

OCT 28 2005

MICHAEL S. RICHIE  
CLERK

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

OKLAHOMA DEPARTMENT OF SECURITIES ex rel. )  
Irving L. Faught, Administrator, )

Plaintiff/Appellee, )

v. )

MARSHA SCHUBERT, an individual and d/b/a )  
SCHUBERT AND ASSOCIATES; RICHARD L. )  
SCHUBERT, an individual and d/b/a SCHUBERT AND )  
ASSOCIATES; and SCHUBERT AND ASSOCIATES, )  
An unincorporated association, )

Defendants )

And )

ROBERT W. MATHEWS, MARVIN L. WILCOX, )  
PAMELA J. WILCOX, DETRA J. OWENS, SHERYL )  
MERCER, BEN J. ALLEN, SHARON A. ALLEN, )  
MICHAEL ROGERS, BOB E. HUDSON, WADE )  
TOEPFER, EDWARD G. STANTON, KENNETH )  
LARUE, MARTIN W. MATHEWS, BETH ARMER, )  
individually, and as trustee For the Beth Armer Revocable )  
Trust, SHANNA KINSLOW, SCOTT A. WILCOX, )  
JUSTIN R. TARRANT, JEFFREY L. WILCOX, )  
JACQUELYN BOUNDS, STEVEN R. ESPOLT, PHILLIP )  
YENZER, GLENDA YENZER, LOYD R. JONES, )  
ROBERT J. OWENS, SONNY HARMON, RODNEY J. )  
MARTIN, WANDA MARTIN, NEIL SHEEHAN, K.R. )  
LARUE, DANA LARUE, KENNETH YOUNG, LESLIE )  
A. YOUNG, ALEXANDRA YOUNG, DEAN CUE, )  
CLAUDETTE CUE, THERESA PITTMAN, DANIEL )  
JACKSON, CRYSTAL JACKSON, SANDRA K. )  
PHILLIPS, ELNORA VIEFHAUS, CURTIS R. SANDERS )  
KURT BLAIR, WENDY B. BLAIR, DANNY GREGORY )  
MARTHA GREGORY, KERRY LONG, RAYMOND C. )  
LAUBACK, GARY L. SCOTT, BILLIE A. VINCENT, )  
TED A. PAYNE, JOYCE E. PAYNE, SEAN WINN )  
ROBERT RAINS, ANGELA D. EWERS, WILLIS LUBER )  
CAROL A. LINDLEY, MAUDIE L. COOK, BILL )  
HARRIS, REBECCA HONEYMAN, WILLIAM )  
ETHERIDGE, CHRISTOPHER LARUE, ARTHUR )  
PLATT, E.E. TACKETT, TIMOTHY W. RAINS, KRISTA )  
RAINS, BETTY LAMB, LAURA PAYNE, MANUEL )  
SEGURA, and JEFFREY PALMER, )

Intervenors/Appellants, )

Supreme Court  
Case No. \_\_\_\_\_

#102716

Logan County District Court  
Case No. CJ-2004-256

PETITION IN ERROR

**PETITION IN ERROR**

  X   PETITION IN ERROR  
       AMENDED OR SUPPLEMENTAL PETITION  
       CROSS PETITION  
       COUNTER-PETITION  
DATE FIRST PETITION IN ERROR FILED: \_\_\_\_\_

I. TRIAL COURT HISTORY

COURT/TRIBUNAL: District Court  
COUNTY: Logan  
CASE NO.: CJ-2004-256  
JUDGE: Donald Worthington  
NATURE OF CASE: Receivership action  
(e.g. Divorce, Personal Injury)

NAME OF PARTY OR PARTIES FILING THIS PETITION IN ERROR:

Robert W. Mathews, Marvin L. Wilcox, Pamela J. Wilcox, Detra J. Owens, Sheryl Mercer, Ben J. Allen, Sharon A. Allen, Michael Rogers, Bob E. Hudson, Wade Toepfer, Edward G. Stanton, Kenneth Larue, Martin W. Mathews, Beth Armer, individually, and as trustee For the Beth Armer Revocable Trust, Shanna Kinslow, Scott A. Wilcox, Justin R. Tarrant, Jeffrey L. Wilcox, Jacquelyn Bounds, Steven R. Espolt, Phillip Yenzer, Glenda Yenzer, Loyd R. Jones, Robert J. Owens, Sonny Harmon, Rodney J. Martin, Wanda Martin, Neil Sheehan, K.R. Larue, Dana Larue, Kenneth Young, Leslie A. Young, Alexandra Young, Dean Cue, Claudette Cue, Theresa Pittman, Daniel Jackson, Crystal Jackson, Sandra K. Phillips, Elnora Vieffhaus, Curtis R. Sanders, R. Kurt Blair, Wendy B. Blair, Danny Gregory, Martha Gregory, Kerry Long, Raymond C. Lauback, Gary L. Scott, Billie A. Vincent, Ted A. Payne, Joyce E. Payne, Sean Winn, Robert Rains, Angela D. Ewers, Willis Luber, Carol A. Lindley, Maudie L. Cook, Bill Harris, Rebecca Honeyman, William Etheridge, Christopher Larue, Arthur Platt, E.E. Tackett, Timothy W. Rains, Krista Rains, Betty Lamb, Laura Payne, Manuel Segura, and Jeffrey Palmer

THE APPEAL IS BROUGHT FROM: (Check one)

  X   Judgment, Decree or Final order of District Court.  
\_\_\_\_\_ Appeal from order granting summary judgment or motion to dismiss where motion filed after October 1, 1993 (Accelerated procedure under Rule 1.36).  
\_\_\_\_\_ Appeal from Revocation of Driver's License (Rule 1.21(b)).  
\_\_\_\_\_ Final Order of Other Tribunal.

(Specify Corporation Commission, Insurance Department, Tax Commission, Court of Tax Review, Banking Board or Banking Commissioner, etc. \_\_\_\_\_)

\_\_\_\_ Interlocutory Order Appealable by Right.  
\_\_\_\_ Other \_\_\_\_\_

II. TIMELINESS OF APPEAL

1. Date of judgment, decree or order appealed was filed: October 17, 2005
2. *If decision was taken under advisement*, date judgment, decree or order was mailed to parties: \_\_\_\_\_  
parties? \_\_\_ Yes \_\_\_ X No.  
If not, did district court direct entry of judgment in accordance with 12 O.S. Supp. 1995 § 994? \_\_\_ Yes \_\_\_ X No.  
When was this done? \_\_\_\_\_
3. If the judgment or order is not a final disposition, is it appealable because it is an Interlocutory Order Appealable by Right? \_\_\_ Yes \_\_\_ X No.
4. If none of the above applies, what is the *specific* statutory basis for determining the judgment or order is appealable? \_\_\_\_\_
5. Were any post-trial motions filed?  

<u>Type</u>	<u>Date Filed</u>	<u>Date Disposed</u>
7. This Petition is filed by: X \_\_\_\_\_ Delivery to Clerk, or  
\_\_\_\_\_ Mailing to Clerk by U.S. Certified Mail,  
Return Receipt Requested, on \_\_\_\_\_  
(Date)

III. RELATED OR PRIOR APPEALS

List all prior appeals involving same parties or same trial court proceeding:  
Original Jurisdiction matter was filed on October 28, 2005. It is styled: Robert L. Mathews, et al v. The Honorable Patricia A. Parrish, District Court Judge for Oklahoma County.

List all related appeals involving same issues: Original Jurisdiction matter was filed on October 28, 2005. It is styled: Robert L. Mathews, et al v. The Honorable Patricia A. Parrish, District Court Judge for Oklahoma County.

(Identify by Style, Appeal Number, Status, and Citation, if any. If none, so state.)

IV. SETTLEMENT CONFERENCE

Is appellant willing to participate in an attempted settlement of the appeal by predecisional conference under Rule 1.250? \_\_\_ Yes \_\_\_ X No

V. RECORD ON APPEAL

  X   A Transcript will be ordered.  
\_\_\_\_\_ No Transcript will be ordered because no record was made and/or no transcript will be necessary for this appeal  
\_\_\_\_\_ A Narrative Statement will be filed  
\_\_\_\_\_ Record is concurrently filed as required by Rule 1.34 (Driver’s License Appeals, etc.) or Rule 1.36 (Summary judgments and motions to dismiss granted).

VI. JUDGMENT, DECREE OR ORDER APPEALED – EXHIBIT “A”

(Attach as Exhibit “A” to the Petition in Error a certified copy of the judgment, decree or order from which the appeal is taken. If a post-trial motion extending appeal time under Rule 1.22 was filed, a certified copy of the order disposing of the motion must be attached also.)

VII. SUMMARY OF CASE – EXHIBIT “B”

Attach as Exhibit “B” a brief summary of the case *not to exceed one 8 ½” x 11” double spaced page.*

VIII. ISSUES TO BE RAISED ON APPEAL – EXHIBIT “C”

Attach as Exhibit “C” the issues proposed to be raised. Include each point of law alleged as error. Avoid general statements such as “Judgment not supported by law.”

IX. NAME OF COUNSEL OR PARTY, IF PRO SE

ATTORNEYS FOR APPELLANTS

ATTORNEY FOR APPELLEES

Name: G. David Bryant,

Name: Gerri Stuckey,

OBA No.: 01264

OBA No.: 16732

Name: Lisa Mueggenborg,

Name: Amanda Cornmesser

OBA No.: 18595

OBA No.: 20044

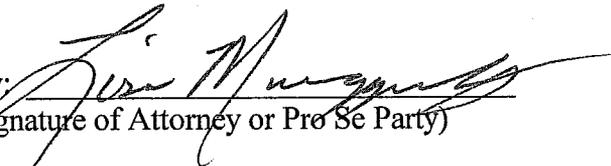
Firm: Kline Kline Elliott & Bryant, PC

Firm: Oklahoma Department of Securities

Address.: 720 N.E. 63<sup>rd</sup> Street  
Oklahoma City, Oklahoma 73105  
Telephone: (405) 848-4448  
Telecopier: (405) 842-4539

Address: 120 North Robinson, Suite 860  
Oklahoma City, Oklahoma 73102  
Telephone: (405) 280-7700  
Telecopier: (405-280-7742

DATE: October 28, 2005

Verified by:   
(Signature of Attorney or Pro Se Party)

Firm: Kline/Kline Elliott & Bryant, PC  
Address: 720 N.E. 63<sup>rd</sup> Street  
Oklahoma City, Oklahoma 73105  
Telephone: (405) 848-4448  
Telefacsimile: (405) 842-4539

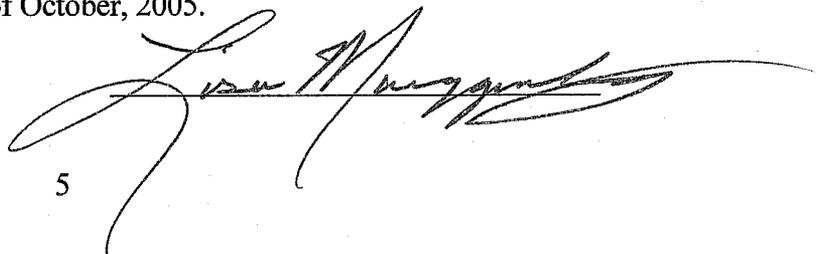
**CERTIFICATE OF MAILING TO ALL PARTIES AND COURT CLERK**

I hereby certify that a true and correct copy of the Petition in Error was mailed this 28 day of October, 2005 to:  
Amanda Cornmesser  
Gerri Stuckey  
Melanie Hall  
First National Center, Suite 860  
120 North Robinson  
Oklahoma City, Oklahoma 73102  
Attorneys for Oklahoma  
Department of Securities

Bradley E. Davenport  
323 W. Broadway Avenue  
Enid, Oklahoma 73701-1549  
Attorney for the Receiver,  
Douglas L. Jackson

Additionally, true and correct copies of the above and foregoing were mailed this 28 day of October, 2005, by first class mail, postage prepaid, to all parties listed on the attached Service List.

I further certify that copy of the Petition in Error was mailed to the Office of the Logan County District Court Clerk on the 28 day of October, 2005.



**SERVICE LIST**

Alexander L. Bednar  
Atty for Richard Leboeff  
PO Box 3021  
Oklahoma City, OK 73101

Brandon Kerr/Charles Meyers  
Attys for Farmers & Merchants  
816 South Main  
Stillwater, OK 74074

Mack Martin  
Atty for Marsha Schubert  
119 N. Robinson Ave, Suite 360  
OKC, OK 73102



STATE OF OKLAHOMA  
LOGAN COUNTY CLERK  
LOGAN COUNTY, OKLAHOMA

SEP 17 PM 12:03

COURT CLERK

SVB

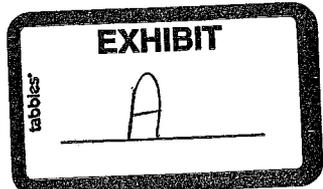
IN THE DISTRICT COURT OF LOGAN COUNTY,  
STATE OF OKLAHOMA

OKLAHOMA DEPARTMENT OF SECURITIES, )  
*ex rel.*, IRVING L. FAUGHT, Administrator, )  
 )  
 Plaintiff, )  
 vs. )  
 )  
 MARSHA SCHUBERT, an individual, and d/b/a )  
 SCHUBERT AND ASSOCIATES; )  
 RICHARD L. SCHUBERT, an individual and d/b/a )  
 SCHUBERT AND ASSOCIATES; )  
 and )  
 SCHUBERT AND ASSOCIATES, an unincorporated )  
 association, )  
 Defendants. )

Case No. CJ-2004-256

JOURNAL ENTRY OF JUDGMENT

NOW on the 12<sup>th</sup> day of August 2005, the Motions for Leave to Intervene filed on behalf of Janice Fagg, Kathleen Gibson, Ella Carr, Frank and Alice Sue Ward, Todd Ward, Josephine Ward, Chester Weems, and Ben Allen, et al. ("Movants") came on for hearing. Also, Richard LeBoeuf's Motion to Intervene and Set Aside Receiver and Transfer and Consolidate this case came on for hearing. The Plaintiff, Oklahoma Department of Securities, appeared by and through its attorneys, Gerri Stuckey, Amanda Cornmesser and Melanie Hall; the Receiver appeared by and through his attorney, Bradley E. Davenport; Richard LeBoeuf appeared by and through his attorney, Alexander Bednar; Ben Allen, et al. appeared by and through their attorneys, G. David Bryant and Lisa M. Mueggenborg; Janice Fagg, Kathleen Gibson and Ella Carr appeared by and through their attorney, Jack Mattingly, Sr.; and, Frank and Alice Sue Ward, Todd Ward, Josephine Ward and Chester Weems, appeared by and through their attorney, William Blaik.



Based upon the argument of counsel and the Court having reviewed all pleadings and submissions of the parties, the Court finds as follows:

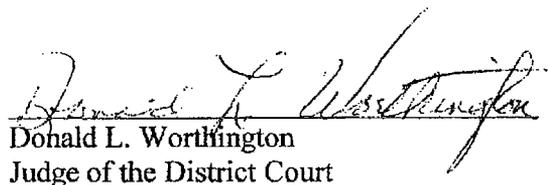
1. This Court has nothing to do with the claims of the Receiver filed against the Movants in Oklahoma County;

2. The Movants, who are seeking to intervene in this Logan County case, are afforded adequate protection of their rights in the case pending before the District Court of Oklahoma County in which they are parties; and,

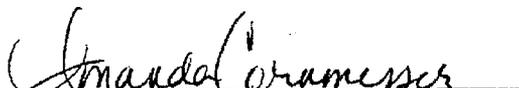
3. The Court finds that the Movants' Motions to Intervene and Mr. LeBoeuf's Motion to Intervene and Set Aside Order Supporting Receiver and to Transfer and to Consolidate case should be and hereby are denied.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Motions to Intervene filed on behalf of Richard LeBoeuf and Ben Allen, et al., and joined by Janice Fagg, Kathleen Gibson, Ella Carr, Frank and Alice Sue Ward, Todd Ward, Josephine Ward and Chester Weems are **DENIED**.

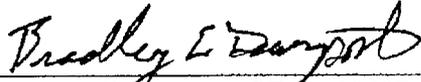
Dated: 10/11/05

  
Donald L. Worthington  
Judge of the District Court

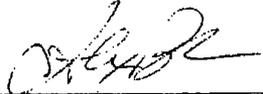
Approved as to Form Only:

  
Gerri Stuckey  
Amanda Cornmesser  
Melanie Hall  
Oklahoma Department of Securities  
120 N. Robinson, Suite 860  
Oklahoma City, OK 73102  
Attorneys for Plaintiff, Oklahoma  
Department of Securities

I, REJEANIA ZMEK, Court Clerk for Logan County, Okla., hereby certify that the foregoing is a true, correct and complete copy of the instrument herewith set out as appears of record in the Court Clerk's Office of Logan County, Okla. this 21<sup>st</sup> day of Oct, 2005.  
REJEANIA ZMEK, Court Clerk  
By  Deputy



Bradley E. Davenport, OBA #18687  
GUNGOLL, JACKSON, COLLINS, BOX & DEVOLL, P.C.  
Post Office Box 1549  
Enid, Oklahoma 73702-1549  
Attorney for Court-Appointed Receiver, Douglas L. Jackson

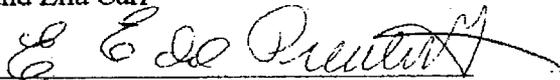


Alexander L. Bednar  
P O Box 3021  
Oklahoma City, OK 73101  
Attorney for Richard LeBoeuf



G. David Bryant  
Lisa Mueggenborg  
Kline Kline Elliott & Bryant, PC  
720 NE 63<sup>rd</sup> St.  
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Attorneys for Ben Allen, et al.

Jack Mattingly, Sr.  
The Mattingly Law Firm, PC  
P O Box 70  
Seminole, OK 74818-0070  
Attorneys for Janice Fagg, Kathleen Gibson  
and Ella Carr



E. Edd Pritchett  
William Blaik  
1120 NW 63<sup>rd</sup>, Suite 200  
Oklahoma City, OK 73116  
Attorneys for Frank and Alice Sue Ward,  
Todd Ward, Josephine Ward and Chester Weems

cc: E. Edd Pritchett  
114 N. Main St., Suite 101  
Kingfisher, OK 73750

*Bradley E. Davenport*

Bradley E. Davenport, OBA #18687  
GUNGOLL, JACKSON, COLLINS, BOX & DEVOLL, P.C.  
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Enid, Oklahoma 73702-1549  
Attorney for Court-Appointed Receiver, Douglas L. Jackson

*Alexander L. Bednar*

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Oklahoma City, OK 73101  
Attorney for Richard LeBoeuf

*G. David Bryant*

G. David Bryant  
Lisa Mueggenborg  
Kline Kline Elliott & Bryant, PC  
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Attorneys for Ben Allen, et al.

*Jack Mattingly, Sr.*

Jack Mattingly, Sr.  
The Mattingly Law Firm, PC  
P O Box 70  
Seminole, OK 74818-0070  
Attorneys for Janice Fagg, Kathleen Gibson  
and Ella Carr

*E. Edd Pritchett*

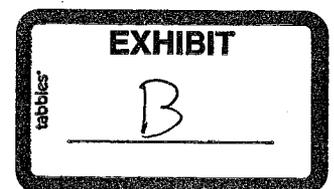
E. Edd Pritchett  
William Blaik  
1120 NW 63<sup>rd</sup>, Suite 200  
Oklahoma City, OK 73116  
Attorneys for Frank and Alice Sue Ward,  
Todd Ward, Josephine Ward and Chester Weerns

cc: E. Edd Pritchett  
114 N. Main St., Suite 101  
Kingfisher, OK 73750

**EXHIBIT "B" -- APPELLANTS' STATEMENT OF THE CASE**

Appellee initiated this receivership action against Marsha Schubert, individually and doing business as Schubert and Associates et al ("Schubert"). Initially, Douglas Jackson was appointed the Receiver for Schubert. However, the original order appointing the Receiver was amended to provide that the Receiver could also serve as Receiver over the assets of non-party "investors and creditors" of Schubert, which included Appellants. Specifically, the Amended Order was entered *ex parte* without affording any of the "investors and creditors" prior notice or an opportunity to be heard or citing any legal authority authorizing the purported expansion of the scope of the Receiver's powers and authority. Yet, the Amended Order vested in the Receiver all property rights and claims of the "investors and creditors" of Schubert. The Amended Order is not consistent with Oklahoma law as the Appellants were denied their constitutional due process. Moreover, it is well settled that a receivership is an *in rem* proceeding and that a receiver simply holds property rights of the party placed in receivership, which was Schubert. Accordingly, the Receiver cannot be appointed to bring claims owned by anyone other than Schubert. Nonetheless, Appellee and the Receiver filed a petition in Oklahoma County against the Appellants and other named defendants styled: *Oklahoma Department of Securities ex rel. Irving L. Faught, Administrator v. Robert L. Mathews, et al*, Case No. CJ-2005-3796, filed in the Oklahoma County District Court, which is the subject of an original jurisdiction action pending before this Court.

On July 27, 2005, Appellants filed a Motion to Intervene, Motion to Vacate *Ex Parte* Order, or Alternatively to Transfer to Oklahoma County. The trial court denied Appellants' Motion to Intervene and Appellants appeal from that Order filed October 17, 2005.



**EXHIBIT "C"**

**ISSUES TO BE RAISED ON APPEAL**

1. Whether the trial court erred in denying the Motion to Intervene.
2. Whether the trial court erred in denying the Motion to Vacate *Ex Parte* Order Appointing Douglas L. Jackson as Receiver For Investors of Marsha Schubert.
3. Whether the trial court erred in denying the alternative Motion to Transfer the Matter to Oklahoma County District Court.

