

FILED  
ORIGINAL  
May 4 2009

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

IN THE SUPREME COURT OF THE STATE OF MONTANA  
Supreme Court Cause No. DA 08-0352

ESTATE OF EARL M. PRUYN, CTING THROUGH  
THE PERSONAL REPRESENTATIVE JACK MEYER

Appellant/Plaintiff,

v.

AXMEN PROPANE, INC., a Montana corporation,  
And EDWARD KIMBRELL, individually

Appellee/Defendants,

FILED

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RESPONSE TO APPELLEE MOTION TO STRIKE PREVIOUSLY SUBMITTED  
BRIEF of INDIVIDUAL DEFENDANT

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On the Appeal from the Fourth Judicial District Court, Missoula County

Appearances:

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Justices of the Montana Supreme Court. I ask that you deny Axmen Propane's Motion to Strike the Brief, I previously submitted on April 9, 2009. As stated in my brief. I have not been protected by the Corporate Shield and have been defending myself for several years. Unfortunately, all previous, properly prepared paperwork has gone largely ignored and unanswered by the Fourth District Court. I personally prepared my brief to the Montana Supreme Court, while traveling on an airplane enroute to Montana, in hopes of having at least marginal input into this case.

Dr Earl Pruyn has a legitimate claim. He lent money to a business to cover a loss from a poor investment. He and his counsel have been professional and straightforward in their attempts to receive relief. There is sufficient evidence in the custody of Axmen Propane and their business records depicting previous investments with Powderhorn Petroleum. None of these records have ever been subpoenaed. Axmen Propane, Grant and Guy Hanson, and their counsel requested a deposition from me in December 2007. They questioned me for almost four hours. Though copies of this deposition were distributed to my counsel, they were never filed on the record of the Fourth District Court, because they did not support Axmen Propane's untruthful claims in this case. The truth is also depicted in the deposition of John Guiliani and the Sentencing Hearing of Edward Kimbrell, dated January 2/3, 2008. Axmen Propane does not want to pay the funds necessary in settling this claim, and thus have concocted their own version of what happened in the Spring 2003. There has never been any discovery, proof, or otherwise provided to any court, as to the support of their theory, only conjecture by my two formal partners on what they think happened, or what they want this court to believe.

I was married from November 1994 through April 2004. My wife and I had no personal debt and we had a net worth of approximately \$1.7 Million. I did not have a need to get rich quick. My goal was to make investments for the company, which would ultimately help get Axmen Propane, Inc out of debt as rapidly as possible. Because of our success in various other propane futures investments, I truly believed that gaining a profit on the volume purchased would help pay down the debt of Axmen Propane significantly, if we gained the ten cent margin, we typically sold our previous investments for. One of the three options I presented to my previous partners in late December 2003, was for the three of us to put our money together and pay the debt owed to Dr Pruyn, as a corporate obligation and go on together. They felt that selling the company to me, was a better solution, and I agreed, because I had put so much of myself into the development of this thriving company. If they had fulfilled their obligation to me, then none of us would be in front of this court, and the matter would have been put to rest in early Spring 2004.

After the turmoil of 2003/2004, my wife and I filed for divorce. I had no desire to take half of our family net worth and left the marriage with my personal vehicle, the retirement funds I had gained during my employment with Axmen Propane and Ferrellgas, approximately \$50,000, and my hope to purchase the company, or at least recover the funds I had contributed in starting the company. After several attempts to carry through with the purchase of Axmen Propane, and my partners' denial of those hopes, I left town to start a new career and life, not accomplishing either goal stated above. I gave my last significant money, \$50,000 to Dr Pruyn because I felt like it was

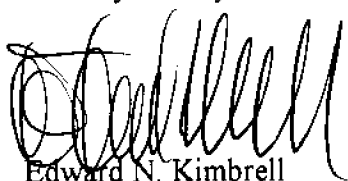
the right thing to do. I have always been a man to stand up for issues I believe in, and to go out of my way to do what is right.

This wrong I had done with this forgery, was the first time I had done anything that was less than honest and full of integrity. I ran every aspect of this fast growing company, with every cent being where it was supposed to belong. It is Axmen Propane's desire to tell the court that I was only out for myself. There is nothing further from the truth. I had gained a reputation for integrity all of my professional and personal life. So much, that my supervisors, in the Air Force made a special point to mention it on my Officer Evaluation Reports on more than one occasion. As I started my new life, I was hired to a medical sales position, where I was making a very good living. Every extra dime I made, was spent in defending myself in two court rooms.

I do not ask this court for anything for myself, other than to be heard, and to have the truth known as to the chain of events that occurred in the Spring 2003, and subsequent events. It is unfortunate that my fellow appellee does not want to accept responsibility for this legitimate debt or any of the wrongs they have created as a result of this claim. This is unfortunate, but it is something I continue to forgive them for.

In regard to not being a direct party allowed to enjoy the time granted to my fellow appellee, Axmen Propane, Inc. I apologize to the court for any misinterpretation on my part. I have received various documents preparing for this appeal. It was my understanding that the paperwork addressing myself as an individual, and Axmen Propane, as Appellees was one and the same. I interpreted the Granting of an Unopposed Motion to Extend The Response to the Appeal also included me as an individual defendant. This was the rationale I used in preparing the Brief and this subsequent response. Please allow my Brief to remain part of the record.

Thank you for your time and consideration.



Edward N. Kimbrell  
Appellee

## CERTIFICATE OF SERVICE

I hereby certify that I have filed a true and accurate copy of the foregoing RESPONSE OF APPELLEE'S MOTION TO STRIKE, with the Clerk of the Montana Supreme Court; and that I have served true and accurate copies of the foregoing RESPONSE OF APPELLEE'S MOTION TO STRIKE upon each attorney of record in the above-referenced Montana Supreme Court action, as follows:

### US Mail

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Dated this 2<sup>nd</sup> day of May, 2009

By



Edward N. Kimbrell  
Appellee/Individual Defendant