

IN THE SUPREME COURT OF THE STATE OF MONTANA

Case No. DA 09-0023

GREGG MOSLEY, JOY FARRELL)
MOSLEY, FRED FELLOWS,)
DEBORAH FELLOWS, GARY)
BAUER and JANA BAUER)

Appellants/Cross-Respondents,)

vs.)

AMERICAN EXPRESS FINANCIAL)
ADVISERS, INC., BRITT B. DAVIS)
GARY WEXLER, WEX WHEELS,)
INC., and KEEP IT SIMPLE STUPID,)
LTD.,)

Respondents,)

and)

AMERICAN EXPRESS FINANCIAL)
ADVISERS, INC.,)

Cross-Appellant.)

MONTANA STATE AUDITOR'S)
MOTION FOR LEAVE TO FILE)
BRIEF OF AMICUS CURIAE)

On Appeal from the District Court of)
the Eighteenth Judicial District of the)
State of Montana, in and for the)
County of Gallatin,)

Cause No. DV-02-151)

FILED

SEP 11 2009

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Monica Lindem, Commissioner of Securities and Insurance, by and through her legal counsel Roberta Cross Guns, respectfully seeks leave of this Court to file an Amicus Curiae brief in this matter. This motion is made pursuant to Mont. R. App. P. 24. Counsel for the parties were contacted regarding this motion. Respondents oppose it and Appellants do not oppose.

The Commissioner, pursuant to her constitutional and statutory authority administers the Securities Act, *inter alia*, for the protection of Montana investors and to promote uniformity of securities regulation among the states. Mont. Code Ann. § 30-10-102. In the course of administering her duties, the Commissioner interprets the Securities Act and promulgates rules to support and explain the statutes found in the Act. The State has an interest in the outcome of the appeal because, as noted by Appellants, their arguments touch on areas of first impression in Montana. Because the Commissioner enforces the Act, it is appropriate that this Court hear from the State on this case.

The Commissioner seeks to submit her amicus brief addressing issues raised by the Appellants regarding the Act. If granted leave to file an amicus brief, the Commissioner would comply with the briefing schedule set by the Court.

Therefore, Monica Lindeen, State Auditor and Commissioner of Securities and Insurance, respectfully requests leave of Court to participate in this matter as amicus curiae.

DATED this 11th day of September, 2009.

MONICA LINDEEN
State Auditor
Commissioner of Securities and Insurance

By: Roberta Cross Guns
ROBERTA CROSS GUNS
Special Assistant Attorney General

CERTIFICATE OF SERVICE

I, Roberta Cross Guns, hereby certify that on the 11th day of September, 2009, I served a true and correct copy of the foregoing Motion to File Amicus Brief upon all counsel of record by mailing the same through the US mail, first-class postage prepaid to the following:

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