

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS  
SECOND DIVISION

ELECTRONICALLY  
FILED

JUL 03 2012

FIRST SECURITY BANK, TRUSTEE

PLAINTIFF

CASE NO.: CV-09-3281

CASE #:

BAMCO GAS, LLC

DEFENDANT

FIRST STATE BANK,  
LONOKE, ARKANSAS

INTERVENOR

MOTION TO ALLOW LIMITED INTERVENTION

Comes now A. Heath Abshure, Arkansas Securities Commissioner, by and through counsel, Amber E. Crouch, Staff Attorney, and for his *Motion to Allow Limited Intervention* pursuant to Rule 24(a) of the Arkansas Rules of Civil Procedure, respectfully states as follows:

1. A. Heath Abshure, the Arkansas Securities Commissioner ("Commissioner"), appointed in accordance with Ark. Code Ann. § 23-42-201(a), is charged with the administration of the Arkansas Securities Act ("Act"), codified at Ark. Code Ann. §§ 23-42-101 through 23-42-509.

2. On August 5, 2005, the Defendant, Bamco Gas, LLC ("Bamco"), began a private placement securities offering of Series 2005, \$10,000,000 8.25% Debentures ("Senior Debentures"). Similarly, on March 26, 2008, Bamco began a private placement securities offering of Series 2008, \$7,000,000 10.00% Subordinate Debentures (collectively with the Senior Debentures, "Bamco Debentures").

3. On August 16, 2005, and April 14, 2008, respectively, Bamco filed Notices of Sales of Securities on United States Securities and Exchange Commission Form D with the Arkansas Securities Department ("Department") for its offerings of the Bamco Debentures, pursuant to Ark. Code Ann. §§ 23-42-501(3) and 23-42-509(c)(1).

4. First Security Bank as Trustee for the Bamco Debentures (“Trustee”) filed its Complaint against Bamco on May 4, 2009, which initiated the present action.

5. The Court appointed Llano Consolidated Resources, LLC (“Llano”) as the receiver for Bamco (“Bamco Receiver”) on May 6, 2009. On May 13, 2010, the Court removed Llano as Bamco Receiver and appointed Alan Barksdale as the Successor Receiver for Bamco (“Successor Receiver”).

6. The Commissioner is empowered by Ark. Code Ann. § 23-42-205(a) to make any public or private investigations within or outside of the State of Arkansas which he deems necessary to determine whether any person has violated or is about to violate any provision of the Act or any rule or order under the Act, or to aid in the enforcement of the Act.

7. Upon sufficient evidence, the Commissioner shall enter an Order directing an investigation and appointing investigative officers from the Staff of the Department (“Staff”). Rule 602.01(b) of the Rules of the Arkansas Securities Commissioner (“Rules”).

8. On August 6, 2010, the Commissioner entered an *Order Directing Investigation and Empowering Officers*, attached hereto as **Exhibit A**, in the matter of Bamco and related parties in connection with suspected violations of the Act stemming from the offers and sales of the Bamco Debentures. On November 23, 2010, the Commissioner entered an *Amended and Substituted Order Directing Investigation and Empowering Officers*, attached hereto as **Exhibit B**, in the matter of Bamco and related parties and appointed Amber E. Crouch, Staff Attorney, as an officer for the Department to conduct the investigation.

9. As of the present date, the Staff is continuing its investigation of any and all circumstances surrounding the offers and sales of the Bamco Debentures in order to determine what further action, if any, should be taken by the Commissioner.

10. Bamco and related persons or entities, in connection with activities associated with the offers and sales of the Bamco Debenture securities in and from the State of Arkansas, are subject to the provisions of the Act.

11. Crews and Associates, Inc. ("Crews"), a broker-dealer and investment adviser firm registered in the State of Arkansas with the Department pursuant to Ark. Code Ann. § 23-42-301, served as the private placement agent for both offerings of the Bamco Debentures and, in this capacity, functioned as the exclusive marketer and seller of the Bamco Debentures to investors and was involved in various aspects of the issuance of the Bamco Debentures.

12. Crews, as a registered broker-dealer and investment adviser firm in the State of Arkansas, and in connection with its role as the placement agent of the Bamco Debentures, is likewise subject to the provisions of the Act.

13. Furthermore, any and all parties and related entities associated with the offer and sale of the Bamco Debentures, including, but not limited to, the Successor Receiver; the Trustee; and Crews, may be subject to the generally applicable provisions of the Act, including, but not limited to, liability for fraud or deceit in connection with the offer, sale, or purchase of securities, pursuant to Ark. Code Ann. § 23-42-507.

14. On June 15, 2012, the Successor Receiver filed his *Motion of Receiver for Approval of (A) Sale Transaction, (B) Proposed Distribution of Receivership Assets, and (C) Related Relief* ("Successor Receiver's Motion") with the Court. The Successor Receiver's Motion references the Department's ongoing investigation of the parties and circumstances surrounding the sale of the Bamco Debentures in Successor Receiver's "Exhibit F," pages 6 and 16, attached thereto.

15. On page 33 of the Successor Receiver's Motion under the heading "Release," the Successor Receiver requested the Court to grant the following release from liability:

an absolute and unconditional full release from liability of any and all claims, causes of action, suits, or demands whatsoever from any individual, corporation, partnership, association, limited-liability company, joint-stock company, trust, unincorporated organization, or *a government or political subdivision thereof* for all action, inaction, and all transactions related to the [Bamco] Debentures, including, but not limited to, all actions taken by the Receiver in this Receivership, all actions taken by Crews concerning the sales and purchases by Crews of the Senior Debentures and Subordinate Debentures, and any action taken by the Receiver . . . and any action taken by the Trustee regarding the Receivership. (Emphasis added).

16. The Commissioner seeks intervention for the limited purpose of objecting to the Successor Receiver's request for release from liability for "any and all claims, causes of action, suits, or demands from any . . . government or political subdivision thereof" in the Successor Receiver's Motion, and respectfully requests the Court to withhold this language from any and all Orders entered in response to the Successor Receiver's Motion or in furtherance of this matter.

WHEREFORE, A. Heath Abshire, the Arkansas Securities Commissioner, prays that the Court will (1) permit him to intervene in this action for the limited purpose of protecting his interest in continuing the Staff's ongoing investigation into the offer and sale of senior and subordinate debenture securities of Bamco, to determine if violations of the Act or Rules have occurred and what action, if any, should be taken by the Commissioner; and (2) deny the Successor Receiver's request for release from liability for "any and all claims, causes of action, suits or demands from any . . . government or political subdivision thereof," including the Department.

Respectfully submitted this the 3rd day of July, 2012.

By: Amber E. Crouch  
Amber E. Crouch, Ark. Bar No. 2010216  
Staff Attorney  
Arkansas Securities Department  
201 East Markham Street, Suite 300  
Little Rock, Arkansas 72201  
Telephone: 501-324-8677  
Facsimile: 501-324-9268

## CERTIFICATE OF SERVICE

I, Amber E. Crouch, hereby certify that a copy of the foregoing Motion to Allow Limited Intervention was served by United States Mail, First Class, postage prepaid, and electronic mail, on the following:

Curtis L. Bowman, Esq.  
Carney Williams, PLLC  
1311 Arcade Drive, Suite 200  
Little Rock, Arkansas 72212  
[cbowman@carneywilliams.com](mailto:cbowman@carneywilliams.com)  
*Counsel for Plaintiff*

Steven D. Durand, Esq.  
Attorney at Law  
P.O. Box 251415  
Little Rock, Arkansas 72225  
[sddurand@yahoo.com](mailto:sddurand@yahoo.com)  
*Counsel for Plaintiff*

Keith L. Grayson, Esq.  
Grayson & Grayson, P.A.  
P.O. Box 1447  
Heber Springs, Arkansas 72543  
[klgmlg@aol.com](mailto:klgmlg@aol.com)  
*Counsel for Defendant*

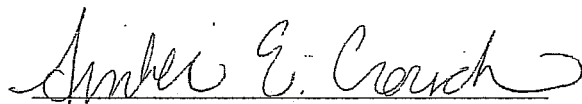
Peter G. Kumpe, Esq.  
Williams & Anderson, PLC  
Twenty-Second Floor  
111 Center Street  
Little Rock, Arkansas 72201  
[pkumpe@williamsanderson.com](mailto:pkumpe@williamsanderson.com)  
*Counsel for Intervenor,  
Striker Receiver*

J. Michael Stuart, Esq.  
Ginger M. Stuart, Esq.  
Stuart Law Firm, P.A.  
P.O. Box 206  
Lonoke, Arkansas 72086  
[stuartlawfirm@centurytel.net](mailto:stuartlawfirm@centurytel.net)  
*Counsel for Intervenor, First  
State Bank of Lonoke*

Michael D. Warner, Esq.  
Cole, Schotz, Meisel, Forman &  
Leonard, P.A.  
301 Commerce Street, Suite 1700  
Fort Worth, Texas 76102  
[mwarner@coleschotz.com](mailto:mwarner@coleschotz.com)  
*Counsel for Defendant*

on this the 3rd day of July, 2012.

By:



Amber E. Crouch, Ark. Bar No. 2010216  
Staff Attorney  
Arkansas Securities Department  
201 East Markham Street, Suite 300  
Little Rock, Arkansas 72201  
Telephone: 501-324-8677  
Facsimile: 501-324-9268

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BEFORE THE ARKANSAS SECURITIES COMMISSIONER

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IN THE MATTER OF

Case No. S-10-0060 ARKANSAS SECURITIES DEPT.

BAMCO GAS, LLC AND  
RELATED PARTIES

Order No. S-10-0060-10-OR01

ORDER DIRECTING INVESTIGATION AND  
EMPOWERING OFFICERS

I.

The Staff of the Arkansas Securities Department has in its possession certain evidence which, if true, indicates that activity by Bamco Gas, LLC ("Bamco") and other related persons or entities have violated various sections of the Arkansas Securities Act, including, but not limited to:

Ark. Code Ann. § 23-42-507, which states it is unlawful for any person in connection with the offer, sale or purchase of any security, directly or indirectly: (1) to employ any device, scheme or artifice to defraud; (2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, or; (3) to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person.

II.

The Arkansas Securities Commissioner ("Commissioner") is empowered by Ark. Code Ann. § 23-42-205 to make investigations to determine whether any provision of the Arkansas Securities Act or any rule or order promulgated or issued pursuant thereto has been violated or is about to be violated.

III.

The Commissioner, or any officer designated by him, is further empowered by Ark. Code Ann. § 23-42-205 to administer oaths and affirmations, subpoena witness, compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda, agreements or other documents or records which are deemed to be relevant or material to the inquiry.

IT IS THEREFORE THE ORDER OF THE SECURITIES COMMISSIONER OF THE STATE OF ARKANSAS, pursuant to Ark. Code Ann. § 23-42-205, that an investigation be commenced to determine what action, if any, should be taken in the



above referenced matter, and the Securities Commissioner hereby appoints David H. Smith, and Kaycee Wolf, attorneys, as officers for the Arkansas Securities Department, to conduct an investigation and administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of any books, correspondence, memoranda, agreements and other documents and records which are deemed to be relevant or material to the inquiry.

WITNESS MY HAND AND SEAL THIS 6th day of August, 2010.

A handwritten signature in black ink, appearing to read "A. Heath Abshire", written over a horizontal line.

A. HEATH ABSHURE  
ARKANSAS SECURITIES COMMISSIONER



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BEFORE THE ARKANSAS SECURITIES COMMISSIONER

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ASD Case No. S-10-0060

ARKANSAS SECURITIES DEPT.

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IN THE MATTER OF

BAMCO GAS, LLC AND  
RELATED PARTIES

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Order No. S-10-0060-10-OR02

**AMENDED AND SUBSTITUTED ORDER DIRECTING  
INVESTIGATION AND EMPOWERING OFFICERS**

I.

The Staff of the Arkansas Securities Department has in its possession certain evidence which, if true, indicates that activity by Bamco Gas, LLC ("Bamco") and other related persons or entities have violated various sections of the Arkansas Securities Act, including, but not limited to:

Ark. Code Ann. § 23-42-507, which states it is unlawful for any person in connection with the offer, sale, or purchase of any security, directly or indirectly: (1) to employ any device, scheme, or artifice to defraud; (2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or (3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

II.

The Arkansas Securities Commissioner ("Commissioner") is empowered by Ark. Code Ann. § 23-42-205 to make investigations to determine whether any provision of the Arkansas Securities Act or any rule or order promulgated or issued pursuant thereto has been violated or is about to be violated.

III.

The Commissioner, or any officer designated by him, is further empowered by Ark. Code Ann. § 23-42-205 to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the Commissioner deems to be relevant or material to the inquiry.

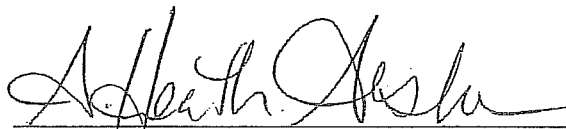


IV.

This order of investigation will replace and supersede Order No. S-10-0060-10-OR01, issued on August 6, 2010.

IT IS THEREFORE THE ORDER OF THE SECURITIES COMMISSIONER OF THE STATE OF ARKANSAS, pursuant to Ark. Code Ann. § 23-42-205, that the investigation commenced in this case by order issued on August 6, 2010, be continued to determine what further action, if any, should be taken in the above referenced matter, and the Securities Commissioner hereby appoints David H. Smith and Amber E. Crouch, attorneys, as officers for the Arkansas Securities Department to conduct the investigation and empowers them in the course thereof to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, correspondence, memoranda, agreements and other documents and records which are deemed to be relevant or material to the inquiry.

WITNESS MY HAND AND SEAL THIS 23rd day of November, 2010.

A handwritten signature in cursive script, appearing to read "A. Heath Abshure", written over a horizontal line.

A. HEATH ABSHURE  
ARKANSAS SECURITIES COMMISSIONER