IN THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

No. 75-3514

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff-Appellee,

v.

HERITAGE TRUST COMPANY, et al.,

Defendants,

ELEANOR SIMPSON,

Applicant for Intervention-Appellant.

Appeal from the United States District
Court for the District of Arizona

ANSWERING BRIEF OF THE SECURITIES AND EXCHANGE COMMISSION, APPELLEE

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I N D E X

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ANSWERING BRIEF OF THE SECURITIES AND EXCHANGE COMMISSION, APPELLEE

COUNTERSTATEMENT OF THE ISSUE PRESENTED

Whether the district court correctly determined that the appellant should not be permitted to intervene "for all purposes" as a matter of right in an injunctive action brought by the Securities and Exchange Commission when the district court had previously enjoined the three named defendants and ordered the appointment of an equity receiver for the corporate defendant and where:

(1) the denial of intervention could not impair or impede appellant's ability to protect her rights as a trust beneficiary in a separate lawsuit;

(2) the appellant made no showing that her interest in the injunctive action may be inadequately represented by the existing parties; and

(3) the appellant's motion to intervene was not timely.

RULE INVOLVED

Rule 24 of the Federal Rules of Civil Procedure provides in pertinent part:

> (a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: . . . (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.
>
> (c) Procedure. A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought.

COUNTERSTATEMENT OF THE CASE

This is an appeal by Eleanor Simpson from an October 6, 1975, minute order of the United States District Court for the District of Arizona denying her motion to intervene "for all purposes" in an injunctive action brought by the Securities and Exchange Commission ("Commission")(R. 669). 1/

1/ References to the record on appeal which was transmitted to this Court on December 29, 1975, are cited as "R. __." The record in this action is also the record in Securities and Exchange Commission v. Heritage Trust Company, et al., No. 75-3357, which is pending before this Court. References to the appellant's brief in this Court are cited as "Br. __."

On July 29, 1974, the Commission instituted an injunctive action against Heritage Trust Company ("Heritage"), John R. Bromley ("Bromley"), and H.D. Wilbanks, Jr. ("Wilbanks"), in the United States District Court for the District of Arizona.[2/] The complaint charged violations of Sections 5 (registration requirements) and 17(a) (anti-fraud provision) of the Securities Act of 1933, 15 U.S.C. §77e and §77q(a), and violations of Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. §78j(b), and Rule 10b-5 thereunder, 17 C.F.R. 240.10b-5 (anti-fraud provisions) in connection with the offer and sale of "revocable inter vivos trusts" by the defendants.[3/] The Commission's complaint also sought certain ancillary relief, including the appointment of an equity receiver, the rendering of an independent accounting, and the notification of all investors and Heritage sales personnel of the nature and scope of the injunctive order entered by the court.

On October 8, 1974, the three defendants, without admitting or denying the allegations of the complaint, consented to the entry of a final order permanently enjoining them from violations of the registration and anti-fraud provisions of the Securities Act of 1933 and the anti-fraud provisions of the Securities Exchange Act of 1934 in connection with the offer or

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2/ Securities and Exchange Commission v. Heritage Trust Company, et al., D. Ariz., CIV-74-519-PHX-WPC.

3/ The Commission's complaint is set forth at R. 1-17.

sale of revocable inter vivos trusts or any other securities (R. 197-207). In addition to directing the defendants to cause an independent accounting firm to conduct a complete audit of Heritage, the final order provided for the appointment of a special counsel who was authorized and directed to conduct an investigation and analysis of the manner of operation of Heritage in order to prepare a report for submission to the Court and the parties, which report would contain the special counsel's findings and recommendations with respect to Heritage.

The final order also directed defendant Bromley to cause Heritage to notify all trustors and Heritage sales personnel of the entry of that order as well as the order's nature and scope. By letter of October 25, 1974, after approval of the contents of such letter by the Court and the Commission, Heritage informed trustors of the entry and the terms of the October 8, 1974, final order. 4/

Thereafter on April 18, 1975, the Commission renewed its earlier motion for the appointment of an equity receiver for Heritage. This motion was based upon information contained in the court's files and records in the instant proceeding as well as information contained in

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4/ A copy of the October 25, 1974, letter from Heritage to its trustors is attached hereto as Appendix A. A copy of this letter was attached as an exhibit to a proof of mailing filed by the defendants in the court below on June 6, 1975, but the proof of mailing and the exhibits attached thereto were not included in the parties' designations of the contents of the record on appeal. In the event this Court desires that the proof of mailing and exhibits attached thereto be included in the record on appeal, the Commission will, of course, include such documents in a supplemental designation of the contents of the record pursuant to Rule 10(e) of the Federal Rules of Appellate Procedure.

the report of the special counsel for Heritage (R. 217-268), filed with the court on April 11, 1975. That report set forth facts which, in the Commission's opinion, "demonstrate[d] that the defendants Heritage and Bromley have, since October 8, 1974, continued to deceive and defraud the investment public and mismanage, dissipate, and waste the funds of investors which have been placed with Heritage Trust Company, as a trustee" (R. 311).

Hearings were held on this motion in April and May, 1975. Pending final determination of the Commission's motion for the appointment of a permanent receiver, the Court on May 23, 1975, entered an Interim Protective Order and Injunction (R. 413-417). That order enjoined the defendants from, among other things, dissipating or otherwise disposing of the funds and assets of Heritage and from soliciting, raising or procuring funds in connection with existing or prospective trust accounts or any other securities of Heritage or any issuer. The court further ordered that Heritage notify all trustors by letter of certain matters, including the Commission's pending motion for the appointment of a permanent receiver and the issuance of the interim injunctive order. In addition, the defendants were directed to provide the trustors with copies of the court's interim injunctive order and a stipulation of facts (R. 380-412) agreed to by counsel for the defendants and the Commission's counsel. 5/

5/ A draft of the letter which the court ordered to be transmitted to trustors was attached to the May 23, 1975, interim protective order as Exhibit A (R. 418). A copy of the same letter was sent by Heritage to its trustors on May 29, and is attached hereto as Appendix B.

On July 1, 1975, the court entered an opinion and order (R. 500-519), specifically holding that the revocable inter vivos trusts were securities and enjoining defendants Bromley and Heritage, inter alia, from selling or offering for sale these securities without registration. The defendants additionally were ordered to mail a copy of the court's July 1 opinion and order to every trustor, noteholder, preferred stockholder, salesman and others "in order that investors may be fully and fairly informed as to the status of this case, possible legal remedies they may have, and its possible effect on their investments" (R. 517).[6/] The Commission's motion for the appointment of a receiver, however, was denied.

On August 27, 1975, after argument on the Commission's motion for rehearing on the appointment of a receiver for Heritage, the court entered an opinion and order (R. 609-613) which, among other things, granted the Commission's request for the appointment of a receiver.[7/] The portion of the August 27 order appointing a receiver was stayed, however, for a period of fifteen days to permit the defendants to appeal. Subsequently, on September 10, 1975, the defendants filed a motion for rehearing on the portion of the August 27 order appointing a receiver (R. 621-623).

6/ The defendants' affidavit with respect to proof of mailing the documents ordered by the court on July 1, 1975, and the exhibits attached thereto, were filed in the court below on July 15, 1975, but have not been designated by any of the parties to be included in the record on appeal transmitted to this Court.

7/ The defendants' appeal of the August 27 order appointing a receiver is pending before this Court, Securities and Exchange Commission v. Heritage Trust Company, et al., No. 75-3357.

It was not until that same date that Eleanor Simpson, appellant herein, moved "for an order allowing her to intervene for all purposes and for an order staying the appointment of a receiver until such time as she may be heard" (R. 615). In the memorandum in support of her motion to intervene Eleanor Simpson was identified as a "cestui que trust, and also a trustor, of one certain inter vivos trust" (Id.).[8/] The bases asserted for her motion to intervene were that (1) Eleanor Simpson is an indispensable party to the action; (2) a retrospective finding that the inter vivos trusts are securities is contrary to the best interests of the trust beneficiaries; and (3) the appointment of a receiver is not in the best interests of the cestuis que trust (R. 615-617).

On October 6, 1975, the district court denied both the defendants' motion for rehearing on the appointment of a receiver and Eleanor Simpson's motion to intervene.

8/ On October 6, 1975, in a reply memorandum to the Commission's opposition to Eleanor Simpson's motion to intervene her counsel stated:

> "If counsel's information is correct, Eleanor Simpson is a trustor of three separate trusts and is a beneficiary of one of them. She seeks to intervene as a beneficiary of that one."

This memorandum was not included in the record on appeal transmitted to this Court.

ARGUMENT

APPELLANT IS NOT ENTITLED TO INTERVENE AS A MATTER OF RIGHT IN AN INJUNCTIVE ACTION BROUGHT BY THE SECURITIES AND EXCHANGE COMMISSION.

Appellant characterizes her motion to intervene as being "a matter of right" (Br. 1), but conspicuously avoids any reference to Rule 24(a)(2) of the Federal Rules of Civil Procedure. That rule, however, is "the touchstone for consideration" of such a motion. McKee & Co. v. Gulf & Western Industries, Inc., 52 F.R.D. 332, 334 (D. Del., 1971); see National Association for the Advancement of Colored People ("NAACP") v. New York, 413 U.S. 345, 365 (1973). Accordingly, this Court stated in Farmland Irrigation Company v. Dopplmaier, 220 F. 2d 247, 248 (1955):

> "Essential to an absolute right of intervention in accordance with Rule 24(a)[(2)] is a showing by the applicant for intervention of the existence of . . . the conditions stated by the Rule . . . ."

Thus, in the instant appeal the appellant, as an applicant for non-statutory intervention as of right under Rule 24(a)(2), must show, in the language of that rule, not only that she has "an interest relating to the property or transaction which is the subject of the action . . ." but also "that the disposition of the action may as a practical matter impair or impede [her] ability to protect that interest, . . ." and that her "interest is [not] adequately represented by existing parties." Appellant has failed to demonstrate that she comes within either of these requirements, nor has she met the further requirement of Rule 24(a) that her application be "timely."

While the courts are liberal in interpreting requirements of Rule 24(a)(2) in favor of an applicant, "no court has been willing to stretch

the rule to the point of abolishing it." Warheit v. Osten, 57 F.R.D. 629, 630 (E.D. Mich., 1973). And there is a "strong judicial policy against nonexpress private intervention in government enforcement litigation when an adequate private remedy is freely accessible." United States v. Allegheny-Ludlum Industries, Inc., 517 F. 2d 826, 844 (C.A. 5, 1975). While appellant contends that she is an "indispensable party" (Br. 1, 2), she would appear to be no more indispensable than any of the approximately 650 other Heritage investors (B. Dep. 9).[9/] If appellant is suggesting that pursuant to Rule 19 of the Federal Rules of Civil Procedure all of these are "persons needed for a just adjudication," then the Commission's enforcement of the securities laws would be seriously impeded. Cf. Securities and Exchange Commission v. Royal Hawaiian Management Corporation, [1966-67 Transfer Binder] CCH Fed. Sec. L. Rep. ¶ 91,982 at p. 96,339 (C.D. Cal., 1967). The federal rules do not require such a result.

A. The Appellant Has Not Demonstrated That Disposition of the Commission's Injunctive Action May Impair or Impede Her Ability To Protect Her Beneficial Interest in a Revocable Inter Vivos Trust.

In the Commission's injunctive action instituted against defendants Heritage, Bromley and Wilbanks two major issues were whether interests in the revocable inter vivos trusts being offered and sold by the defendants constituted "securities," as that term is defined in the federal securities

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9/ "B. Dep. __" refers to the May 6, 1975, deposition of John R. Bromley which is included in the record on appeal transmitted to this Court.

laws,[10] and whether, based upon the facts adduced at the trial and the subsequent conduct of the defendants, the appointment of an equity receiver for Heritage was warranted. The distict court resolved both of these issues in the afirmative.[11]

Assuming arguendo that the appellant has a "significantly protectable interest"[12] relating to the Commission's injunctive action, but without attempting to speculate as to the exact nature or scope of that interest, we are unable to discern how the disposition of that injunctive action by the issuance of an injunction requiring the defendants to comply with the federal securities laws and an order appointing a receiver for defendant Heritage "may as a practical matter impair or impede [the appellant's] ability to protect that interest."[13]

10/ The term "security" is defined in Section 2(1) of the Securities Act of 1933, 15 U.S.C. §77b(1), and Section 3(a)(10) of the Securities Exchange Act of 1934, 15 U.S.C. §78c(a)(10). The Supreme Court has noted that these definitions are virtually identical. United Housing Foundation, Inc. v. Forman, 421 U.S. 837, 847 (1975), and Tcherepnin v. Knight, 389 U.S. 332 (1967).

11/ It stayed the effectiveness of the portion of its order appointing a receiver pending an appeal which is presently before this Court, Securities and Exchange Commission v. Heritage Trust Company, et al., No. 75-3357.

12/ Cf. Donaldson v. United States, 400 U.S. 517, 531 (1971).

13/ In 7A Wright & Miller, Federal Practice and Procedure, §1908 at 514 (1972), it is stated:

> "It is generally agreed that in determining whether disposition of the action will impede or impair the applicant's ability to protect his interest the question must be put in practical terms rather than in legal terms. The central purpose of the 1966 amendment [to Rule 24(a)] was to allow intervention by those who might be practically disadvantaged by the disposition of the action. . . ." (Emphasis supplied.)

Stating that "[b]eneficiaries of the trust must recognize the situation as it exists," the appellant posits four questions (Br. 3) which, in her opinion, "arise as a result of the finding that the inter vivos trusts are investment contracts." Yet absent a meaningful statement or explanation with respect to why and how the holding that inter vivos trusts are within the purview of the federal securities laws may impede her ability to protect her interest, the concerns expressed in the appellant's four questions are speculative and conjectural.

We submit that even after the district court's holding that inter vivos trusts are securities, the appellant is not foreclosed by application of the principles of res judicata, collateral estoppel, or stare decisis from asserting any rights or claims which she may have as a trust beneficiary against Heritage and Messrs. Bromley and Wilbanks in an appropriate forum. See Securities and Exchange Commission v. Everest Management Corp., 475 F. 2d 1236 (C.A. 2, 1972).[14/] Nor does the fact that the trust instrument, taken together with the circumstances under which it was sold, constitutes a security deprive appellant, as an investor, of any right she might have against the trustee under that instrument. Cf. Securities and Exchange Commission v. Royal Hawaiian Management Corporation, [1966-67 Transfer Binder] CCH Fed. Sec. L. Rep. ¶ 91,982 at p. 96,339 (C.D. Cal., 1967). It does,

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14/ III Scott on Trusts (1967), §199 at pp. 1638-1640, discusses the various equitable remedies available to a beneficiary in an action against a trustee, including the appointment of a receiver and the removal of the trustee. See also Restatement (Second) of Trusts (1959), §199 at pp. 437-439. III Scott on Trusts, §198 at pp. 1631-1638, and Restatement (Second) of Trusts, §198 at pp. 434-437, discuss the legal remedies available to a beneficiary.

however, gives her additional rights under the securities laws.[15/]

Appellant's primary concern appears to be with the possible depletion of the inter vivos trust, which, it is suggested, might result from an appointment of a receiver (Br. 3; R. 616-617). In this regard, appellant speculates that the payment of fees to the receiver will reduce the availability of Heritage's funds to which the trust beneficiaries might look for satisfaction of potential losses which may result if a breach of the trustee's fiduciary duties is proven (Br. 3, R. 617).[16/] The applicant for intervention in Warheit v. Osten, supra, 59 F.R.D. at 630, asserted a comparable contention, which the court rejected, stating

> "It is not sufficient to assert . . . that the original action, if successful, will reduce the 'collectability' of the defendants. This facet of the rule [24(a)(2)] will be without meaning if that construction were adopted, for almost any lawsuit, if successful, will reduce the assets of the defendants.

Cf. United States v. Lehigh Valley Cooperative Farmers, Inc., 294 F. Supp. 140 (E.D. Pa., 1968); Peterson v. United States, 41 F.R.D. 131 (D. Minn., 1966); but see DeKorwin v. First National Bank of Chicago, 94 F. Supp. 577 (N.D. Ill., 1950).

15/ As pointed out in appellant's brief in the district court, there is currently pending in the United States District Court for the District of Arizona a class action brought on behalf of Heritage investors under the federal securities laws, Zeigler, et al. v Heritage, et al., CIV-75-578-PHX (R. 616).

16/ With respect to the reasonableness or the propriety of a receiver's fees, the Commission would urge the court as a matter of discretion to permit any affected person to be heard. Cf. 11 U.S.C. §647.

B. The Appellant Has Failed To Demonstrate That Her Interests May Not Be Adequately Represented by the Existing Parties in the Commission's Injunctive Action.

The issue of ascertaining the adequacy of the existing parties' representation of appellant's interest in this action is complicated by the fact that appellant moved to intervene in the court below "for all purposes" but failed to comply with the procedural requirements of Rule 24(c), which provide in pertinent part:

> "The motion [to intervene] shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought" (emphasis supplied).

No pleading accompanied appellant's motion.

To the extent that appellant seeks to oppose the receivership, a substantial identity of interest appears to exist between appellant and the defendants in the Commission's action. The defendant trustee, Heritage, and its officials, defendants Bromley and Wilbanks, argued in the district court that the revocable inter vivos trusts offered and sold by Heritage did not fall within the purview of the federal securities laws and that, in any event, there should be no receiver for Heritage. Those defendants have appealed the district court's ruling to this Court.[17/] The appellant has made no showing that the defendants' presentation in the district

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17/ See brief of Heritage and Messrs. Bromley and Wilbanks filed in this Court on February 19, 1976, in Securities and Exchange Commission v. Heritage Trust Company, et al., appeal pending, No. 75-3357, and the memorandum of law filed in the district court by the appellant herein (R. 615-617).

court was, or in this Court is, inadequate.[18/]

Appellant's protestation that the trust beneficiaries' interests are contrary to those of the Commission (Br. 4)[19/] and that no other party is adequately protecting those interests ignores the Commission's responsibilities, as the "statutory guardian charged with safeguarding the public interest in enforcing the securities laws,"[20/] to ensure compliance with those laws and to protect public investors. In the instant action the Commission sought to protect not only the interests of prospective investors by enjoining the defendants from sales in violations of the securities laws but also the interests of existing Heritage investors. Indeed, this is why it seeks a receiver. As stated in Moore v. Tangipahoa Parish School Board, 298 F. Supp. 286, 292, n.10 (E.D. Pa., 1969):

> "When intervenors claim they are not being adequately represented by the Government, courts should be very hesitant to hold such representation inadequate, 'at least in the absence of any claim of bad faith or malfeasance on the part of the

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18/ Motions to intervene by trust beneficiaries have been denied where the circumstances of the litigation demonstrate that the trustee is adequately representing the interests of the beneficiaries. Peterson v. United States, supra, 41 F.R.D. 131; Kind v. Markham, 7 F.R.D. 265 (S.D. N.Y., 1945); accord, Cheyenne River Sioux Tribe of Indians v. United States, 338 F. 2d 906 (C.A. 8, 1964), certiorari denied, 382 U.S. 815 (1965); cf. Farmland Irrigation Company v. Dopplmaier, supra, 220 F. 2d 247.

19/ The appellant stated in a memorandum filed in the district court that "[m]ovant submits that the government is not representing the beneficiaries of a trust by attempting to have the trust agreement construed to be another type against the will of the beneficiaries." See n.8, supra, p. 7. But, as we have seen (pp. 11-12, supra), appellant will in no event be deprived of her contract rights against the trustee.

20/ Securities and Exchange Commission v. Management Dynamics, Inc., 515 F. 2d 801, 808 (C.A. 2, 1975).

> Government . . . .' Sam Fox Publishing Co. v. United States, 1961, 366 U.S. 683, 689, 81 S. Ct. 1309, 1313, 6 L. Ed. 2d 604." (Other citations omitted.)

Appellant's reliance upon Green v. Brophy, 110 F. 2d 539 (C.A. D.C., 1940), for the proposition that she should be allowed to intervene in this action is misplaced. That case dismissed an action brought by trustees to recover the trust res which the beneficiaries of that trust had removed and delivered into the custody of the defendants. It was held that the case must be be dismissed unless the trust beneficiaries were also named as parties defendants. Rule 19, "Joinder of Persons Needed for Just Adjudication," deals with the problem of what was referred to in the Green case as an "indispensable party"; and Rule 19(a)(2)(i) refers to a person who "claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest . . . ." The Advisory Committee Notes on the Proposed Amendments to the Federal Rules of Civil Procedure, 39 F.R.D. 73, 110 (1966), state

> "that an applicant is entitled to intervene [under Rule 24(a)(2)] in an action when his position is comparable to that of a person under Rule 19(a)(2)(i), as amended, unless his interest is already adequately represented in the answer by existing parties" (emphasis supplied).

Here, as we have seen, it appears that appellant's interest is adequately represented.

C. The Appellant's Motion To Intervene Was Not Made in a Timely Fashion.

Not until September 10, 1975, did appellant attempt to intervene. Appellant has not stated why her motion was not made earlier. While appellant asserts that she seeks to intervene in her capacity as a beneficiary of one of the Heritage revocable inter vivos trusts, in the court below she admitted that she is also a trustor of three such trusts. Pursuant to the district court's orders, Heritage trustors were notified by letters of the existence of and the developments in the Commission's litigation in October 1974 and again in May 1975.[21/]

As the Supreme Court has stated:

> "Whether intervention be claimed of right or as permissive, it is at once apparent, from the initial words of both Rule 24(a) and Rule 24(b), that the application must be 'timely.' If it is untimely, intervention must be denied."

NAACP v. New York, supra, 413 U.S. at 365; accord, Johnson v. San Francisco Unified School District, 500 F. 2d 349, 354 (C.A. 9, 1974). The Supreme Court also stated in the NAACP decision that the timeliness of an application to intervene is to be determined by the court from all the circumstances surrounding the particular litigation "in the exercise of its sound discretion," and "unless that discretion is abused, the court's ruling will not be disturbed on review" (footnote omitted). NAACP v. New York, supra, 413 U.S. at 366.

To the extent that appellant moves to intervene to object to the appointment of an equity receiver for Heritage on the basis of her speculation that the payment of fees to the receiver will deplete the funds to which

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21/ Supra, pp. 4 and 5. See also Appendices A and B attached hereto.

trust beneficiaries might look to recover losses, it is curious that the appellant did not intervene after she received the October 8, 1974, final order. On that date the district court ordered the appointment of a special counsel for Heritage and the conduct of an audit of Heritage by an independent accounting firm, both of which were to be paid for by Heritage. Trustors were notified of these occurrences. Like the appointment of a receiver, these factors might also arguably reduce the funds available from Heritage to pay for any money judgments resulting from breach of its fiduciary duties. Again in May 1975, appellant, as a trustor, was advised that a motion for a receiver was pending. But appellant's efforts to participate in the Commission's action did not commence until months later, after the litigation in the district court had been substantially concluded.

CONCLUSION

For the foregoing reasons, the order of the district court should be affirmed.

Respectfully submitted,

DAVID FERBER
Solicitor to the Commission

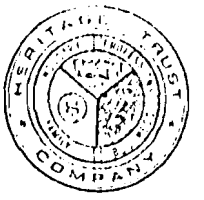
MICHAEL J. STEWART
Assistant General Counsel

JOHN M. MAHONEY
Attorney

Securities and Exchange Commission
Washington, D.C. 20549

March 1976.

A P P E N D I X



Heritage Trust Company

October 25, 1974

Dear Trustor:

In order to clarify the present status of the action for injunction filed by the Securities and Exchange Commission on July 29, 1974, you are hereby notified that on October 4, 1974, Heritage Trust Company, John R. Bromley, its president, and H. D. Wilbanks, Jr., its trust officer, voluntarily entered into a permanent Order of Injunction which enjoins the Company, Mr. Bromley and Mr. Wilbanks from violating Section 5 and 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities and Exchange Act of 1934 and Rule 10(b) thereunder. It should be pointed out that the Order and Consent thereto states that neither the Company nor Mr. Bromley nor Mr. Wilbanks admit or deny any of the allegations made in the Commission's complaint. It is the opinion of the Company, Mr. Bromley and Mr. Wilbanks that such a settlement is in the best interest of the trustors.

As part of the Order, a special counsel was appointed by the Court for the purpose of investigation and analysis of the operations of the Company. Special Counsel will prepare and submit to the Court, the Company and the Commission a report of his findings and recommendations with respect to Heritage Trust Company.

The Order by Consent also states that the Company shall have the independent accounting firm of Laventhol, Krekstein, Horwath & Horwath complete the audit of Heritage Trust Company previously initiated by the Company, and which is now in progress and within 45 days present to the Court financial statements reflecting the financial condition of Heritage Trust Company.

If you have any questions as to the above, inquiries should be directed to Special Counsel, who is Mr. Donald Daughton, at his office of Daughton, Feinstein and Wilson, 1840 First National Bank Plaza, 100 West Washington Street, Phoenix, Arizona 85003.

HERITAGE TRUST COMPANY

BY _____

APPENDIX A

912 North First Street P. O. Box 25809 Phoenix, Arizona 85002 Cable Address: Heritage (602) 257-0212 Telex: 668-373

Heritage Trust Company

May 29, 1975

Dear Trustors:

By letter dated October 24, 1974, you were notified of the pendency of certain proceedings brought by the Security and Exchange Commission and the Consent Decree (Injunction) entered into on October 8, 1974, between the Commission and Heritage Trust Company. On April 18, 1975, the Commission moved the District Court for an order appointing a receiver alleging violations of the Consent Decree. The allegations were denied by Heritage and a trial was recently held. The matter is now under advisement and a final decision is expected within four to six weeks.

At the conclusion of the trial, the Court denied the Commission's request for an interim receiver but did enter an interim injunction order, copy of which is enclosed. There is also enclosed a copy of Stipulations of Fact filed by the Commission and Heritage in the trial proceedings.

The enclosures may contain salient matters and pursuant to the order of the Court, your attention is directed thereto. If you have any questions regarding this letter or the enclosures, you should consult your personal attorney.

This letter and the enclosures are sent pursuant to order of the Court.

Sincerely,

John R. Bromley
President

dej
Enclosures

APPENDIX B

919 North First Street P. O. Box 25009 Phoenix, Arizona 85002 Cable Address: Heritage (602) 257-0212 Telex: 668-374