment” to the extent that they were earning a good return on their money, but every investment in this sense is not automatically transformed into a security under *Reves* or any other relevant case law. Again, there is simply no evidence whatsoever, including the testimony of the note holders and Defendant Arrowood himself, that Mr. Arrowood was ever offering an investment in his oil and gas operations, or that the note holders ever viewed the transactions as such. This clearly established fact should be considered dispositive in this case, and should mandate judgment as a matter of law in favor of Defendant Arrowood.

Plaintiff ODS’s additional “relevant facts” also fail to support its argument that the promissory notes were improperly offered securities. In addition to the foregoing, Plaintiff ODS states that:

- “Defendants sold promissory notes to at least 12 persons, many of whom he did not know personally, but was introduced to by others.” [Fact No. 10].
- “The Note holders were from at least five different states.” [Fact. No. 11].

- “Defendant did not ‘know’ his Note holders even after he took their money.” [Fact No. 12].

Plaintiff ODS’s negative implication notwithstanding, there is absolutely no requirement that Mr. Arrowood be personally acquainted with his note holders, although he was in fact acquainted with the majority of them. The second *Reves* factor analyzes only whether there was a plan of distribution for common trading in the instrument at issue. *Reves*, 494 U.S. at 66. There is no question in this case that Defendant Arrowood never advertised by means of a general public solicitation such as a mass email or other publication. Mr. Arrowood was approached by most of the note holders because of their interest in obtaining a favorable return on their money, and those note holders promoted Mr. Arrowood and his entity to others. Regardless, there was no solicitation to the general public in this case so as to convert these transactions into the sale of securities. *See LeBrun*, 24 F.Supp.2d at 648 (finding that the notes were not securities largely because “there was no advertising or marketing of these notes to the general public, but only a specific inquiry into a select group of individuals”). This has been held to be perhaps the most significant factor in the *Reves* analysis, and it clearly weighs in favor of Defendant Arrowood in this case,

Plaintiff ODS also disputes the Defendant’s assertion regarding the bankruptcy estate assets of Defendant 2001 Trinity Fund, L.L.C., and contends that the amount of such assets is speculative at this juncture. Defendant Arrowood based his contention in this regard on a report filed by the Trustee in the bankruptcy proceeding, which contention was correct and supported by the Trustee’s report as filed. The fact that the Trustee has now qualified his statements does not impugn the Defendant’s assertions or the valid basis therefore. In any event, the current

comments by the Trustee are irrelevant to the issues in this case and should be disregarded by this Court in determining the issues presented by Defendant Arrowood's Renewed Motion.

Moreover, the Affidavit of John Ulrey, submitted in support of Plaintiff ODS's arguments, does not in any way establish that the promissory notes involved in this case were securities within the jurisdiction of ODS. Mr. Ulrey testifies only that he has identified "at least 12 persons as investors in 2001 Trinity Fund, L.L.C." Mr. Ulrey acknowledges that those "investments" were in the form of promissory notes, and that many of those notes were repaid with a profit to the payee. Mr. Ulrey states that: "[s]ome of those persons received their principal back plus significant interest." [Ulrey Affidavit, ¶ 7]. Mr. Ulrey does not opine in any manner in his Affidavit that the notes offered by Defendant Arrowood to the payees were securities. To the contrary, Affiant Ulrey testified only to what Defendant Arrowood has already conceded: that he offered notes to the payees for a return well in excess of what was being offered elsewhere. This is simply not sufficient to establish and support in any manner ODS's contention that Defendant Arrowood was improperly selling securities in violation of Oklahoma law. The statements in Mr. Ulrey's Affidavit do not change or otherwise impact the facts of this case, and should not be considered by this Court in its evaluation of the issues presented in Defendant Arrowood's Renewed Motion for Summary Judgment.

Lastly, Plaintiff ODS asserts that Defendant Arrowood's Renewed Motion should be denied because he did not address whether another regulatory structure was in place to obviate the need for the protection of the securities laws, urging that such is an important and integral factor under the *Reves* analysis. To the contrary, in the *LeBrun* case cited above, the United States District Court for the Eastern District of Louisiana dismissed the plaintiff's very similar case, despite finding that the existence of another regulatory scheme – the fourth *Reves* factor –

was simply inapplicable, and proceeded to balance the other three factors to reach its determination. The fourth *Reves* factor is similarly inapplicable in this case, and this Court should evaluate and weigh the other three more important considerations, just as the Court did in *LeBrun*.

To recap those very important factors, the motivation of the note holders, as clearly established by their Affidavits and the facts as submitted by both Plaintiff and Defendant, indicate that the note holders were interested only in obtaining a favorable return on their money, not participation in Defendant Arrowood's business operations. The second factor – the plan of distribution of the instrument – is virtually nonexistent in this case. There is no serious dispute that not only were there just a handful of note holders, the majority of those note holders personally approached Defendant Arrowood or were referred by family or friends. Defendant Arrowood never at any time engaged in any mass email or other public solicitation regarding the Notes, which is the hallmark of an investment transaction. *See Hunssinger v. Rockford Business Credits, Inc.*, 745 F.2d 484, (7th Cir. 1984). Finally, the third *Reves* factor – the reasonable expectations of the investing public – also easily favors Defendant Arrowood. There is no “investing public” whatsoever in this case. The small group of note holders were generally acquaintances of Defendant Arrowood, and cannot be considered the “public” in any sense of the term. The three critical *Reves* factors thus weigh heavily in favor of Defendant Arrowood and against the position asserted by Plaintiff ODS. Mr. Arrowood simply was not involved in the sale of securities as a matter of law, and the case filed against him by Plaintiff ODS is completely meritless.

Moreover, on April 3, 2013, Defendant Arrowood obtained documents from ODS which had previously been requested, but were not produced. The majority of those belatedly produced

documents involve Mr. Arrowood's dealings with Larry M. Sessions during the time period after 2001 Trinity Fund and Mr. Arrowood were unable to repay Mr. Sessions' promissory note as scheduled. While the promissory note is sometimes referred to as an "investment" by Mr. Sessions, it is clear that the note was considered an investment only in the sense that the holder would receive a higher rate of interest than was otherwise available. This was explicitly stated by Mr. Sessions' son-in-law, Jeremy Okler, in response to Mr. Sessions' complaints.

This is not a scam, I don't know how many ways to tell you. Business doesn't always happen on a set schedule. *Cd's happen on a set schedule, and you know what they pay.* He is working to get you out and it will happen shortly.

[Exhibit 1] (emphasis added). Mr. Sessions' goal was only to obtain a high rate of return on his money, which the notes issued by Mr. Arrowood offered, not to participate in Mr. Arrowood's oil and gas operations.

Larry Sessions accurately described the transaction with Defendant Arrowood in his letter to in connection with his claim in the bankruptcy of 2001 Trinity.

On December 3, 2008, I loaned Robert C. Arrowood, President of 2001 Trinity Fund, \$150,000 for the duration of 45 days yielding an interest of 5% during this period. Payment was not made....

As of December 14, 2009, according to the terms of the promissory note, the total amount owed to me for principal plus interest and late charge is \$204,365.00.

Please enter my claim in the bankruptcy court for \$204,356.00 against the 2001 Trinity Fund on Dec. 14, 2009. At the time the claim is settled the amount of money owed to me will escalate at a rate of 5% every 45 day period.

[Exhibit 2]. Mr. Sessions was thus well aware that his transaction with Mr. Arrowood was a loan and nothing more, and essentially acknowledges that he otherwise had no interest in Mr. Arrowood's business operations. This is completely consistent with Mr. Arrowood's position that the promissory notes were not intended to be securities and should not be construed as such.

This Court should note that Defendant Arrowood made every effort to timely repay the promissory notes, including the sale of oil and gas properties and the collateralization of the loan amounts. In an email to Mr. Sessions, Defendant Arrowood stated that:

I am in the process of liquidating certain properties which will enable me to pay back the money that I borrowed from you.

I apologize for the time it has taken to repay this loan but as you should know from the news, the industry that I am in (oil and gas) has hit a lull and has slow down the process of my sales tremendously.

As stated in the promissory note there is a penalty of 5% for going pass the original 45 days and that will be included in your final payment.

[Exhibit 3].²

This Court should also note that Mr. Sessions determined to withdraw his complaints against Defendant Arrowood and his company with both Plaintiff ODS and the Oklahoma Attorney General. By letter dated December 14, 2009, to Shaun Mullins, counsel for ODS on this case, Mr. Sessions stated that:

After much deliberation, I request that the complaint against Robert Arrowood, President of Arrowood Companies, Inc. be terminated. I made a loan to the 2001 Trinity Fund, LLC, run by Mr. Arrowood, and the Trinity Fund is in Chapter 11 bankruptcy. I have filed a claim against the Trinity Fund in bankruptcy court and I believe this action is adequate.

Your cooperation in this matter is greatly appreciated.

[Exhibit 5]. However, Mr. Mullins and ODS have declined to do so, and have persisted in their efforts to persecute and destroy Defendant Robert Arrowood and his businesses, despite clear evidence that the promissory notes offered by Mr. Arrowood were just exactly that - notes, not securities within the jurisdiction of ODS.

² In fact, until the downturn described by Mr. Arrowood, 2001 Trinity Fund had no complaints filed against it with the Oklahoma Attorney General's office. [Exhibit 4].

In conclusion, this case has done potentially irreparable damage to Mr. Arrowood's reputation, both personally and professionally. Defendant Arrowood has now established that the notes offered to the holders thereof were not securities under any established precedent, and Plaintiff ODS has submitted nothing to warrant a different conclusion. Accordingly, Defendant Robert Arrowood respectfully requests that his Renewed Motion for Summary Judgment be granted, and this protracted and unwarranted case against him be dismissed by this Court.

Respectfully Submitted,

William H. Bock, OBA# 13888
Michelle L. Greene, OBA# 17507
WILLIAM H. BOCK, INC.
6492 N. Santa Fe Ave., Suite A
Oklahoma City, OK 73116
Telephone: (405) 848-5400
Facsimile: (405) 848-5479

From: Jeremy Okier

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[Print] [Close]

From: Jeremy Okier <jokler1@gmail.com>
To: .anne.larry@mchsi.com
Subject: Re: Trinity
Date: Thursday, April 16, 2009 12:58:27 PM

Larry,

This is not a scam, I don't know how many ways to tell you. Business doesn't always happen on a set schedule, we've talked about this. Cd's happen on a set schedule, and you know what they pay. He has sent you interest and penalty. He is working to get you out and it will happen shortly. If you want to sue then do it, I can't stop you. However, how quickly do you think that will resolve anything? It won't do anything to speed up this process. Call Rob or I will set up a call with him.

Jeremy

On Thu, Apr 16, 2009 at 12:42 PM, <anne.larry@mchsi.com> wrote:

I have not been given any reason why the cash-out did not occur as planned or why it has not happen in the 40 days since it was supposed to have occurred. If I am a victim of a scam, I need to sue. If you say my money is safe then provide me with a definite date for the close-out.

I an sorry, but this not family it is business.

Larry

----- Original message from Jeremy Okier <jokler1@gmail.com>:-----

For some reason I can't respond to you from my cld.net account. Here is the response I sent yesterday that came back to me:

Larry,

What assurance are you looking for? I will ask him for whatever you want. I've been talking to rob every other day. He has told me the only thing holding him up is the on going family issue regarding his mother in law. I'm certain that you will be out shortly. He has apologized up and down to me about putting you in this situation. If he wasn't talking to me all the time I would be nervous, this is not the case. Feel free to call Rob if you want to hear this yourself, or I can set up a conference call. If this goes into May you need to send me your wiring instructions so you don't have to wait for your money.

Jeremy

EXHIBIT 1

<http://commcenter.mchsi.com/wmc/en-US/v/wm/49F1DB2E00056A310000029E2232450...> 4/24/2009

005 10-038\Sessions 38

1138 Park Lane
Gulf Breeze, FL 32563
Date: Dec. 12, 2009

Subj.: Council for the Debt of 2001 Trinity Fund
Claim for Unpaid Loan Payment

Dear Mr. Mike Kirschnar, Esq.:

On December 3, 2008, I loaned Robert C. Arrowood, President of 2001 Trinity Fund, \$150,000.00 for the duration of 45 days yielding an interest of 5% during this period. Payment was not made. On January 19, 2009, a new promissory note was written (with the same terms) for \$165,000.00 for the original principal plus interest and late charge. When this promissory note matured on March 6, 2009, the check from the 2001 Trinity Fund, LLC for \$173,250.00 was deposited at my bank and it was returned because of insufficient funds. After discussions with Mr. Arrowood, interest and late fee payment was made for the amount of \$23,250.00; however, the principal amount of \$150,000.00 was not repaid as promised. After much discussion, a new promissory note for \$165,000.00 was signed by Mr. Arrowood. This amount equals the principal plus interest from March 6, 2009. When this note matured on August 18, 2009 for the amount of \$173,250.00 (principal plus interest), it was deposited at my bank and was returned with a stop payment given as the reason for the returned check.

As of December 14, 2009, according to the terms of the promissory note, the total amount owed to me for principal plus interest and late charge is \$204,365.00.

Please enter my claim in bankruptcy court for \$204,365.00 against the 2001 Trinity Fund on Dec. 14, 2009. At the time the claim is settled the amount of the money owed to me will escalate at an increase at a rate of 5% every 45 day period.

Sincerely,

Larry Sessions

P.S. Sent via email on Dec. 12, 2009 to Mr. Kirschnar at mike@robinsonwilliams.com.

Documents attached

EXHIBIT @2

From: Rob Arrowood

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[Print] [Close]

From: Rob Arrowood <rob@thetrinitygroup.com>
To: anne.larry@mchsi.com
Subject: Re: Investment — Breach of Contract
Date: Sunday, July 19, 2009 10:14:32 PM

Larry,

I am in the process of liquidating certain properties which will enable me to pay you back the money that I borrowed from you.

I apologize again for the time that it has taken to repay this loan but as you should know from the news, the industry that I am in (oil and gas) has hit a lull and has slow down the process of my sales tremendously.

As stated in the promissory note there is a penalty of 5% for going pass the original 45 days and that will be included in your final payment.

Making threats and / or a lawsuit will not make things happen any faster and will only cause us both to incur expenses that are not necessary.

If you wish to discuss this further please do not hesitate to call me @ 405-321-8740 or my cell @ 405-823-8442.

Sincerely,

Rob Arrowood
President
2001 Trinity Fund, LLC

On Jul 17, 2009, at 6:51 PM, anne.larry@mchsi.com wrote:

> July 17, 2009
>
> You have made no effort to correct your breach of our contract and I
> have no recourse except to follow the process indicated in my letter
> dated June 29, 2009. I plan to meet with the District Attorney in
> Pensacola next week will clarify if my upcoming lawsuit against you
> will contain both civil and criminal aspects. After meeting with the
> District Attorney I will secure the services of a private attorney
> for the upcoming law suit.
>
> I do not wish to file a lawsuit; however, without restitution on
> your part I have no other recourse. The original 45 day investment
> has been extended an additional 147 days, as of today, allowing you
> time to secure a closure. Enough is enough and I make this last
> appeal to you to honor you contract.
>
> Sincerely,
> Larry Sessions

EXHIBIT 3

<http://commcenter.mchsi.com/wmc/en-US/v/wm/4A647F720001431B000021B322304515...> 7/20/2009



OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION UNIT

Date: 12-17-08

You have requested complaint information on a company. We can only provide you with the number of complaints because we consider the actual complaint to be confidential.

Name of company: 2001 Trinity Fund

Number of complaints:

This year: 0

Last Year: 0

Please contact
OK. Corporation Comm.
405 521-2211
for info on oil gas
& or mineral rights

To find more information about a company, you can contact the Oklahoma Secretary of State to determine whether a company is incorporated and, if so, the dates of incorporation and other information. The address of the Secretary of State is:

Oklahoma Secretary of State
State Capitol, Room 101
Oklahoma City, Oklahoma 73105

Also, you may want to contact the Better Business Bureau of Oklahoma City or Tulsa. Those addresses are:

Better Business Bureau of Oklahoma City
17 South Dewey
Oklahoma City, Oklahoma 73102

Better Business Bureau of Tulsa
6711 South Yale, Suite 230
Tulsa, Oklahoma 74136

If you want a complaint form, please call the 24 hour automated consumer line at (405)521-2029 and leave your name and address on our answering machine.

Sincerely,

Office of Attorney General
Consumer Protection Unit

1138 Park Lane
Gulf Breeze, FL 32563

December 14, 2009

Mr. Greg Abbott
Office of Attorney General
P.O. Box 12548
Austin TX 78711-2548

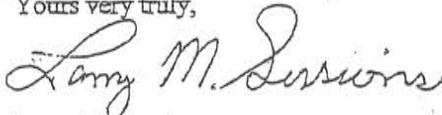
Re: Customer Compliant
Arrowood Companies Inc. - 2001 Trinity Fund, LLC
Filed on August 12, 2009

Dear Mr. Abbott,

After much deliberation, I request that the complaint against Robert Arrowood, President of Arrowood Companies, Inc. be terminated. I made a loan to the 2001 Trinity Fund, LLC, run by Mr. Arrowood, and the Trinity Fund is in chapter 11 bankruptcy. I have filed a claim against the Trinity Fund in bankruptcy court and I believe this action is adequate.

Your cooperation in this matter is greatly appreciated.

Yours very truly,



Larry M. Sessions

EXHIBIT 5

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April __, 2014, a true and correct copy of the foregoing Defendant Robert Arrowood's Reply to Plaintiff's Response and Supplement to Renewed Motion for Summary Judgment was mailed by first-class mail, postage prepaid, to:

Shaun Mullins
Gerri Kavanaugh
Oklahoma Department of Securities
120 North Robinson, Suite 860
Oklahoma City, OK 73102

William H. Bock