

IN THE DISTRICT COURT OF LOGAN COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA
LOGAN COUNTY SS
FILED FOR RECORD

2005 AUG 11 AM 10:28

Oklahoma Department of Securities)
ex rel. Irving L. Faught, Administrator, et al.,)

Plaintiff,)

vs.)

Marsha Schubert, an individual and d/b/a,)
Schubert and Associates, et al.,)

Defendants.)

REJEANIA ZMEK
COURT CLERK

BY _____ DEPUTY

Case No. CJ-2004-256

**PLAINTIFF'S RESPONSE TO MOTION IN LIMINE
TO STRIKE PLAINTIFF'S WITNESS TESTIMONY**

Plaintiff, Oklahoma Department of Securities *ex rel.* Irving L. Faught, Administrator (Department), respectfully submits this response to the *Motion in Limine To Strike Plaintiff's Witness Testimony* filed by Kline, Kline, Elliott & Bryant, PC (Movants) on August 9, 2005.

As asserted by Movants, the Department intends to offer witness testimony at the hearing scheduled for August 12, 2005. However, the Department disagrees with Movants' proposition that "it is apparent from Movant's Motion to Vacate that its subject and concern is 'purely legal' and does not call into question any question of fact."

"Receivership matters are addressed to the sound legal discretion of the court which must be viewed from all the facts and circumstances presented by the record." *Harrison v. Missouri State Life Ins. Co.*, 1936 OK 443, 59 P.2d 774, 776-777. When considering a motion to vacate the appointment of a receiver, a court is guided by the same principles that it considers when appointing a receiver. *Id.* at 776. Among those considerations is whether the *facts* demonstrate that a decision to vacate the appointment will "imperil the interests of others whose rights are entitled to as much consideration" (Emphasis Added.) *Id.* A motion to vacate should not be

granted “where the injury resulting therefrom would probably be greater than the injury sought to be averted.” *Id.* Therefore, consideration of the facts is necessary for the Court to properly exercise its judicial discretion in ruling upon the Motion to Vacate.

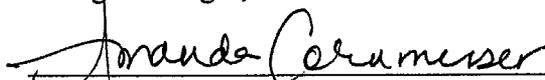
Furthermore, without the presentation of oral testimony and documentary evidence, the Department cannot meet its burden of proof in opposing the Movants’ Motion to Vacate. In *Panama Timber Company, Inc. v. Barsanti*, 1980 OK 170, 619 P.2d 872, the Oklahoma Supreme Court held that the trial court’s refusal to vacate the appointment of the receiver was an abuse of discretion “where defendant’s evidence on the motion to vacate the prior order was not directly rebutted.”

The Department hereby requests that the Court deny Movant’s motion in limine.

Respectfully submitted,

OKLAHOMA DEPARTMENT OF SECURITIES
Irving L. Faught, Administrator

By:



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