

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA

IN RE: )  
)  
)  
ROBERT WILLIAM MATHEWS, )  
) Case No. 07-10108-TMW  
) Chapter 7  
)  
Debtor, )  
)  
)  
OKLAHOMA DEPARTMENT OF SECURITIES, )  
)  
) Ex Rel. IRVING L. FAUGHT, )  
)  
)  
) Plaintiff, )  
)  
)  
vs. ) Adversary No. 07-01140  
)  
)  
ROBERT WILLIAM MATHEWS, )  
)  
)  
) Defendant. )

and

IN RE: )  
)  
)  
MARVIN LEE WILCOX and )  
)  
) PAMELA JEAN WILCOX, )  
) Case No. 07-10610-RLB  
) Chapter 7  
)  
Debtors. )  
)  
)  
OKLAHOMA DEPARTMENT OF SECURITIES, )  
)  
) Ex Rel. IRVING L. FAUGHT, )  
)  
)  
) Plaintiff, )  
)  
)  
vs. ) Adversary No. 07-01226  
)  
)  
MARVIN LEE WILCOX, )  
)  
)  
) Defendant. )

**MOTION FOR SUMMARY JUDGMENT AGAINST DEBTORS MARVIN AND  
PAMELA WILCOX AND DEBTOR ROBERT MATHEWS**

The Oklahoma Department of Securities (Department), a creditor in this Chapter 7 Bankruptcy Case, hereby moves this Court for the entry of an Order of Summary Judgment against Debtors Marvin and Pamela Wilcox (Debtors Wilcox) and Debtor Robert Mathews (Debtor Mathews) finding that their debts owed to the Department are non-dischargeable under 11 U.S.C. §523(a)(2) and (19), and for imposition of an equitable lien on certain property of Debtors Wilcox.

### **FACTUAL BACKGROUND**

The undisputed facts are as follows:

1. Beginning in or around January of 2000, through or around October 14, 2004, Marsha Schubert, individually and doing business as Schubert and Associates, (collectively, "Schubert"), orchestrated a securities fraud in and from Crescent, Oklahoma. Schubert, promising large financial returns, accepted funds in excess of Two Hundred Million Dollars (\$200,000,000) for purported investment (the "Purported Investment Program"). Approximately 100 persons lost in excess of Nine Million Dollars (\$9,000,000) in the Purported Investment Program. *Admitted in ¶7 of answer filed by Debtors Wilcox and ¶6 of answer filed by Mathews.*

2. The securities fraud had two basic components: a) a "Ponzi" scheme in which most of the money entrusted to Schubert by participants in the Purported Investment Program was not invested in a legitimate venture, but instead, was paid out as purported returns to other participants in the Purported Investment Program; and b) a check exchange scheme that primarily involved the accounts of Schubert and three individuals, to include Debtor Marvin Wilcox and Debtor Mathews. The check exchange scheme involved a consistent movement of funds between the accounts of the three

individuals and bank accounts controlled by Schubert. The scheme created a "float" that Schubert utilized to pay purported investment returns. *Admitted in ¶7 of answer filed by Debtors Wilcox and ¶6 of answer filed by Mathews.*

3. Periodically, Debtors Marvin Wilcox and Mathews gave Schubert physical control of multiple checks from their personal bank accounts that were blank except for their signatures. Schubert filled out the blank checks previously signed by Debtors Marvin Wilcox and Mathews, in amounts she determined, for deposit into bank accounts she controlled. *Admitted in ¶7 of answer filed by Debtors Wilcox and ¶6 of answer filed by Mathews.*

4. In exchange for each check drawn on the accounts of Debtors Marvin Wilcox and Mathews, Schubert wrote checks on bank accounts she controlled, in most cases for a greater dollar amount, payable to Debtors Marvin Wilcox and Mathews. *Admitted in ¶7 of answer filed by Debtors Wilcox and ¶6 of answer filed by Mathews.*

5. Between September 11, 2001 and October 6, 2004 (the "Mathews Relevant Period"), there were over nine hundred fifty (950) transactions between Schubert and Debtor Mathews. The deposits to Schubert from Debtor Mathews totaled in excess of Eighty-Six Million Dollars (\$86,000,000). Disbursements from Schubert to Debtor totaled in excess of Eighty-Seven Million Dollars (\$87,000,000). *Admitted in ¶7 of answer filed by Debtors Wilcox and ¶6 of answer filed by Mathews.*

6. Between December 12, 2002 and October 6, 2004 (the "Wilcox Relevant Period"), there were over six hundred fifty (650) transactions between Schubert and Debtor Marvin Wilcox. The deposits to Schubert from Debtor Marvin Wilcox totaled in excess of Seventy-Seven Million Dollars (\$77,000,000). Disbursements from Schubert

to Debtor Marvin Wilcox totaled in excess of Seventy-Eight Million Dollars (\$78,000,000). *Admitted in ¶7 of answer filed by Debtors Wilcox and ¶6 of answer filed by Mathews.*

7. The transactions described in paragraphs 5 and 6 above were purportedly in connection with the day trading of securities. Debtors Marvin Wilcox and Mathews never received confirmations concerning the purchase and sale of such securities on their behalf or saw any other evidence of their day trading accounts. *Admitted in ¶7 of answer filed by Debtors Wilcox and ¶6 of answer filed by Mathews.*

8. Debtors received monthly statements related to their legitimate brokerage accounts maintained at AXA Advisors, LLC for which Schubert was their broker. *See Ex. 1 Wilcox Transcr. 50:10-14 (Sept. 2006); Ex. 2 Mathews Transcr. 8:3-13 (Oct. 2006).* Debtors never received any statements from their “day trading” accounts through Schubert, yet, believed that they rarely suffered any losses in their “day trading” accounts. *See Ex. 1 at 21:7-17 and 68:12-14 (Sept. 2006); Ex. 2 at 10:13-16 (Oct. 2006); Ex. 3 at Mathews Transcr. 102:11-14 (June 2007).*

9. Debtor Marvin Wilcox and Mathews regularly picked up bundles of checks prepared by Schubert, including the checks made payable to themselves and the other individual involved in the check exchange scheme, and ferried them to the appropriate bank for deposit. *Admitted in ¶7 of answer filed by Debtors Wilcox and ¶6 of answer filed by Mathews.*

10. The activity described in paragraph 9 above continued when Schubert was scheduled to be out-of-town. In order to distribute “day trading” profits, Schubert prepared checks drawn on a bank account she controlled for each of the days she would

be gone, put the checks in an envelope marked with the pertinent deposit day, and left the envelopes in her office for deposit by her office staff or by Debtors Marvin Wilcox or Mathews. *See Ex.3 at 103:3-25 (June 2007).*

**Proof of the Primary Securities Violations**

11. On October 14, 2004, the Oklahoma Department of Securities (Department) filed suit against Schubert in the District Court of Logan County, State of Oklahoma, for violations of the Oklahoma Uniform Securities Act of 2004 (Act), Okla. Stat. tit. 71, §§ 1-101 through 1-701 (Supp. 2003), and the Oklahoma Securities Act (Predecessor Act), Okla. Stat. tit. 71, §§ 1-413, 501, 701-703 (1991 & Supp. 2003). *Admitted in ¶7 of answer filed by Debtors Wilcox and ¶6 of answer filed by Mathews.*

12. On November 15, 2004, upon the stipulation and consent of Schubert, the Logan County District Court entered a permanent injunction against Schubert that included an order of restitution, the amount to be determined at the conclusion of the receivership. *Oklahoma Department of Securities ex rel. Irving L. Faught, Administrator v. Marsha Schubert, et al.*, CJ 2004-256. *Admitted in ¶7 of answer filed by Debtors Wilcox and ¶6 of answer filed by Mathews.*

13. On May 5, 2005, Schubert entered a plea of guilty in the United States District Court for the Western District of Oklahoma to one count of money laundering in connection with the Purported Investment Program. Schubert was sentenced to 10 years in prison and ordered to pay restitution in the amount of Nine Million One Hundred Fourteen Thousand Seven Hundred Forty-Four Dollars (\$9,114,744.00). *United States of America v. Marsha Kay Schubert*, CR 05-078. *Admitted in ¶7 of answer filed by Debtors Wilcox and ¶6 of answer filed by Mathews.*

14. On September 9, 2005, Schubert entered a plea of guilty in the District Court of Logan County, State of Oklahoma, to fourteen (14) counts of obtaining money by false pretenses in connection with the Purported Investment Program. Schubert was sentenced to 25 years in prison and ordered to pay restitution in the amount of Nine Million One Hundred Fourteen Thousand Seven Hundred Forty-Four Dollars (\$9,114,744.00). *State of Oklahoma v. Marsha Kay Schubert*, No. CF-2004-391. Marsha Schubert stated as the factual basis for her plea that she obtained money in a "Ponzi" scheme in which she promised that the funds would be invested but instead, used the funds to pay prior investors involved in the Purported Investment Program. *Admitted in ¶7 of answer filed by Debtors Wilcox and ¶6 of answer filed by Mathews.*

15. On May 11, 2005, the Department sued Debtors Wilcox and Debtor Mathews, and over 100 other persons, who received cash and/or other property from Schubert that were the proceeds of Schubert's unlawful activity ("Relief Defendants") and for which the Relief Defendants gave inadequate or no consideration. *Admitted in ¶7 of answer filed by Debtors Wilcox and ¶6 of answer filed by Mathews.*

#### **Debtors' Judgments**

16. As a result, Debtor Mathews was ordered to disgorge Five Hundred Twenty-Four Thousand Eight Hundred Twenty-Six Dollars and Nineteen Cents (\$524,826.19). *Admitted in ¶7 of answer filed by Debtors Wilcox and ¶6 of answer filed by Mathews.*

17. As a result, Debtors Wilcox were ordered to disgorge Five Hundred Nine Thousand Five Hundred Five Dollars (\$509,505.00). *Admitted in ¶7 of answer filed by Debtors Wilcox and ¶6 of answer filed by Mathews.*

18. Debtor Pamela Wilcox had check writing authority on the account used to aid the fraudulent scheme, wrote checks on that account and personally benefitted from the proceeds received from the fraudulent scheme. *Admitted in ¶7 of answer filed by Debtors Wilcox and ¶6 of answer filed by Mathews.*

19. For over 35 years, Debtor Marvin Wilcox worked in various capacities for at least two banks. *See Ex.1 at 15:6-8 (Sept. 2006).* Debtor Marvin Wilcox earned \$40,000 a year at NBanC in Kingfisher, Oklahoma, and retired in 2002 as a loan officer and a Vice President of NBanC. *See Exhibit 4 Themer Transcr. 30:2-16 (April 2005).*

20. Debtor Marvin Wilcox did not have a retirement plan through the bank and planned to retire and live on his substantial investment returns. *See Ex. 4 at 30:17-23 (April 2005).*

21. Following Debtor Marvin Wilcox's retirement from NBanC, there was a noticeable change of lifestyle for Debtors Wilcox. Debtors Wilcox built a house after living in a mobile home for many years. Debtors Wilcox previously drove a Ford pickup and upgraded to a fleet of vehicles including a new Ford pickup, Rav 4 and a Cadillac. *See Ex. 4 at 31:17-25 and 32:1-6 (April 2005).*

22. Debtors Wilcox were receiving 20-30 percent (20-30%) "returns" on their investments. *See Ex. 4 at 31:7-16: (April 2005).*

**Material Aid by Debtors to Marsha Schubert**

23. Debtor Mathews referred Debtors Wilcox and other investors to Schubert. *See Ex. 1 at 10:18-25: and 11:1-13 (Sept. 2006).*

24. Debtor Marvin Wilcox recommended Schubert to several people for investment purposes. *See Ex. 1 at 77:14-21 and 78:1-4.* Debtor Marvin Wilcox

introduced his supervisor, Dennis Themer (Themer), President of NBanC in Kingfisher, Oklahoma, to Schubert and encouraged him to open an investment account with her. *See Ex. 4* at 11:8-15 (April 2005). Themer was aware that Debtors Wilcox and Debtor Mathews were purportedly “day trading” with Schubert and was aware of the activity in their NBanC accounts. *See Ex. 4* at 52:9-25 (April 2005). Approximately two years later, the check exchange between Schubert and Debtors Wilcox and Debtor Mathews involved such large amounts that Themer directed Debtors Marvin Wilcox and Mathews to stop their day trading activity through NBanC so as not to subject the bank to risk based on the uncollected balances in their accounts. *See Ex. 4* at 26:3-23 (April 2005).

25. As a result, Debtors Marvin Wilcox and Mathews opened accounts at F&M Bank in Crescent, Oklahoma, and the activity continued for a brief time. *See Ex. 4* at 40:2-24 (April 2005)

#### **Partnership between Debtor Marvin Wilcox and Schubert**

26. Debtors considered themselves to be in partnership with Schubert & Associates. On the Schedule K-1 attached to their federal income tax returns, prepared by Jeffrey C. Trent, Debtors Wilcox reported to the Internal Revenue Service that that were partners in Schubert & Associates. *See Exhibit 5 Wilcox and Mathews tax returns.*

#### **ARGUMENT**

Rule 56(c) of the Federal Rules of Civil Procedure and Rule 7056 of the Bankruptcy Code provide that summary judgment will be granted if “there is no genuine issue as to any material fact” and the “moving party is entitled to a judgment as a matter of law.” Once a case has been made in support of summary judgment, the burden shifts and the party opposing the motion has the burden of raising specific facts evidencing the

need for trial. *In re Vaughn*, 342 B.R. 385, (10<sup>th</sup> Cir. BAP 2006). All material facts in this matter are detailed herein and in depositions and exhibits attached hereto. These facts are undisputed and therefore, summary judgment should be granted in favor of the Plaintiff.

While the Bankruptcy Code generally favors the interests of the debtor in obtaining a “fresh start,” Congress has recognized that there are times when that interest is trumped by the competing interest in protecting the victims of fraud. *Grogan v. Garner*, 498 U.S. 279, 287 (1991). 11 U.S.C. § 523(a)(2)(A) and (19) of the Bankruptcy Code establish two such exceptions. The creditor has the burden to establish non-dischargeability under any of the 523(a) exceptions by a preponderance of the evidence. *Grogan* at 291.

**11 U.S.C. § 523(a)(2)(A)**

11 U.S.C. § 523(a)(2)(A) of the Bankruptcy Code provides that a debt for money to the extent obtained by actual fraud is non-dischargeable. Although fraud is not defined in the Bankruptcy Code, the definition encompasses “any means by which a person gains advantage over another” and “includes all surprise, trick, cunning, disassembling, or unfair way by which another is cheated.” *McClellan v. Cantrell*, 217 F.3d 890, 893 (7<sup>th</sup> Cir. 2000); *In re Vitanovich*, 259 B.R. 873, (BAP 6<sup>th</sup> Cir. 2001).

Debtors, in their answers to Plaintiff’s complaints, admit the factual allegations, but specifically deny that they had the state of mind necessary to be found liable for fraud. Intent to deceive is a necessary element of showing that actual fraud has been committed. *McClellan* at 894. Courts however, recognize that because a debtor will rarely, if ever, admit to intentionally committing a fraud, “intent to deceive can be

inferred from the totality of the circumstances, including the debtor's reckless disregard for the truth." *In re Cohen*, 191 B.R. 599 at 605 (D. NJ 1996); *In re Woolley*, 145 B.R. 830 at 834-836 (Bkrtcy.E.D.Va., 1991). The *Vitanovich* court determined that a check kiting scheme constituted an actual fraud and held that the resulting debt was non-dischargeable under 523(a)(2)(A). *Vitanovich* at 879.

Schubert conducted a "Ponzi" scheme wherein she promised that investor funds would be invested, but instead used those funds to pay purported returns to other investors. The Debtors materially aided Schubert's "Ponzi" scheme by allowing Schubert to use their bank accounts to create a float by which she operated her "Ponzi" scheme. More than \$165,000,000 ran through Debtors' bank accounts over a 4 year period. As a result of their aid to Schubert's scheme, 87 investors lost over \$9,000,000.

Debtors received money, property and other living and/or luxury items which were obtained by fraud including, but not limited to: (1) money deposited into each of their accounts for their personal expenses including loan payments; (2) purchases of new vehicles; (3) purchase of a new home by the Debtors Wilcox; and (4) purchases of farm equipment. Debtor Mathews personally received a net amount of at least \$524,826.19. Debtors Wilcox personally received a net amount of at least \$509,505.

The totality of the circumstances clearly show that Debtors acted with intent to deceive the investing public and/or the banks involved, and at the very least, that they acted with reckless disregard of the truth of Schubert's scheme. This is not a case where Schubert opened a bank account without the Debtors' knowledge or otherwise diverted information about the accounts away from the Debtors.

Debtors maintained over their respective bank accounts. Debtors monitored their bank balances, applied for loans in which they provided financial statements with their bank balances, and wrote multiple checks out of their accounts for general living expenses and luxuries. When NBanC told Debtors they could no longer operate on uncollected balances, many of which were six-figured, Debtors opened accounts at another bank. After a short time, Debtors returned to NBanC and resumed their activity.

These Debtors gave Schubert pre-signed checks that Schubert filled out and directed for deposit to her bank. Sometimes Schubert delivered those checks to Debtors' bank; other times, Debtor Mathews or Debtor Marvin Wilcox picked up the deposits for both Debtors and ferried them to the bank. Other factors supporting the Debtor's intent to deceive include the large volume of transactions in Debtors' bank accounts, the dollar amounts of the transfers between Debtors and Schubert, the outrageous rates of returns to the Debtors on the transactions, and the fact that every transaction made money and none lost money despite the risky nature of the "day-trading" method of investing.

Although Debtors were not parties to the contracts made between Schubert and other investors, their conduct allowed the "Ponzi" scheme to operate for several years. In their answer to Plaintiff's complaint, Debtors acknowledge that Schubert would not have been able to "run her scheme" without them for as long as she did.

In addition to allowing their bank accounts to be used in a check exchange, Debtors actively referred others to invest in Schubert's worthless and nonexistent securities despite: (1) for four years not receiving any statements from a "daytrading" company reporting their balances; (2) aiding Schubert's bank float by providing signed checks to her; (3) making daily deposits from Schubert's F&M bank account into their

NBanC accounts; and (4) having NBanC shut down their activities because of the bank's risk concerns.

The fraud was operated in the ordinary course of business for Schubert and Associates allowing Debtors to benefit financially. Debtors were active accomplices and knowingly allowed millions of dollars to run through their personal bank accounts. According to their tax returns, both Debtors believed they were partners in Schubert and Associates. Although Debtors did not make decisions regarding Schubert's activities, they had knowledge of and actively participated in the ongoing business of Schubert and Associates. See *In re Taite*, 76 B.R. 764, 773 (Bkrcty.C.D. Cal., 1987). The Debtors, as business partners of Schubert, may be held liable for her fraudulent activity; therefore, their debts arising from such activity are not dischargeable. *In re M.M. Winker & Associates*, 239 F.3d 766 (5<sup>th</sup> Cir. 2001).

Debtors Marvin Wilcox and Mathews were both businessmen who managed their respective businesses with acumen; Debtor Marvin Wilcox even being a loan officer and Vice-President of a bank for many years. That, along with the control they retained over their accounts, the volume and amount of the transactions, and the unbelievable and ever-increasing "returns", suggest that Debtors knew, or should have known with the exercise of reasonable care, that their actions were contributing to a fraudulent scheme.

**11 U.S.C. § 523(a)(19)**

11 U.S.C. § 523(a)(19) of the Bankruptcy Code provides, in pertinent part, for the non-dischargeability of a debt that:

(A) is for-(i) the violation of any of the Federal securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934), any of the State securities laws, or any regulation or order issued under such Federal or State securities laws; or (ii) common law fraud,

deceit, or manipulation in connection with the purchase or sale of any security; and (B) results from (i) any judgment, order, consent order, or decree entered in any Federal or State judicial or administrative proceeding; (ii) any settlement agreement entered into by the debtor; or (iii) any court or administrative order for damages, fine, penalty, citation, restitutionary payment, disgorgement payment, attorney fee, cost, or other payment owed by the debtor.

Courts have noted that the plain language of Section 523(a)(19) indicates that its coverage is broad. *In re Civiello*, 348 B.R. 459 (Bankr.N.D.Ohio 2006). The legislative history behind 523(a)(19) provides that the purpose of this exception to discharge is to protect investors and hold accountable those who violate securities laws. *Id* at 463. The plain language of 523(a)(19)(A)(i) does not require that the violation of the securities laws necessarily be conducted by the debtor. Nor does the plain language of 523(a)(19)(B)(i) require that the debt at issue result from a judgment or order against the debtor.

The Department proposes that Schubert's Order of Permanent Injunction and her State Guilty Plea and Conviction satisfy the 523(a)(19)(A) requirement that the debt at issue be for violations of securities laws. The Department also proposes that the debt owed by Debtors in the amounts evidenced by their respective unjust enrichment judgments result from the state judicial orders entered against Schubert and therefore satisfy the 523(a)(19)(B)(i) requirement.

It is an established principle in securities laws that disgorgement of ill-gotten gains of a securities fraud can be extended to a non-violator to effect full relief under the securities laws. *SEC v. Colello*, 139 F.3d 674 (1998); *SEC v. Egan*, 856 F.Supp 451 (N.D. Ill. 1993). If the money had remained with the violator and it was the violator that filed for bankruptcy, any debt obtained in connection with that violation would be non-

dischargeable. However, violators, in an attempt to hide assets or reward someone who aids their scheme, often transfer their ill-gotten gains to a family member, a favored friend or a close business associate. Allowing that person to keep the ill-gotten gains would in essence be a benefit to the violator. Where as here, the Debtors provided material aid by allowing Schubert to exchange checks between their bank accounts and referring investors to Schubert with knowledge of, or at least reckless disregard of the fraudulent scheme, allowing discharge might encourage future violators to dole out big rewards to others.

The Department proposes that this Court could find that by allowing Schubert to use their bank accounts to conduct the check exchange scheme, Debtors materially aided Schubert in conducting the "Ponzi" scheme and have therefore themselves incurred liability. Under Oklahoma securities laws, any person who materially aids a violation of the Act is jointly and severally liable with and to the same extent as the person who violated the Act, "unless the person sustains the burden of proof that the person did not know and, in the exercise of reasonable care could not have known, of the existence of the conduct by reason of which liability is alleged to exist." Section 1-509(G)(5) of the Act.

In interpreting a similar provision in the Oregon securities statutes, the court in *Prince v. Brydon*, 764 P.2d 1370 (Or. 1988), established the test for secondary liability as 1) a violation of the securities statutes, and 2) material assistance or aid by secondary persons in connection with the violation. For purposes of this test, "aid" does not encompass the activities that lead to the fraudulent transaction(s), but rather encompasses the activities that make the securities violations possible. *Rendler v. Markos*, 453 N.W.

2d 202 (Wis. Ct. App. 1990); *Boland v. Hammond*, 759 N.E. 2d 789 (Ohio Ct. App. 2001). Whether a person's aid is "material" is not dependent on the person's factual knowledge but instead, is dependent on the importance of the person's contribution to the violative conduct. *Prince* at 1371.

### CONCLUSION

Debtors Marvin Wilcox and Mathews materially aided Marsha Schubert by fueling her fraud with the check exchange. Debtors Marvin Wilcox and Mathews were financially motivated to keep the "Ponzi" scheme going and were keenly aware that without their aid, the "Ponzi" scheme would have collapsed long before it did. With that collapse, their "gravy train" was over.

The Department respectfully requests a) summary judgment against Debtors Wilcox and Debtor Mathews finding that their debts owed to the Department are non-dischargeable under 11 U.S.C. §523(a)(2) and (19), and b) imposition of an equitable lien on the homestead of Debtors Wilcox.

/s Amanda Cornmesser  
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CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of May, 2008, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the following ECF registrants:

Jeffrey C. Trent  
P.O. Box 851530  
915 West Main  
Yukon, OK 73099  
*Attorney for Debtors*

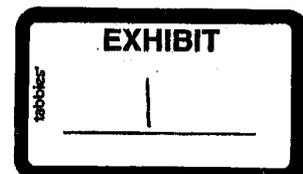
/s Gerri Stuckey

IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

OKLAHOMA DEPARTMENT OF )  
SECURITIES, ex rel IRVING )  
L. FAUGHT, ADMINISTRATOR, )  
et al., )  
 )  
Plaintiffs, )  
 )  
v. ) No. CJ-05-3796  
 )  
ROBERT W. MATHEWS, et al., )  
 )  
Defendants. )

DEPOSITION OF MARVIN LEE WILCOX  
TAKEN ON BEHALF OF THE PLAINTIFFS  
IN OKLAHOMA CITY, OKLAHOMA  
ON SEPTEMBER 13TH, 2006

REPORTED BY: KIT VICKERY, R.D.R.



1 part of it, but --

2 Q He was just a director.

3 A Yes, uh-huh.

4 Q And you're referring to Lauren Pollard.

5 A Lauren, uh-huh.

6 Q At what point in time did you first engage  
7 in any kind of a business relationship with Marsha  
8 Shubert?

9 A When did we -- repeat that, please.

10 Q Certainly. When did you first engage in a  
11 business relationship such as investment  
12 representative/client relationship with Marsha  
13 Shubert?

14 A It was around 1st of October in 2002, I  
15 believe.

16 MS. WILCOX: 2001.

17 A I'm sorry, 2001.

18 Q And what was it that brought about you and  
19 Marsha Shubert getting together in October 2001 for  
20 investment business?

21 A Well, a friend of mine had been doing some  
22 business with her, and his -- the friend of mine's  
23 father had had some investments with some people in  
24 Oklahoma City, and I had some problems with an  
25 investment firm in the city, and Marsha had told my

1 Q And relative to your first communications  
2 with Marsha Shubert, was that done by telephone or in  
3 person?

4 A I don't remember.

5 Q Did you, in fact, speak with Marsha Shubert  
6 again, whether by telephone or in person, before  
7 making your decision to go ahead and invest with or  
8 through her?

9 A Would you repeat the question, please?

10 Q Certainly. Did you speak with Marsha  
11 Shubert either by telephone or in person, for example  
12 about the kinds of products or services she offered,  
13 before making the decision to go ahead and invest with  
14 her?

15 A I really don't remember.

16 Q Do you recall, Mr. Wilcox, at the time you  
17 first began investing with or through Marsha Shubert  
18 what company she was working for?

19 A AXA Advisors.

20 Q And when you initially invested with her  
21 through Marsha Shubert, did you understand that you  
22 were investing with AXA Advisors?

23 A Yes, sir.

24 Q Do you know what kind of account or  
25 accounts you opened with AXA Advisors when you first

1 friend that she could help him retrieve monies from  
2 there and invest in her company down there, and so  
3 they did so.

4 And things ran along there for several months and  
5 looked good to my friend what was going on, and he  
6 told me that Marsha was an investment person, which I  
7 didn't know at the time, I didn't know what she did,  
8 and if we could get some money together it would  
9 probably be a pretty good idea to invest with her.  
10 She seemed to be really good at what she was doing.

11 Q Can you identify the friend you've  
12 referenced?

13 A Bob Mathews.

14 Q Do you recall anything more specific than  
15 what you've already stated about what he told you  
16 about Marsha Shubert --

17 A No, sir -- I'm sorry.

18 Q -- or why you should invest with her?

19 A No, no, sir.

20 Q Okay. So after speaking with Mr. Mathews  
21 about possibly investing with Marsha Shubert, when did  
22 you go ahead and meet with or talk to Marsha Shubert  
23 about investing?

24 A It was probably approximately 90 days later  
25 that I decided to try.

1 started in October of 2001?

2 A Not really, sir.

3 Q Do you know if you had more than one AXA  
4 account in October of 2001?

5 A Not to my knowledge.

6 Q Do you recall whether you had any kind of  
7 check writing privileges on the account you had with  
8 AXA Advisors in October of 2001?

9 A Like the account that she opened, did it  
10 have check writing privileges on it; is that what  
11 you're getting at?

12 Q Yes, sir.

13 A There was a -- we got some checks in the  
14 mail from AXA, so I presume that I had.

15 Q But that wasn't a feature you utilized in  
16 that timeframe of October 2001.

17 A No.

18 Q Who was on this AXA account as an owner  
19 besides yourself, Mr. Wilcox, if anyone?

20 A My wife, Pam Wilcox.

21 Q And was anyone besides you and your wife  
22 authorized to withdraw funds from your AXA account?

23 A Not to my knowledge.

24 Q When you first opened this account with AXA  
25 through Marsha Shubert in about October of 2001, Mr.

1 if you can, please.

2 (Witness reads.)

3 Q Have you seen the document marked as  
4 Plaintiffs' Exhibit 1 before, Mr. Wilcox?

5 A Well, obviously my signature is there, but  
6 I don't think I've read it. Like I said, I just  
7 relied on her for everything, that's why we paid her.

8 Q And does this document that you've just  
9 testified you signed indicate whether or not any  
10 options account you had was in any way affiliated with  
11 AXA?

12 A I'm sorry, do what now?

13 Q Does this document you just testified you  
14 signed indicate that any options trading done on your  
15 behalf was in any way affiliated with AXA?

16 MR. BRYANT: I'd say that the document  
17 speaks for itself, but go ahead and answer to the best  
18 of your ability.

19 MS. WILCOX: We always thought it was  
20 done with AXA.

21 MR. DAVENPORT: Ma'am, I'd ask you to  
22 refrain. We'll have some questions for you later  
23 today.

24 MS. WILCOX: Good.

25 A I guess I don't -- repeat the question one

1 when it was that you believe Marsha began day trading  
2 on your behalf?

3 A December of '03, or January of '04,  
4 something like that would be close, I think.

5 Q And if I understood your testimony, you  
6 weren't sure with what company or companies that day  
7 trading was occurring.

8 A Not really, no, sir.

9 Q What, if any, understanding did you have of  
10 day trading back in December of '03 or January of '04?

11 A Me? I didn't have a clue what day trading  
12 was.

13 Q What, if any, explanation of day trading  
14 did Marsha Shubert give to you?

15 A She just said buy stocks and sell them the  
16 same day and make a little bit of money, you know, a  
17 little -- just, you know, during the day to trade --  
18 the way I understood it she'd buy in the morning and  
19 sell in the evening and that's all I know about it.

20 Q What, if any, amount of money did you  
21 provide to Marsha Shubert for her to begin day trading  
22 on your behalf?

23 A I don't remember. I don't have a clue.

24 Q Do you believe that you did provide Marsha  
25 Shubert with some amount of money to begin day trading

1 more time, please.

2 Q Does the document marked as Plaintiffs'  
3 Exhibit 1 that you testified bears your signature  
4 indicate that in the options account that was opened  
5 on your behalf was in any way affiliated with AXA?

6 MR. BRYANT: Same objection.

7 A I don't know.

8 Q Can you read for the record the second  
9 sentence of this document marked as Plaintiffs'  
10 Exhibit 1?

11 A Read which one now?

12 Q The second sentence, please.

13 A This relationship -- blah, blah, blah --  
14 (Witness reads.)

15 A I just assumed that -- I don't know what I  
16 thought. I really don't. I didn't think. All I did  
17 was sign for her. She asked me to sign stuff, I  
18 signed it.

19 Q And was that your habit or routine at least  
20 as far as your dealings with Marsha Shubert was  
21 concerned, to sign documents without reading them?

22 A Yes, sir.

23 Q Mr. Wilcox, you've testified as to the  
24 approximate time that both of these AXA accounts were  
25 started through Marsha Shubert. Can you tell me about

1 for you?

2 A I'm sure we did.

3 Q Did you ever receive any type of account  
4 number relative to the day trading you believed Marsha  
5 Shubert did on your behalf?

6 A No, sir.

7 Q Previously, Mr. Wilcox, you testified that  
8 you did receive some AXA account statements in the  
9 mail at your PO Box; is that right?

10 A Uh-huh.

11 Q With respect to the day trading you  
12 believed Marsha Shubert did on your behalf, did you  
13 receive any kind of account statements regarding that  
14 activity?

15 A No, sir.

16 Q At no time?

17 A I don't think so.

18 Q What, if any, inquiry did you make of  
19 Marsha Shubert as to why you weren't getting  
20 statements on the day trading?

21 A I didn't inquire about it because she's the  
22 person we hired to take care of us, and I didn't see  
23 any problems, none.

24 Q Mr. Wilcox, prior to getting into an  
25 investment relationship with or through Marsha Shubert

1 Q Do you recall about how often you would go  
2 into Marsha Shubert's office and ask about your  
3 account balances?  
4 A Oh, 60, 90 days, you know.  
5 Q And did you ever compare what she wrote  
6 down as an account balance and gave to you with any of  
7 the statements you received from AXA Advisors?  
8 A No, sir. We believed in her  
9 wholeheartedly.  
10 Q Other than what Marsha Shubert told to you,  
11 Mr. Wilcox, did you ever see any document or piece of  
12 paper that indicated to you that you had a day trading  
13 account?  
14 A No, sir.  
15 MR. DAVENPORT: Tell you what, why don't  
16 we take about a ten-minute break.  
17 MR. BRYANT: Sure, that would be fine.  
18 (Break taken from 11:35 to 11:50.)  
19 Q If you would, sir, please turn to page 19,  
20 and I'll direct your attention to the response to  
21 request to production number 28. Do you see that,  
22 sir?  
23 A Yes, sir.  
24 Q And if you want to, just refer to the  
25 actual request number 28 just so you'll know what

1 that's talking about, and let me know when you're  
2 done.  
3 (Witness reads.)  
4 A Okay.  
5 Q Are you aware of what bank and financial  
6 documents that have been provided to the plaintiffs or  
7 supposedly in plaintiffs' possession as referenced  
8 there?  
9 A NBC.  
10 Q And do you recall, sir, when you provided  
11 those NBC documents?  
12 A No, sir.  
13 Q Do you know whether they were provided to  
14 the receiver or to the securities department?  
15 A I don't have a clue.  
16 Q If you would, sir, look behind page 20 of  
17 Plaintiffs' Exhibit 2. Do you see a cover sheet that  
18 says Marvin and Pam Wilcox? Behind page 20.  
19 A Oh, I'm sorry. Oh, uh-huh.  
20 Q And then there are documents besides that  
21 cover sheet.  
22 A Yes.  
23 Q Would you agree with me, sir -- and please  
24 look -- that there aren't any bank statements attached  
25 behind this cover sheet that says Marvin and Pam

1 Wilcox?  
2 (Witness goes through document.)  
3 A Yes, sir.  
4 Q Does that documentation behind the cover  
5 sheet appear to be solely made up of tax returns?  
6 A Yes, sir.  
7 Q Relative to those tax returns, Mr. Wilcox,  
8 if you would, direct your attention to the 2001 U.S.  
9 individual tax return. Do you have that in front of  
10 you?  
11 A 2001?  
12 Q Yes, sir.  
13 A That's the first one.  
14 Q And do you see on line item number 13 an  
15 amount that you have listed or that has been listed on  
16 your behalf for capital gains or loss?  
17 A Yes, sir.  
18 Q And can you state for the record, sir, what  
19 the amount reported on line 13 states?  
20 A Can't read it.  
21 Q Did you participate, sir, in preparing and  
22 producing these tax returns in discovery in this case?  
23 A No, sir.  
24 Q Okay. If you would, sir, please turn a  
25 couple of pages, and you should see a Schedule D

1 entitled capital gains and losses. Let me show you my  
2 copy so you can see what it looks like.  
3 A Okay, got you.  
4 Q Do you see the amount, sir, listed on line  
5 item seven of this Schedule D for the net short-term  
6 capital gain or loss?  
7 A Yes, sir.  
8 Q And what does that amount state?  
9 A 13,804.  
10 Q And if you look back at the first page of  
11 that return, does that appear to be the number entered  
12 on line item 13?  
13 A Yes, sir.  
14 Q Now if you look back at your Schedule D,  
15 listed there in that first section on line item one is  
16 what appears to be four different stocks or  
17 securities. Do you see that?  
18 A Yes, sir.  
19 Q To the best of your understanding, with  
20 whom were you invested in those stocks? Through whom?  
21 A I presume through AXA.  
22 Q And sir, besides those four stocks or  
23 securities listed there in part one under line item  
24 one, are there any other stocks or securities that you  
25 can see listed on the Schedule D for 2001?

1 Q Did anyone from Wilbanks ever contact you  
 2 for any reason?  
 3 A No, I don't believe so.  
 4 Q Did you ever contact anyone at Wilbanks for  
 5 any reason?  
 6 A No.  
 7 Q You testified earlier that you did glance  
 8 at your AXA statements. Did you look at your balance  
 9 on the front of the statement?  
 10 A I guess that's what I was -- I don't know  
 11 what I was looking at.  
 12 Q Did you ever notice a decline in your  
 13 balance?  
 14 A No, I didn't pay that much attention to it.  
 15 My wife handled everything.  
 16 Q Did you ever notice of any wires going into  
 17 your AXA account?  
 18 A I didn't have a clue about any of them.  
 19 Q Did you ever ask Marsha Shubert to help you  
 20 read the AXA statement?  
 21 A No.  
 22 Q Did you ever ask anyone to help you read  
 23 the AXA statement?  
 24 A Nope.  
 25 Q Are you familiar with the name Shubert and

1 Associates?  
 2 A Yes, ma'am.  
 3 Q And what does that name mean to you?  
 4 A Nothing.  
 5 MR. BRYANT: Interpose an objection.  
 6 Well, he's answered it, but I think it calls for a  
 7 legal conclusion. Once again, what's your answer?  
 8 A Nothing. It meant nothing to me.  
 9 Q What did you think Shubert and Associates  
 10 was?  
 11 A Account of hers.  
 12 Q A bank account?  
 13 A I don't know.  
 14 Q Did you believe she was trading options  
 15 through Shubert and Associates?  
 16 MR. BRYANT: He just answered he doesn't  
 17 know who Shubert and Associates is. So what's the --  
 18 A I don't know how she traded.  
 19 Q I'm sorry, I can't understand with the gum.  
 20 A I say I do not know how she traded or done  
 21 her business.  
 22 Q If you don't know how she did her business,  
 23 why were you comfortable giving her your checkbook?  
 24 MR. BRYANT: Objection.  
 25 A It's been answered once, that gentleman

1 there.  
 2 Q It's not intentional. If you could answer  
 3 it again for me, please.  
 4 A Because I knew the family all their life,  
 5 very reputable. I had no reason to think that she was  
 6 an outlaw.  
 7 Q Did she tell you your balance on a monthly  
 8 basis in your options account?  
 9 A No. Like I told him, 60, 90 days, I'd just  
 10 go in and say, hey, where am I at, Marsha? She'd  
 11 throw me a figure, and I was happy, I left.  
 12 Q Did your balance ever seem to go down in  
 13 your options account?  
 14 A Not to my knowledge.  
 15 Q Did she ever make any kind of guarantees?  
 16 A No.  
 17 Q Were you using your -- the account that the  
 18 options money was going in and out of as your primary  
 19 checking account?  
 20 A The day trading account?  
 21 Q Right.  
 22 A Not really. The Redbud Farm account, our  
 23 horse account, and my wife has an account of her own,  
 24 personal, that was away from that that handled all the  
 25 house stuff and things like that. So pretty much I

1 just kind of let that take care of itself is whatever  
 2 she was doing.  
 3 Q Did you make any kind of purchases out of  
 4 that account?  
 5 A Out of my personal options account?  
 6 Q Yes.  
 7 A I don't remember.  
 8 Q How soon after opening your day trading  
 9 account did she tell you you were making a return?  
 10 A Shoot, I don't have a clue.  
 11 Q Did it seem like you got good results  
 12 pretty quickly?  
 13 A From what she was telling me.  
 14 Q Could you tell me what she told you?  
 15 A Well, you know, some days a couple hundred  
 16 dollars sometimes, maybe \$700 another day, and she did  
 17 occasionally say, yeah, we lost 500, you know, here or  
 18 there, but not very often.  
 19 Q Did you ever think that day trading was  
 20 risky?  
 21 A I knew just getting in investments period,  
 22 stocks, whatever, is risky. Yes, ma'am, I knew it was  
 23 risky, but I was comfortable enough with Ms. Shubert  
 24 that I figured, you know, she talked about stocks and  
 25 things like this, protecting us and things like that,

1 A No.  
 2 Q Did you think you were going to be day  
 3 trading out of that account at all?  
 4 A I don't know. I don't have a clue.  
 5 Q Were you still day trading and putting the  
 6 deposits into your NBC account at that time?  
 7 A More than likely, yeah.  
 8 Q Did you ever talk to anyone at F&M Bank?  
 9 A Nope.  
 10 Q Do you remember who you signed up to get an  
 11 account with, any of the officers?  
 12 A Nope, don't remember.  
 13 Q Mr. Wilbanks, did Marsha Shubert trade on a  
 14 daily basis for you that you were aware of at that  
 15 time? Did you think she was trading daily?  
 16 A I didn't know if she was trading every day.  
 17 You know, I knew it was quite often, sure. She would  
 18 say found a good deal, I wanted to do it, and you  
 19 know, that's just what she did. I don't know if it  
 20 was every single day. I couldn't tell you that.  
 21 Q Did you ever take a trip with Marsha  
 22 Shubert to Cancun?  
 23 A I took a trip with a group to Cancun.  
 24 Q Was Marsha Shubert on that trip?  
 25 A She was, uh-huh.

1 Q Were you aware if she was day trading for  
 2 you on that trip?  
 3 A No. No.  
 4 Q Were you aware if any deposits were made in  
 5 your account while you were on that trip?  
 6 A I don't have a clue.  
 7 Q Are you aware that the Oklahoma Department  
 8 of Securities has a lawsuit against Farmers and  
 9 Merchant's Bank?  
 10 A No, ma'am.  
 11 Q Can you tell me when you learned about  
 12 Marsha Shubert's fraudulent activities?  
 13 A On October the 5th, it had been about 90  
 14 days or so, I went into her office and asked her  
 15 where, you know, Pam and I was at in our accounts, and  
 16 she kind of smiled, carried on a conversation just  
 17 perfect, and got out one of them little stickies and  
 18 she wrote down \$2.8 million she told me is what we  
 19 had. I smiled and said thank you, Marsha. I left and  
 20 the next day she was gone.  
 21 Q Did you think you were still day trading at  
 22 that time?  
 23 A No, no.  
 24 Q So this just would have been your AXA  
 25 account?

1 A I don't know what account it was. She said  
 2 that was our money, that's all she told me, that was  
 3 our money, ours.  
 4 MS. CORNMESSER: Okay. I don't have  
 5 anything further. Pass the witness.  
 6 MR. BRYANT: Want to take a little  
 7 break?  
 8 MR. DAVENPORT: I've got a couple  
 9 follow-up.  
 10 MR. BRYANT: Oh, I'm sorry. Go right  
 11 ahead.  
 12 REDIRECT EXAMINATION  
 13 BY MR. DAVENPORT:  
 14 Q Mr. Wilcox, can you tell me what your  
 15 understanding is as you sit here today of the claims  
 16 that have been brought against you in this suit?  
 17 A Do I understand the claims that have been  
 18 brought against me in the suit?  
 19 Q Can you tell me what your understanding of  
 20 those claims is?  
 21 A No.  
 22 Q Do you have any factual defenses that  
 23 you're asserting in this lawsuit?  
 24 MR. BRYANT: I object. It's really  
 25 calling for a legal conclusion, but if you know

1 anything, fine, but you just said you didn't know what  
 2 the lawsuit was about.  
 3 A I don't know nothing.  
 4 Q You indicated in response to Ms.  
 5 Cornmesser's questions -- or one of them -- that  
 6 something to the effect that Marsha would contact you  
 7 on this day trading and say she had found something  
 8 she thought was a good deal. Was that what happened  
 9 every time she did day trading on your behalf, or is  
 10 that just an occasional occurrence?  
 11 A No, she didn't contact me. Just maybe the  
 12 way I explained it. No, she just traded whenever --  
 13 you know, whenever. I wasn't contacted, no.  
 14 Q You had indicated that Mr. Mathews was the  
 15 one that originally suggested Marsha Shubert to you  
 16 for investment purposes. Did you ever refer anyone to  
 17 her?  
 18 A Knowing that it is a risky business, I  
 19 waited about a year to see if everything was really  
 20 good before I told a few friends about it.  
 21 Q And who did you refer to her?  
 22 MR. BRYANT: Excuse me, he didn't say he  
 23 referred anyone. He told some friends. I'll let him  
 24 answer on the basis he talked to somebody. There's  
 25 not going to be any allowance of an inference that a

1 referral has any legal implication. Go ahead and say  
 2 who you mentioned it to, if you remember.  
 3 A Well, Bobby Hudson -- my friend Bobby, and  
 4 Curtis Sanders, that's it.  
 5 MR. DAVENPORT: No further questions.

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1 WORD FOR WORD REPORTING  
 2 FIRST NATIONAL CENTER, Suite 2220  
 3 Oklahoma City, Oklahoma 73102  
 4 PHONE (405) 232-9673  
 5 FAX (405) 232-9600

6 Correction Sheet  
 7 Witness: Marvin Lee Wilcox Reporter: KV  
 8 Attorney: David Bryant Date: 9/13/06  
 9 Ordering atty: Amanda Commesser, 120 N. Robinson, Ste  
 10 860, OKC 73102

11 Page Line Correction Reason for Correction

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1 IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
 2 STATE OF OKLAHOMA

3 OKLAHOMA DEPARTMENT OF )  
 4 SECURITIES, ex rel IRVING )  
 5 L. FAUGHT, ADMINISTRATOR, )  
 6 et al., )

7 Plaintiffs, )

8 v. ) No. CJ-05-3796

9 ROBERT W. MATHEWS, et al., )

10 Defendants. )

11 JURAT PAGE

12 I, MARVIN LEE WILCOX, of lawful age, do hereby  
 13 state under oath that I have read the foregoing  
 14 transcript of my sworn testimony in its entirety given  
 15 on September 13th, 2006, and that the same is a full,  
 16 true, and correct record of my testimony so given,  
 17 excepting corrections, if any, noted below.

18 Marvin Lee Wilcox, Deponent

19 Subscribed and sworn to before me, a Notary  
 20 Public, this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

21 \_\_\_\_\_  
 22 Notary Public

23 My commission expires:  
 24 \_\_\_\_\_  
 25 \_\_\_\_\_

1 CERTIFICATE

2 STATE OF OKLAHOMA )

3 ) SS

4 COUNTY OF POTTAWATOMIE )

5 I, Kit Vickery, RMR, RDR, Certified

6 Shorthand Reporter duly licensed and qualified in and  
 7 for the State of Oklahoma, DO HEREBY CERTIFY that the  
 8 above-named MARVIN LEE WILCOX was by me first duly  
 9 sworn to testify the truth; that the above and

10 foregoing deposition taken by me in stenotype and  
 11 thereafter transcribed is a true and correct  
 12 transcript of the testimony of the witness; that the  
 13 deposition was taken on September 13th, 2006 at 10:00  
 14 a.m., at 720 NE 63rd, Oklahoma City, State of  
 15 Oklahoma; that I am not an attorney for nor a relative  
 16 of any said parties, or otherwise interested in the  
 17 event of said action.

18 In WITNESS WHEREOF, I have hereunto set my  
 19 hand and seal of office on this 21st day of September,  
 20 2006.

21 \_\_\_\_\_  
 22 Kit M. Vickery, RMR, RDR

IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

OKLAHOMA DEPARTMENT OF )  
SECURITIES, ex rel. IRVING L. )  
FAUGHT, Administrator, et al., )

Plaintiffs, )

VS. )

No. CJ-2005-3796 )

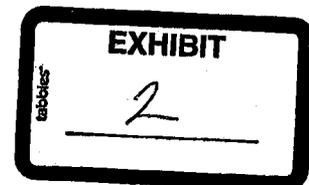
ROBERT W. MATHEWS, )

Defendant. )

\* \* \* \* \*

DEPOSITION OF ROBERT W. MATHEWS  
TAKEN ON BEHALF OF THE PLAINTIFFS  
ON OCTOBER 17, 2006  
IN OKLAHOMA CITY, OKLAHOMA

\* \* \* \* \*



REPORTED BY: KORTNEY V. HOUTS, C.S.R.

1 Schubert?  
 2 A I believe it was in 2001.  
 3 Q And had you kept in some kind of contact with  
 4 Mrs. Schubert over the years since you had first met  
 5 her in 1980?  
 6 A Yes. I was around her most of the time.  
 7 Q To the best of your understanding, do you  
 8 know how long she had been in the investment business  
 9 after having moved on from the Guthrie bank?  
 10 A No. Huh-uh.  
 11 Q Were you aware in 2001 that she was in the  
 12 investment business?  
 13 A Yes.  
 14 Q Did anyone refer you to her?  
 15 A My dad.  
 16 Q And when you first communicated with Marsha  
 17 Schubert about doing some investing with or through  
 18 her, did you meet with her in person, do this over the  
 19 telephone? How did that occur?  
 20 A In person.  
 21 Q And where did that take place?  
 22 A Crescent.  
 23 Q Was it in her office?  
 24 A Yes, sir.  
 25 Q And do you recall what kind of investment she

1 discussed --  
 2 A No.  
 3 Q -- on that first meeting?  
 4 A No.  
 5 Q Did you go ahead and make an investment with  
 6 Marsha Schubert on that first meeting?  
 7 A Not on the first meeting.  
 8 Q About when did you go ahead and invest with  
 9 her?  
 10 A It was probably a couple of months later.  
 11 Q And did you open an investment account at  
 12 that time?  
 13 A Yes.  
 14 Q And do you recall who that was with?  
 15 A AXA.  
 16 Q How many accounts did you open at that time?  
 17 A I don't know.  
 18 Q You don't know?  
 19 A I don't know.  
 20 Q Do you recall what your initial investment  
 21 amount was?  
 22 A 75,000, I believe, roughly.  
 23 Q Did you make that in the form of cash or a  
 24 check?  
 25 A Check.

1 Q And was that payable to AXA?  
 2 A Yes.  
 3 Q Mr. Mathews, after you opened one or more AXA  
 4 accounts with Marsha Schubert in 2001, did you receive  
 5 investment account statements from AXA?  
 6 A Yes.  
 7 Q And you received those in the mail at your  
 8 home?  
 9 A Yes.  
 10 Q Do you recall how often you received those?  
 11 A No.  
 12 Q On some kind of regular basis though?  
 13 A Yeah, I guess.  
 14 Q Do you have any specific recollection of  
 15 opening additional accounts subsequent to 2001?  
 16 A No.  
 17 Q Did you make any other investments besides  
 18 this initial \$75,000?  
 19 A She did, I believe, but I just turned it over  
 20 to her. I don't know what she did.  
 21 Q You don't recall writing anymore checks --  
 22 A No.  
 23 Q -- to AXA or anyone else --  
 24 A No.  
 25 Q -- besides this one \$75,000?

1 A That was it.  
 2 Q When you received account statements in the  
 3 mail from AXA Advisors, did you ever review those  
 4 statements?  
 5 A No.  
 6 Q Any particular reason why not?  
 7 A She was taking care of it. I didn't  
 8 understand it anyway.  
 9 Q Was there a point, Mr. Mathews, when you  
 10 began doing any investing or trading with Marsha  
 11 Schubert herself as opposed to AXA Advisors?  
 12 A I don't know.  
 13 MR. BRYANT: Go ahead.  
 14 Q (By Mr. Davenport) What kind of investing  
 15 did you understand Marsha Schubert was doing on your  
 16 behalf?  
 17 A I'm not sure. She just told me she'd take  
 18 care of it, and she just did it on her own.  
 19 Q Was there a time that you believed Marsha  
 20 Schubert was conducting options trading on your behalf?  
 21 A Yes. She told me she was trading options.  
 22 Q Do you know if that was taking place all  
 23 along from 2001 forward or --  
 24 A I don't --  
 25 Q -- did it start after that?

1 A I don't know.  
 2 Q And whenever it was that Mrs. Schubert began  
 3 the options trading on your behalf, did you have any  
 4 understanding as to what that was?  
 5 A No.  
 6 Q Did you ever fill out an account application  
 7 with any options trading company so she could trade  
 8 options on your behalf?  
 9 A No.  
 10 Q Did you ever give her any check or additional  
 11 moneys to begin options trading on your behalf?  
 12 A No.  
 13 Q Did you ever get any investment account  
 14 statements in the mail from any option trading company  
 15 like you testified you did from AXA Advisors?  
 16 A No. No.  
 17 Q How were you kept apprised of what was  
 18 supposedly going on with this options trading?  
 19 A Just asked her once in a while.  
 20 Q And what would she tell you?  
 21 A Everything's good.  
 22 Q Did she ever give you a balance or anything  
 23 of that nature?  
 24 A From time to time if I asked for it.  
 25 Q Did you ever get any kind of written

1 A I never seen anything on them about the  
 2 options trading.  
 3 Q Was there some other kind of trading that you  
 4 believe Marsha Schubert did on your behalf?  
 5 A I don't know.  
 6 Q Did you ever discuss day trading with Marsha  
 7 Schubert?  
 8 A Yes, she did. Yes, I did.  
 9 Q And what was the substance of that  
 10 discussion?  
 11 A She asked if she could do some day trading  
 12 for us, and I said yes.  
 13 Q Again, did you fill out any kind of account  
 14 application for her to start day trading on your  
 15 behalf?  
 16 A No.  
 17 Q Did you give her a check or any other form of  
 18 funds to open a day trading account?  
 19 A Yes.  
 20 Q Okay. What did you give her relative to day  
 21 trading?  
 22 A She just had some signed checks.  
 23 Q On your personal checking account?  
 24 A Yes.  
 25 Q And what was the name of the bank where you

1 documents from Marsha about the options trading?  
 2 A Not documents.  
 3 Q Did Marsha Schubert or anyone with whom she  
 4 was affiliated ever send you like a 1099 tax form or  
 5 K-1 tax form relative to options trading?  
 6 A Related to options trading?  
 7 Q Yes, sir.  
 8 A Not that I know of.  
 9 Q How, if at all, did you report your earnings  
 10 or losses related to options trading on your tax  
 11 returns?  
 12 A My accountant asked her for some information.  
 13 Q And who is that?  
 14 A Jeff Trent.  
 15 Q Do you know whether or not Marsha ever  
 16 provided him with any documentation?  
 17 A Yes, she did.  
 18 Q And did you see any of that documentation?  
 19 A No.  
 20 Q Did you review your tax returns in this 2001  
 21 through 2004 time period before they were signed and  
 22 sent off to the --  
 23 A Yes.  
 24 Q Do you recall whether you had made money or  
 25 lost money in each of those years from options trading?

1 had your checking account?  
 2 A NBC.  
 3 Q And that's in Kingfisher?  
 4 A Kingfisher.  
 5 Q Did you inquire of Marsha Schubert why she  
 6 would have need to keep your signed checks on hand to  
 7 day trade?  
 8 A Did I ask her why?  
 9 Q Yes, sir.  
 10 A No.  
 11 Q Did you have any understanding as to why?  
 12 A I thought she just needed to -- you know,  
 13 found a deal, she needed to buy it. That's what she  
 14 told me.  
 15 Q Did you think that was in any way unusual  
 16 that somebody would ask you to provide them with signed  
 17 checks on your bank account?  
 18 A Not really.  
 19 Q Relative to any day trading that Marsha  
 20 Schubert may have done on your behalf, did you ever  
 21 receive any account statements?  
 22 A From her?  
 23 Q From anyone.  
 24 A No.  
 25 Q And, again, how were you able to keep track

1 THE WITNESS: Yes.  
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1 ERRATA SHEET  
 2 WITNESS: ROBERT W. MATHEWS  
 3 DATE: OCTOBER 17, 2006  
 4 STYLE: OKLAHOMA DEPT. OF SECURITIES, et al.  
 vs.  
 5 ROBERT W. MATHEWS  
 6 REPORTER: KORTNEY V. HOUTS, C.S.R.  
 7 Page Line Correction  
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1 JURAT  
 2 I, ROBERT W. MATHEWS, state under oath that I have  
 3 read the above and foregoing deposition in its entirety  
 4 and that the same is a full, true, and correct  
 5 transcription of my testimony so given except for the  
 6 corrections noted.  
 7  
 8 \_\_\_\_\_  
 ROBERT W. MATHEWS  
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 14 SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned  
 15 Notary Public in and for the State of \_\_\_\_\_,  
 16 on the \_\_\_\_\_ day of \_\_\_\_\_, 2006.  
 17  
 18 \_\_\_\_\_  
 NOTARY PUBLIC  
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 21  
 22 My Commission Expires: \_\_\_\_\_  
 23  
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 25 REPORTED BY: KORTNEY V. HOUTS, C.S.R.

1 CERTIFICATE  
 2  
 3 State of Oklahoma )  
 ) SS:  
 4 County of Oklahoma )  
 5  
 6 I, Kortney V. Houts, Certified Shorthand Reporter  
 7 within and for the State of Oklahoma, do hereby certify  
 8 that the above-named witness was first duly sworn to  
 9 testify to the truth, the whole truth, and nothing but  
 10 the truth in the case aforesaid; that the above and  
 11 foregoing deposition was taken in shorthand and  
 12 thereafter transcribed; and that the same was taken on  
 13 October 17, 2006, in the City of Oklahoma City, County  
 14 of Oklahoma, State of Oklahoma, and under the  
 15 stipulations set out, and I am not attorney for nor  
 16 relative of any of said parties nor otherwise  
 17 interested in the event of said action.  
 18 IN WITNESS WHEREOF, I have hereunto set my hand  
 19 and official seal this 18th day of October, 2006.  
 20  
 21 \_\_\_\_\_  
 KORTNEY V. HOUTS, CSR  
 22 Oklahoma Certified Shorthand Reporter  
 Certificate No. 1804  
 Exp. Date: December 31, 2006  
 23  
 24  
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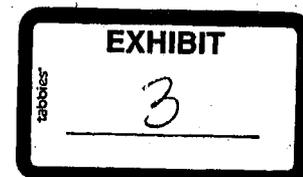
IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT COURT OF OKLAHOMA

IN RE: )  
 )  
ROBERT WILLIAM MATHEWS, ) Case No. 07-10108-TMW  
 ) Chapter 7  
Debtor. )

DEPOSITION OF ROBERT MATHEWS  
TAKEN ON BEHALF OF THE RECEIVER AND CREDITOR  
IN OKLAHOMA CITY, OKLAHOMA  
ON JUNE 19, 2007

WORD FOR WORD REPORTING, L.L.C.  
100 NORTH BROADWAY  
SUITE 3250  
OKLAHOMA CITY, OKLAHOMA 73102  
(405) 232-9673

REPORTED BY: GINGER MILAM, CSR



1 A. Yes, sir.  
 2 Q. Is that the original amount that borrowed from them,  
 3 or have you increased that amount more recently?  
 4 A. No, that was the original amount. It started out  
 5 at, I think, 220 or something.  
 6 Q. And J.T. Holt is your loan officer?  
 7 A. Yes, sir.  
 8 Q. Now, you didn't -- you built the house as a cabin  
 9 originally and then you've added onto it?  
 10 A. Yes.  
 11 Q. How many times have you added onto it?  
 12 A. Once.  
 13 Q. Once? And you said you spent about \$75,000 when you  
 14 added onto it?  
 15 A. Approximately.  
 16 Q. After Marsha Schubert, to quote you, quote, went  
 17 down, or business went down, what investigation did you do?  
 18 A. None, other than just talk to people and try to  
 19 figure out what the hell had happened.  
 20 Q. Yeah. Did you lose any money when she, quote, went  
 21 down?  
 22 A. Well, I guess I did. I mean, she told me I had damn  
 23 near \$2 million in there.  
 24 Q. She told you that you had a couple million dollars?  
 25 A. Approximately.

1 deposits?  
 2 A. Take them to the bank?  
 3 Q. Yes.  
 4 A. Yes, a time -- a few times.  
 5 Q. Okay. So tell me how that would work.  
 6 A. She would see if I could take the deposits to the  
 7 bank, she had an envelope ready in the office, I'd pick it up,  
 8 take it over there and give it to the teller.  
 9 Q. Which bank?  
 10 A. NBC.  
 11 Q. Okay. So you'd drive to NBC?  
 12 A. Yes.  
 13 Q. And then she'd give you a deposit slip back or the  
 14 bank would?  
 15 A. I usually didn't even take that, I just left the  
 16 deposit with it.  
 17 Q. Okay. Why would you make deposits for her?  
 18 A. Well, she -- it's like saving her a trip, I thought.  
 19 Q. Okay.  
 20 A. If she'd asked me to -- you know, they were busy or  
 21 could I take the check to some -- checks to the bank or take  
 22 something to the bank for her.  
 23 Q. Okay.  
 24 A. I might drop something off at KB&T, it's a sealed  
 25 envelope. I'd just drop it off there and say this is from

1 Q. Did you ever receive any statements to that effect?  
 2 A. No.  
 3 Q. Did you think that was kind of odd to have money and  
 4 not receive statements?  
 5 A. A little bit.  
 6 Q. What did you do about that, if anything?  
 7 A. Nothing, I just asked her. I trusted --  
 8 Q. What did she say?  
 9 A. She'd tell me what I -- approximately what I had in  
 10 there.  
 11 Q. Did you ever ask her why you weren't receiving  
 12 statements?  
 13 A. No, not really.  
 14 Q. Did you believe you had \$2 million?  
 15 A. Yes.  
 16 Q. And did you ever ask her why there was such large  
 17 volumes on your day trading?  
 18 A. No.  
 19 MR. JACKSON: We'll take a break. I think I'm about  
 20 done.  
 21 (Short break)  
 22 Q. (By Mr. Jackson) Mr. Mathews, okay, how would you  
 23 know when to give her new checks?  
 24 A. She would ask.  
 25 Q. Okay. Were there times that she asked you to make

1 Marsha Schubert.  
 2 Q. Okay. And did you do that on more than one  
 3 occasion?  
 4 A. Oh yeah, several times.  
 5 Q. Over a two or three-year period?  
 6 A. Well, I don't think it was that long but -- when she  
 7 was doing it on an everyday basis, practically, I did several  
 8 times.  
 9 Q. She was doing it on an everyday basis; what is it?  
 10 A. The day trading.  
 11 Q. Okay.  
 12 A. That's what I thought it --  
 13 Q. So when she was doing it on an everyday basis, you  
 14 might do it two or three days a week for her?  
 15 A. Yes, it's possible. Lance took them sometimes,  
 16 Marvin took them sometimes, she sent secretaries, she took  
 17 them a lot.  
 18 Q. So you knew that Lance was taking them and Marvin  
 19 was taking them?  
 20 A. Yes.  
 21 Q. Did you know that they were having large amounts of  
 22 money run through their account like your account?  
 23 A. Yes.  
 24 Q. I mean, I saw one statement, as much as \$9 million a  
 25 month was going through your account?

1 A. Yes.  
 2 Q. And did you know that there was that much money  
 3 going through their accounts also?  
 4 A. Yes.  
 5 Q. Did you ever make deposits at F&M Bank?  
 6 A. No.  
 7 Q. Do you know if Marvin or Lance ever made --  
 8 A. I don't think she did any day trading in F&M Bank.  
 9 Q. Okay.  
 10 A. I know she didn't in my account.  
 11 Q. Okay. On the day trades that she did for you, would  
 12 you say she made money on 95 percent of the trades or what --  
 13 how would you estimate that?  
 14 A. Probably, maybe a little bit less, I don't know  
 15 whether -- she loss, seemed to some, but I never kept track.  
 16 I never looked at it.  
 17 Q. But you were making enough money that you were able  
 18 to kind of support -- support yourself; is that correct?  
 19 A. Yes.  
 20 Q. Did you have an impression whether you were making  
 21 five or 10,000, \$20,000 a month?  
 22 A. Five, six, seven sometimes, yeah, eight.  
 23 Q. Okay. And you'd just use that money to live on and  
 24 do certain things?  
 25 A. Yeah, yeah, farm.

1 Q. Okay.  
 2 A. Now or then.  
 3 (Exhibit No. 2 marked for identification and made a  
 4 part of the record)  
 5 Q. (By Mr. Jackson) I'm going to hand you a document  
 6 that's marked Exhibit 2. I'm going to represent to you that  
 7 this is a financial statement that came from the records of  
 8 NBC. Do you recognize that document?  
 9 A. Yes.  
 10 Q. Tell me what that document is.  
 11 A. Financial statement.  
 12 Q. Who would have prepared that financial statement?  
 13 A. I suppose I did.  
 14 Q. Would you have done that yourself, or would your  
 15 accountant have done that?  
 16 A. Oh no, I wrote it -- I'd write it up and Ellen might  
 17 type it up.  
 18 Q. Now, do you still own that farm and lake property  
 19 and house and barn with four corrals, shop and horse barn?  
 20 A. Yes.  
 21 Q. Okay. Do you still own the -- you still got the  
 22 six-and-a-half acres in Cimarron City?  
 23 A. Yes.  
 24 Q. What about that Cody feed overhead bin?  
 25 A. Yes.

1 Q. Farm. Support your habit?  
 2 A. Yeah.  
 3 Q. Were there times that Marsha was out of town on  
 4 vacation, etcetera, that you had to make deposits for her?  
 5 A. Yes.  
 6 Q. Tell me how that worked.  
 7 A. She'd have a -- an envelope for each day, or I guess  
 8 her girls would take it sometimes when we didn't.  
 9 Q. So she'd been out of town, and she'd have envelopes  
 10 to be deposited each day?  
 11 A. Yes.  
 12 Q. And so, like, if she was out of town for a week  
 13 she'd have deposits -- envelopes for Monday and for Tuesday  
 14 and for Wednesday and Thursday?  
 15 A. She was never out of town for a week but two or  
 16 three days once in awhile seem like.  
 17 Q. But she'd always have envelopes for you to deposit  
 18 each day?  
 19 A. Yes.  
 20 Q. Did you think that was odd?  
 21 A. Not really. I didn't --  
 22 Q. How -- how was she day trading?  
 23 A. I don't know.  
 24 Q. You never did know?  
 25 A. I don't know nothing about it.

1 Q. What about the two cube feeders?  
 2 A. Yes.  
 3 Q. What about the 21-foot Krause disc?  
 4 A. No.  
 5 Q. What happened to it?  
 6 A. Sold it.  
 7 Q. Who did you sell it to?  
 8 A. Somebody from Hennessey, I don't remember his name.  
 9 Q. What did you get for it?  
 10 A. Oh, 5500, 6,000, something like that.  
 11 Q. Did he pay you cash or by check?  
 12 A. Check.  
 13 Q. And did you deposit it or cash it?  
 14 A. Deposit it.  
 15 Q. Do you still have your shop equipment and tools?  
 16 A. Yes.  
 17 Q. And would you say that \$25,000 is about what your  
 18 shop equipment and tools are worth?  
 19 A. Possibly.  
 20 Q. Okay. You got a '91, 350 truck with the bale spike,  
 21 do you still have that?  
 22 A. Yes.  
 23 Q. And a '94 Sooner aluminum stock trailer?  
 24 A. No, I don't have that.  
 25 Q. What happened to it?

1 MR. JACKSON: Bear with me just a second.  
 2 (Off the record)  
 3 Q. (By Mr. Jackson) Now, on your Declaration of  
 4 Intent, you set out that you're going to reaffirm with  
 5 Communication Federal Credit Union on your pickup?  
 6 A. Yes.  
 7 Q. And then Farm and Credit, you're going to reaffirm  
 8 with them?  
 9 A. Yes.  
 10 Q. And Farmers and Merchants Bank, you're reaffirming?  
 11 A. Yes.  
 12 Q. And Ford Motor Credit, you're reaffirming?  
 13 A. Yes.  
 14 Q. Are you current with all these payments?  
 15 A. Yes.  
 16 Q. Where are you getting the money to make these  
 17 payments?  
 18 A. Working.  
 19 Q. Where are you working?  
 20 A. I work for Crescent Services, I farm a little bit,  
 21 Ellen helps pay a bill or two. That's one reason I borrowed  
 22 so much damn money, I can't get by.  
 23 Q. And you're reaffirming with NBC?  
 24 A. Yes.  
 25 MR. JACKSON: I don't have any further questions.

1 CERTIFICATE  
 2 STATE OF OKLAHOMA )  
 ) SS:  
 3 COUNTY OF OKLAHOMA )  
 4  
 5 I, GINGER MILAM, a certified shorthand reporter  
 6 within and for the State of Oklahoma, certify that ROBERT  
 7 MATHEWS was by me sworn to testify the truth; that the  
 8 deposition was taken by me in stenotype and thereafter  
 9 transcribed by computer and is a true and correct transcript  
 10 of the testimony of the witness; that the deposition was taken  
 11 on the 19th day of June 2007, in Oklahoma City, Oklahoma; that  
 12 I am not an attorney for or a relative of any party, or  
 13 otherwise interested in this action.  
 14 Witness my hand and seal of office on this the 29th  
 15 day of June 2007.  
 16  
 17  
 18 \_\_\_\_\_  
 GINGER MILAM, CSR  
 Oklahoma CSR No. 01595  
 Expiration Date December 31, 2008  
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1 Ms. Cornmesser, do you have any?  
 2 MS. CORNMESSER: I don't have anything further.  
 3 MR. JACKSON: I'm not sure whether you have the  
 4 right to read and sign in the federal system or not.  
 5 THE WITNESS: Pardon?  
 6 MR. JACKSON: I said I'm not sure whether you have  
 7 the right to read and sign in the federal system or not. I --  
 8 so we'll pass the witness. You may have questions, J.T., I  
 9 don't know.  
 10 MR. TRENT: I actually have a lot of questions, but  
 11 I don't think it's appropriate to ask them at this time.  
 12 MR. JACKSON: We're done.  
 13 (Witness excused)  
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Dennis Themer  
April 1, 2005

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IN THE DISTRICT COURT OF LOGAN COUNTY  
STATE OF OKLAHOMA

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

vs. )

) CASE NO. CJ-2004-256

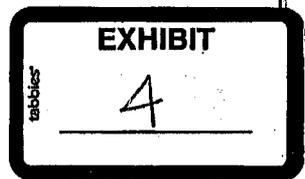
MARSHA SCHUBERT, an individual )  
and d/b/a SCHUBERT & ASSOCIATES; )  
and SCHUBERT & ASSOCIATES, an )  
unincorporated association, )  
Defendant. )

\* \* \* \* \*

DEPOSITION OF DENNIS THEMER  
taken on behalf of the  
Plaintiff  
on April 1, 2005  
in Oklahoma City, Oklahoma.

\* \* \* \* \*

WORD FOR WORD REPORTING, L.L.C.  
2220 FIRST NATIONAL CENTER  
120 NORTH ROBINSON AVENUE  
OKLAHOMA CITY, OKLAHOMA 73102



Reported by: MARTI M. MARTIN, C.S.R.

COPY

1 Q Okay.

2 A I do not have a personal relationship with Marsha  
3 Schubert.

4 Q Did someone introduce you to her?

5 A Yes.

6 Q And who would that be?

7 A I believe Marvin Wilcox.

8 Q Did you have an Axa account with Mrs. Schubert?

9 A Yes.

10 Q Anyone encourage you to open this account?

11 A Marvin.

12 Q Why?

13 A He said he was doing well, getting good returns. I  
14 personally had an account with another broker that there was  
15 no activity. I think I was a very small fish in his big pond.

16 Q When did you open your Axa account?

17 A I don't want to speculate.

18 Q Can you give me a year? Was it 2002, 2003, 2004?

19 A I don't want to guess. I can bring you my  
20 statement, if you'd like.

21 Q That's fine. How much money did you put in the  
22 account when you opened it?

23 A Approximately \$25,000.

24 Q Where did that money come from?

25 A Came from a rollover IRA.

1 Q Jim?

2 A Talkington.

3 Q Okay. Did you ever communicate with Bob Matthews  
4 about the activity going in and out of his account?

5 A Yes.

6 Q And what did he tell you?

7 A We told him we weren't comfortable with the  
8 uncollected balances.

9 Q But I thought you said it was okay because he was a  
10 long-term customer?

11 A He was a long-term customer. This was short-term,  
12 but this was going -- the volumes kept getting greater. We  
13 said, The volumes are getting too great, we're not going to  
14 take that risk.

15 Q So do you remember when you told him that?

16 A No.

17 Q What did he tell you when you told this to him?

18 A He said that was fine and they'd try to get it on an  
19 uncollected -- collected balance.

20 Q Did he explain what was going on?

21 A He said they were day trading.

22 Q Who is "they"?

23 A He and Marsha Schubert.

24 Q Had you noticed a substantial increase in his  
25 deposit activity from the beginning of 2000 until 2002?

1 A Primarily lending.

2 Q Does he still work at the bank?

3 A No.

4 Q When did he leave?

5 A I don't want to speculate. Approximately '02.

6 Q Okay. End of '02?

7 A Yes.

8 Q Why did he leave?

9 A He felt like he had substantial enough returns on  
10 his investments. He also had some horses, and he had sold  
11 some decent horses. I'm speculating on -- I mean, this is  
12 speculation on my part. I don't want to speculate, so I'm  
13 going to stop there.

14 Q Okay. What was his salary while he was employed at  
15 NBanc?

16 A Approximately 40,000.

17 Q Did you notice a change of lifestyle after he left  
18 the bank?

19 A He built a house.

20 Q What was he living in before?

21 A A mobile home.

22 Q Did you find that to be a substantial increase?

23 A Yes.

24 Q What car was he driving when he worked at the bank?

25 A A Ford diesel pickup, as I recall.

1 Q What's he drive now?

2 A I don't know.

3 Q Do you know what he's driven in the past couple of  
4 years?

5 A I know he's had a Ford pickup and a Rav 4 and I  
6 believe a Cadillac.

7 Q Did he ever explain to you his returns or any  
8 activity that Mrs. Schubert had with him to back up the change  
9 of lifestyle?

10 A He -- yes.

11 Q What did he tell you?

12 A He said he was getting approximately 20 to  
13 30 percent return.

14 Q Did you find that a little hard to believe?

15 A Yes and no. At some points it's hard to believe,  
16 and other points I can see it happening.

17 Q When can you see it happening?

18 A There are certainly 20 percent returns out there  
19 today if you can find them.

20 Q I'm going to show you what's marked State's Exhibit  
21 No. 3. This is an analysis prepared from Marvin Wilcox's bank  
22 statements that were subpoenaed by the Department. From  
23 January 1, 2003 through February 9, 2004 Mr. Wilcox had an  
24 average monthly negative collected balance. Why was he  
25 permitted to have this negative balance for so long?

1 A I don't recall.  
2 Q Did Mr. Anderson tell you that he had any concerns  
3 about the activity?  
4 A He was concerned about the uncollected funds.  
5 Q So did it stop at your bank after you talked to him?  
6 A If you look at the exhibits, it appears to have.  
7 Q When you asked Marsha about wiring funds into the  
8 account, what did she tell you?  
9 A She initially said she would go open accounts there  
10 where they'd clear simultaneously.  
11 Q She would open accounts at NBanC?  
12 A No.  
13 Q She would open accounts at F&M?  
14 A The customers. The three would; Wilcox, Berry, and  
15 Matthews.  
16 Q So they would no longer run through NBanC?  
17 A Exactly.  
18 Q So that was going to be the solution, everything  
19 would then be run through F&M Bank?  
20 A Exactly.  
21 Q So you really didn't need to clear up the  
22 uncollected balances?  
23 A We just said we were not going to tolerate  
24 uncollected balances.  
25 Q Before March of 2004, were there regular drawings of

1 Q Who was she visiting with?  
2 A I don't know.  
3 Q Did she ever visit with Jeff Wilcox?  
4 A I do not know. Where my office sits, I might could  
5 see somebody in the lobby, but I cannot see the other offices,  
6 Q Jeff ever tell you that Marsha came in to visit with  
7 him?  
8 A Not that I recall.  
9 Q Do you have any other customers who have the same  
10 type of transactions, volume level, these kind of amounts?  
11 A Yes.  
12 Q And what would cause them to have these type of  
13 transactions? Is it day trading as well?  
14 A No.  
15 Q What's their reasoning?  
16 A Cattle.  
17 Q So these are the only three individuals in your bank  
18 that had this kind of volume and activity for day trading?  
19 A For day trading, that I'm aware of, yes.  
20 Q Did you think that -- is it a fact that the moneys  
21 in these three gentlemen's accounts were higher than anybody  
22 else you had in the bank on a daily basis?  
23 A Volume wise?  
24 Q Uh-huh.  
25 A No.

C E R T I F I C A T E

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STATE OF OKLAHOMA )  
 )  
COUNTY OF McCLAIN )

I, MARTI M. MARTIN, Certified Shorthand Reporter  
within and for the State of Oklahoma, do hereby certify  
there came before me the deponent herein, namely DENNIS  
THEMER, who was by me duly sworn to testify to the truth and  
nothing but the truth concerning the matters in this case.

I further certify that the foregoing transcript is  
a true and correct transcript of my original stenographic  
notes.

I further certify that I am neither attorney or  
counsel for, nor related to or employed by any of the  
parties to the action in which this deposition is taken; and  
furthermore, that I am not a relative or employee of any  
attorney or counsel employed by the parties hereto or  
financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand  
and affixed my seal this 15th day of April, 2005.

*Marti M. Martin*

MARTI M. MARTIN, C.S.R.

CSR # 01730

Marti M. Martin  
Oklahoma Certified Shorthand Reporter  
Certificate No. 1730  
Exp. Date: December 31, 2006

Form **1040** U.S. Individual Income Tax Return **2002**

(99) IRS use only -- Do not write or staple in this space.

Department of the Treasury -- Internal Revenue Service

**Label**  
(See instructions.)

**Use the IRS label.**  
Otherwise, please print or type.

**Presidential Election Campaign**  
(See instructions.)

For the year Jan 1 - Dec 31, 2002, or other tax year beginning , 2002, ending , 20		OMB No. 1545-0074
Your first name <b>MARVIN</b>	MI Last name <b>L WILCOX</b>	Your social security number <b>445-48-1671</b>
If a joint return, spouse's first name <b>PAMELA</b>	MI Last name <b>J WILCOX</b>	Spouse's social security number <b>502-90-8126</b>
Home address (number and street). If you have a P.O. box, see instructions. <b>P O BOX 106</b>		<b>▲ Important! ▲</b> You must enter your social security number(s) above.
City, town or post office. If you have a foreign address, see instructions. <b>KINGFISHER</b>		
Apartment no.		
State ZIP code <b>OK 73750</b>		

**Note:** Checking "Yes" will not change your tax or reduce your refund.  
 Do you, or your spouse if filing a joint return, want \$3 to go to this fund? ...  Yes  No  Yes  No

**Filing Status**

Check only one box.

- 1  Single
- 2  Married filing jointly (even if only one had income)
- 3  Married filing separately. Enter spouse's SSN above & full name here ...
- 4  Head of household (with qualifying person). (See instructions.) If the qualifying person is a child but not your dependent, enter this child's name here ...
- 5  Qualifying widow(er) with dependent child (year spouse died ...). (See instructions.)

**Exemptions**

If more than five dependents, see instructions.

6a  Yourself. If your parent (or someone else) can claim you as a dependent on his or her tax return, do not check box 6a

b  Spouse

(1) First name	Last name	(2) Dependent's social security number	(3) Dependent's relationship to you	(4) <input checked="" type="checkbox"/> if qualifying child for child tax credit (see instrs)
				<input type="checkbox"/>

d Total number of exemptions claimed ... 2

**Income**

Attach Forms W-2 and W-2G here. Also attach Form(s) 1099-R if tax was withheld.

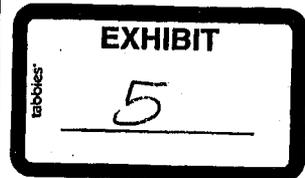
If you did not get a W-2, see instructions.

Enclose, but do not attach, any payment. Also, please use Form 1040-V.

7	Wages, salaries, tips, etc. Attach Form(s) W-2	7	61,944.
8a	Taxable interest. Attach Schedule B if required	8a	171.
b	Tax-exempt interest. Do not include on line 8a	8b	
9	Ordinary dividends. Attach Schedule B if required	9	259.
10	Taxable refunds, credits, or offsets of state and local income taxes (see instructions)	10	
11	Alimony received	11	
12	Business income or (loss). Attach Schedule C or C-EZ	12	-214.
13	Capital gain or (loss). Att Sch D if reqd. If not reqd, ck here	13	16,861.
14	Other gains or (losses). Attach Form 4797	14	
15a	IRA distributions	15a	
b	Taxable amount (see instrs)	15b	
16a	Pensions and annuities	16a	
b	Taxable amount (see instrs)	16b	
17	Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E	17	5,078.
18	Farm income or (loss). Attach Schedule F	18	1,654.
19	Unemployment compensation	19	
20a	Social security benefits	20a	
b	Taxable amount (see instrs)	20b	
21	Other income	21	
22	Add the amounts in the far right column for lines 7 through 21. This is your total income	22	85,753.

**Adjusted Gross Income**

23	Educator expenses (see instructions)	23	
24	IRA deduction (see instructions)	24	
25	Student loan interest deduction (see instructions)	25	
26	Tuition and fees deduction (see instructions)	26	
27	Archer MSA deduction. Attach Form 8853	27	
28	Moving expenses. Attach Form 3903	28	
29	One-half of self-employment tax. Attach Schedule SE	29	102.
30	Self-employed health insurance deduction (see instructions)	30	
31	Self-employed SEP, SIMPLE, and qualified plans	31	
32	Penalty on early withdrawal of savings	32	
33a	Alimony paid b Recipient's SSN	33a	
34	Add lines 23 through 33a	34	102.
35	Subtract line 34 from line 22. This is your adjusted gross income	35	85,651.



Tax and Credits

Standard Deduction for -

People who checked any box on line 37a or 37b or who can be claimed as a dependent, see instructions.

All others: Single, \$4,700

Head of household, \$6,900

Married filing jointly or Qualifying widow(er), \$7,850

Married filing separately, \$3,925

Table with columns for line number, description, and amount. Includes lines 36-55 covering Adjusted Gross Income, Deductions, and Credits.

Other Taxes

Table with columns for line number, description, and amount. Includes lines 56-61 covering Self-employment tax, Social Security, and Household employment taxes.

Payments

If you have a qualifying child, attach Schedule EIC.

Table with columns for line number, description, and amount. Includes lines 62-69 covering Federal income tax withheld, EIC, and other payments.

Refund

Direct deposit? See instructions and fill in 71b, 71c, and 71d.

Table with columns for line number, description, and amount. Includes lines 70-72 covering refundable amounts and estimated tax.

Amount You Owe

Table with columns for line number, description, and amount. Includes lines 73-74 covering amount owed and tax penalty.

Third Party Designee

Do you want to allow another person to discuss this return with the IRS (see instructions)? [X] Yes. Complete the following. [ ] No

Sign Here

Joint return? See instructions. Keep a copy for your records.

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Paid Preparer's Use Only

Preparer's signature: JEFFREY C. TRENT, CPA, INC. Date: 09/23/2003. Firm's name: JEFFREY C. TRENT, CPA, INC. 915 WEST MAIN STREET YUKON OK 73099. EIN: 73-1054385. Phone no.: (405) 354-4879.

Name(s) shown on return. Do not enter name and social security number if shown on Page 1.

Your social security number

MARVIN L & PAMELA J WILCOX

445-48-1671

Note. If you report amounts from farming or fishing on Schedule E, you must enter your gross income from those activities on line 41 below. Real estate professionals must complete line 42 below.

Part II Income or Loss From Partnerships and S Corporations

Note. If you report a loss from an at-risk activity, you must check either column (e) or (f) on line 27 to describe your investment in the activity. See instructions. If you check column (f), you must attach Form 6198.

Table with 6 columns: (a) Name, (b) Enter P for partnership; S for S corporation, (c) Check if foreign partnership, (d) Employer identification number, (e) All is at risk, (f) Some is not at risk. Row 27: SCHUBERT & ASSOCIATES, P, 75-2973658, X.

Summary table for Part II with columns: (g) Passive loss allowed, (h) Passive income from Schedule K-1, (i) Nonpassive loss from Schedule K-1, (j) Section 179 expense deduction from Form 4562, (k) Nonpassive income from Schedule K-1. Includes rows for Totals and lines 29-31.

Part III Income or Loss From Estates and Trusts

Table with 2 columns: (a) Name, (b) Employer ID no. Rows A and B.

Summary table for Part III with columns: (c) Passive deduction or loss allowed, (d) Passive income from Schedule K-1, (e) Deduction or loss from Schedule K-1, (f) Other income from Schedule K-1. Includes rows for Totals and lines 34-36.

Part IV Income or Loss From Real Estate Mortgage Investment Conduits (REMICs) - Residual Holder

Table with 5 columns: (a) Name, (b) Employer identification number, (c) Excess inclusion from Schedules Q, line 2c, (d) Taxable income (net loss) from Schedules Q, line 1b, (e) Income from Schedules Q, line 3b. Includes line 38.

Part V Summary

Summary table for Part V with rows 39-42. Row 39: Net farm rental income or (loss) from Form 4835. Row 40: Total income or (loss). Row 41: Reconciliation of Farming and Fishing Income. Row 42: Reconciliation for Real Estate Professionals.

Form 1040 U.S. Individual Income Tax Return 2002

Department of the Treasury - Internal Revenue Service

(99) IRS use only - Do not write or staple in this space.

Label (See instructions.)

Use the IRS label. Otherwise, please print or type.

Presidential Election Campaign (See instructions.)

For the year Jan 1 - Dec 31, 2002, or other tax year beginning 2002, ending 20. Your first name MI Last name ROBERT W MATHEWS. Home address P.O. BOX 533. State ZIP code OK 73028.

Important! You must enter your social security number(s) above.

Note: Checking 'Yes' will not change your tax or reduce your refund. Do you, or your spouse if filing a joint return, want \$3 to go to this fund? Yes No

Filing Status

Check only one box.

- 1 Single
2 Married filing jointly (even if only one had income)
3 Married filing separately. Enter spouse's SSN above & full name here
4 Head of household (with qualifying person)
5 Qualifying widow(er) with dependent child

Exemptions

If more than five dependents, see instructions.

6a Yourself. If your parent (or someone else) can claim you as a dependent on his or her tax return, do not check box 6a. 6b Spouse. c Dependents: (1) First name Last name (2) Dependent's social security number (3) Dependent's relationship to you (4) if qualifying child for child tax credit

Income

Attach Forms W-2 and W-2G here. Also attach Form(s) 1099-R if tax was withheld.

If you did not get a W-2, see instructions.

Enclose, but do not attach, any payment. Also, please use Form 1040-V.

7 Wages, salaries, tips, etc. Attach Form(s) W-2. 8a Taxable interest. Attach Schedule B if required. 9 Ordinary dividends. Attach Schedule B if required. 10 Taxable refunds, credits, or offsets of state and local income taxes. 11 Alimony received. 12 Business income or (loss). Attach Schedule C or C-EZ. 13 Capital gain or (loss). Att Sch D if reqd. If not reqd, ck here. 14 Other gains or (losses). Attach Form 4797. 15a IRA distributions. 16a Pensions and annuities. 17 Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E. 18 Farm income or (loss). Attach Schedule F. 19 Unemployment compensation. 20a Social security benefits. 21 Other income. 22 Add the amounts in the far right column for lines 7 through 21. This is your total income.

Adjusted Gross Income

23 Educator expenses (see instructions). 24 IRA deduction (see instructions). 25 Student loan interest deduction (see instructions). 26 Tuition and fees deduction (see instructions). 27 Archer MSA deduction. Attach Form 8853. 28 Moving expenses. Attach Form 3903. 29 One-half of self-employment tax. Attach Schedule SE. 30 Self-employed health insurance deduction (see instructions). 31 Self-employed SEP, SIMPLE, and qualified plans. 32 Penalty on early withdrawal of savings. 33a Alimony paid b Recipient's SSN. 34 Add lines 23 through 33a. 35 Subtract line 34 from line 22. This is your adjusted gross income.

SCHEDULE D (Form 1040)

Capital Gains and Losses

OMB No. 1545-0074

2002

12

Department of the Treasury Internal Revenue Service (99)

Attach to Form 1040. See instructions for Schedule D (Form 1040). Use Schedule D-1 to list additional transactions for lines 1 and 8.

Name(s) shown on Form 1040

Your social security number

ROBERT W MATHEWS

Part I Short-Term Capital Gains and Losses - Assets Held One Year or Less

Table with 7 columns: (a) Description of property, (b) Date acquired, (c) Date sold, (d) Sales price, (e) Cost or other basis, (f) Gain or (loss), (g) 28% rate gain or (loss). Includes entry for 1 QUALCOMM INC/25 SHARES and summary rows 2-7.

Part II Long-Term Capital Gains and Losses - Assets Held More Than One Year

Table with 7 columns: (a) Description of property, (b) Date acquired, (c) Date sold, (d) Sales price, (e) Cost or other basis, (f) Gain or (loss), (g) 28% rate gain or (loss). Includes summary rows 9-16.

\* 28% rate gain or loss includes all 'collectibles gains and losses' (as defined in the instructions) and up to 50% of the eligible gain on qualified small business stock (see instructions).

SCHEDULE K-1 (Form 1065)

Partner's Share of Income, Credits, Deductions, etc.

OMB No. 1545-0049

Department of the Treasury Internal Revenue Service

For calendar year 2002 or tax year beginning on April 4, 2002, and ending December 31, 2002

2002

Partner's identifying number

Partnership's identifying number

Partner's name, address, and ZIP code

Partnership's name, address, and ZIP code

Robert W. Mathews  
Po Box 533  
Crescent, OK 73028

Schubert & Assoc  
Po Box 314  
Crescent, OK 73028

A This partner is a  general partner  limited partner  limited liability company member

F Partner's share of distributions (see instructions):

B What type of entity is this partner?

Nonrecourse

C Is this partner a  domestic or a  foreign partner?

Qualified nonrecourse financing

D Enter partner's percentage of:  Before change or termination  End of year

Other

Profit sharing 23.60% 23.60%

G Tax shelter registration number

Loss sharing 23.60% 23.60%

H Check here if this partnership is a publicly traded partnership as defined in section 469(k)(2)

Ownership of capital 23.60% 23.60%

E IRS Center where partnership filed return:

Credit applicable boxes:  Final K-1  Amended K-1

J Analysis of partner's capital account:

(a) Capital account at beginning of year	(b) Capital contributed during year	(c) Partner's share of loss 3, 4, and 7, Form 1065, Schedule B-2	(d) Withdrawals and distributions	(e) Capital account at end of year (preceding column (a) through (d))
159,200 <sup>00</sup>		85235.68	(85235.68)	159,200 <sup>00</sup>

(a) Distributive share items

	(b) Amount	(c) 1040 items enter the amount in column (b) only
1 Ordinary income (loss) from trade or business activities		Sch. B, Part I, line 1
2 Net income (loss) from rental real estate activities		Sch. B, Part II, line 5
3 Net income (loss) from other rental activities		Sch. E, Part I, line 4
4 Portfolio income (loss):		Sch. D, line 5, col. (f)
a Interest		Sch. D, line 12, col. (f)
b Ordinary dividends		Sch. D, line 12, col. (g)
c Royalties		Line 5 of worksheet for Sch. D, line 20
d Net short-term capital gain (loss)		Enter on applicable line of your return.
e (1) Net long-term capital gain (loss)	85235.68	See page 6 of Partner's instructions for Schedule K-1 (Form 1065).
(2) 28% rate gain (loss)		
(3) Qualified 5-year gain		
f Other portfolio income (loss) (attach schedule)		
5 Guaranteed payments to partner		Enter on applicable line of your return.
6 Net section 1231 gain (loss) (other than due to casualty or theft)		
7 Other income (loss) (attach schedule)		
8 Charitable contributions (see instructions) (attach schedule)		Sch. A, line 15 or 18
9 Section 179 expense deduction		
10 Deductions related to portfolio income (attach schedule)		See pages 7 and 8 of Partner's instructions for Schedule K-1 (Form 1065).
11 Other deductions (attach schedule)		Form 8586, line 5
12a Low-income housing credit:		
(1) From section 42(j)(5) partnerships		
(2) Other than on line 12a(1)		
b Qualified rehabilitation expenditures related to rental real estate activities		
c Credits (other than credits shown on lines 12a and 12b) related to rental real estate activities		
d Credits related to other rental activities		See page 8 of Partner's instructions for Schedule K-1 (Form 1065).
13 Other credits		

For Paperwork Reduction Act Notice, see instructions for Form 1065.

EEA

Schedule K-1 (Form 1065) 2002