



However, if any of the new allegations are left to stand, it would first demand a procedural right of Respondent to answer with both general and specific denials, lest the Division be unduly influenced on using an improper basis for decision on the 12(b)(6) motion based on the potential or lack thereof for the Division prevailing on the merits.

For example: Ward did not act as a “shill” and State did not allege such in the O.S.C. Opp. Memo, pg. 5, line 12; Ward did not set up the transaction by extolling her husband’s brilliance and State did not alleged “setting up a transaction” in O.S.C. Opp. Memo, pg. 5, line 12-13; Ward did not seek to gain “investors’ confidence” and the O.S.C. did not allege that Respondent knew of any investment. Opp. Memo, pg. 5, line 13; Respondent, Ward, a female, did not participate in any communications when “he closed the deal” because it later became apparent that she was site-seeing in California with her sister when “he” closed the deal; and the Division did not allege any such concurrent communications with the closing of any deal in their O.S.C. Opp. Memo, pg. 5, line 14.

In the interest of keeping this matter on schedule, Respondent, through counsel, could seek to merely be allowed pursuant to Utah Rules of Civil Procedure, Rule 7 (c) (2), to file an over-length reply memorandum and raise the following showing of good cause:

1. Assistant Attorney General, counsel for the Division, filed the State’s opposition to Respondent Motion to Dismiss on or about September 5, 2005. In the Division’s memorandum, the State filled nearly two pages with restatement of the facts, apparently in an attempt to use this pleading to create new and sufficient allegations in order to maintain its cause of action.

CERTIFICATE OF MAILING

I hereby certify that I mailed, postage prepaid, by first class mail, a true and correct copy of the forgoing Ex-Parte Pleadings to the following this 8<sup>th</sup> day of September 2006.

Or, (check box and initial if appropriate)

Hand delivered \_\_\_\_\_

Jeff Buckner

Assistant Attorney General

160 East 300 South

PO Box 140872

Salt Lake City, Utah 84114-0872

Hand delivered \_\_\_\_\_

Pam Radzinski

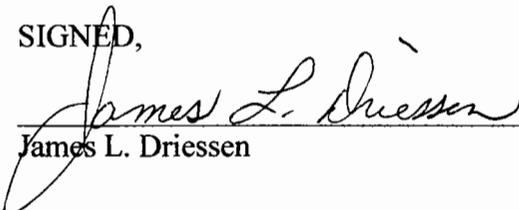
Utah Dept. of Commerce

Securities Division

P.O. BOX 146760

Salt Lake City, Utah 84114-6760

SIGNED,

  
\_\_\_\_\_  
James L. Driessen