

APR 28 2005

J. DAVID NAVARRO, Clerk
By INGA JOHNSON
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO, DEPARTMENT OF
FINANCE, SECURITIES BUREAU,

Plaintiff,

vs.

ULTIMATE VENTURES, INC., a
Canadian corporation, and CAMERON
KUIPERS, president and director, in his
official and individual capacities,

Defendants,

ULTIMATE VENTURES, INC., a
Canadian corporation,

Third-Party Plaintiff,

vs.

K. BARTH WILLIAMS, as an individual
and d/b/a ASSURANCE FINANCIAL and
ASSURANCE FINANCIAL, INC., an
Idaho corporation.

Third-Party Defendants.

Case No. CVOC 0309967D

FINDINGS OF FACT
AND CONCLUSIONS OF LAW AND
ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT

1
2
3 K. BARTH WILLIAMS, as an individual
4 and d/b/a ASSURANCE FINANCIAL and
5 ASSURANCE FINANCIAL, INC., an
6 Idaho corporation.

7 Counterclaimants,

8 vs.

9 ULTIMATE VENTURES, INC., a
10 Canadian corporation,

11 Counterdefendant.

12 K. BARTH WILLIAMS and
13 ASSURANCE FINANCIAL, INC., an
14 Idaho corporation,

15 Third-Party Plaintiff,

16 vs.

17 CAMERON KUIPERS, president and
18 director of Ultimate Ventures, Inc.,
19 individually and in his official capacity,

20 Third-Party Defendant.

21 This matter came before the Court on the Motion for Summary Judgment filed by the Idaho
22 Department of Finance, Securities Bureau (the Department), against the Defendants, Ultimate
23 Ventures, Inc. (UVI) and Cameron Kuipers. The motion was argued before the Court on March 10,
24 2005. On March 14, 2005, the parties submitted their proposed Findings of Fact and Conclusions
25 of Law. The Court considered the matter fully under advisement on that date.

I. BACKGROUND

1
2 On December 30, 2003, the Department sued UVI, a Canadian corporation, and its
3 president, Cameron Kuipers, alleging certain violations of the Idaho Securities Act. The
4 Department is seeking an injunction as well as damages in the amount of at least \$4,388,605.79 as
5 restitution. The Department also seeks civil penalties in the amount of \$10,000 for each alleged
6 violation of the Securities Act, and attorneys fees and costs.

7 On February 6, 2004, UVI filed its answer. On February 6, 2004, Kuipers filed a Motion to
8 Dismiss the Complaint as it related to him individually for lack of personal jurisdiction. After a
9 hearing, the Court denied Kuipers' Motion to Dismiss on May 7, 2004.

10 On February 17, 2004, UVI and Kuipers filed a Third-Party Complaint against K. Barth
11 Williams and Assurance Financial, Inc., an Idaho corporation (hereinafter Williams and AFI). In
12 their Complaint, UVI and Kuipers alleged that it was Williams who approached Kuipers with the
13 original idea to sell securities to Idaho investors. They seek general and punitive damages as well as
14 costs and attorneys fees from Williams and AFI.
15

16 On June 3, 2004, Kuipers filed his answer to the Department's complaint.
17

18 On July 8, 2004, the Court entered an order setting the matter for trial on April 13, 2005.
19 Following the hearing on the instant Motion for Summary Judgment, the Court vacated the trial
20 date.

21 On August 3, 2004, Williams and AFI filed their Answer to the Third-Party Complaint, as
22 well as a Counterclaim against UVI and a Third-Party Complaint against Kuipers.

23 On October 27, 2004, UVI and Kuipers filed a reply to the Counterclaim and an Answer to
24 the Third-Party Complaint.
25

1 This Decision settles the Department's claims against UVI and Kuipers. UVI's Third-Party
2 Complaint against Williams and AFI and the Counterclaim and Third-Party Complaint by Williams
3 and AFI against UVI and Kuipers will be set for trial.

4 The law firm which had represented UVI and Kuipers was granted leave to withdraw. New
5 counsel has filed an appearance on their behalf.

6 **II. SUMMARY JUDGMENT STANDARD**

7 Where the pleadings, depositions, and admissions on file, together with the affidavits, if any,
8 show that there is no genuine issue as to any material fact and that the moving party is entitled to a
9 judgment as a matter of law, the judgment sought shall be rendered forthwith. Rule 56(c), Idaho
10 Rules of Civil Procedure. The party moving for summary judgment bears the burden of establishing
11 the absence of a genuine issue of material fact. *State v. Shama Resources Limited Partnership*, 127
12 Idaho 267, 899 P.2d 977 (1995). Once the moving party establishes the absence of a genuine issue,
13 the burden shifts to the non-moving party to make a showing of the existence of a genuine issue of
14 material fact on the elements challenged by the moving party. *Id.* Summary judgment shall be
15 entered when the non-moving party "fails to make a showing sufficient to establish the existence of
16 an element essential to that party's case and in which the party will bear the burden of proof at trial."
17 *Id.* The trial court must liberally construe the record in favor of the non-moving party and must draw
18 all reasonable inferences and conclusions in the non-moving party's favor. *Id.* The party opposing a
19 motion for summary judgment is not permitted to rest upon mere allegations or denials and the party's
20 response and affidavits must set forth specific facts showing that there is a genuine issue of material
21 fact for trial. *Id.* The admissibility of the evidence presented in support of or in opposition to the
22 motion for summary judgment is a threshold question for the trial court to decide. *Id.*

III. FINDINGS OF FACT

1
2 The Department filed the instant Motion for Summary Judgment on January 18, 2005. The
3 Motion is supported by numerous affidavits, including that of Marilyn T. Chastain, the Bureau
4 Chief for the Idaho Department of Finance. That affidavit establishes beyond a doubt that Kuipers
5 has never registered as a securities salesman or broker-dealer as required by the Idaho Securities Act
6 and further, that no notice of intent to claim an exemption from registration has ever been filed for
7 the securities that are the subject of this lawsuit, namely the preferred stock of UVI.

8
9 Certain documents were submitted by the Department from the Securities Commission of
10 British Columbia, Canada. UVI and Kuipers objected to the admission of a transcript of an
11 interview between Kuipers and the British Columbia Securities Commission (BCSC). The
12 admissibility of evidence is a threshold question for the trial court. The Court finds that the
13 transcripts of the Kuipers interview with the Canadian authorities are properly authenticated and are
14 not inadmissible hearsay.

15
16 Idaho Rule of Evidence 901 requires that documents be properly authenticated before they
17 are admitted. The Defendants admitted in their response to the State's Request for Admission No. 2
18 that the transcript in question was a true and correct copy of the interview. Additionally, the State
19 provided a copy of the interview prepared by a Canadian court reporter and certified by a BCSC
20 representative and by a Canadian consul in British Columbia. The Court finds that the transcript is
21 admissible as an admission of a party-opponent under Idaho Rule of Evidence 801(a). The
22 objection of the Defendant that the transcript is inadmissible as not compliant with Idaho Rule of
23 Civil Procedure 32(a)(4) is misplaced. The rule applies only to depositions. The interview was not
24 a deposition. It was conducted pursuant to an investigation. Idaho Rule of Civil Procedure 56(e)
25

1 allows for evidence to be presented in the form of affidavit. The transcript of the Kuipers interview
2 is admitted.

3 The following Findings of Fact and Conclusions of Law with minor changes are adopted
4 from the proposed Findings of Fact and Conclusions of Law presented by the Department. The
5 Court finds these facts are well supported by the record.

6 1. Defendant Cameron Kuipers during all times pertinent hereto was a Canadian citizen.

7 2. Kuipers has never been registered with the Idaho Department of Finance as a securities
8 salesperson or securities broker-dealer under the Idaho Securities Act (the Act).

9 3. In 1984, Kuipers declared personal bankruptcy in Canada.

10 4. On or about April 3, 1996, a default judgment in the amount of \$50,207.61, plus interest
11 and costs was entered against Kuipers in the Supreme Court of British Columbia.

12 5. On or about March 11, 1998, a consent judgment in the amount of \$70,000 plus interest
13 was entered in the Supreme Court of British Columbia against Kuipers individually and against
14 three companies, at least two of which, One-Stop Career Centres of Canada, Ltd. and Absolute
15 Products, Ltd., Kuipers served as an officer and director.

16 6. On or about May 14, 1998, a judgment in the amount of \$108,565.92 was entered by the
17 Supreme Court of British Columbia against the Canadian company 488576 B.C. Ltd., of which
18 Kuipers was an officer, director, and 100% shareholder, and in the amount of \$37,851.73 against
19 Kuipers as an individual, jointly and severally with other individuals.

20 7. On or about May 4, 1999, Kuipers filed an Affidavit and Financial Statement in The
21 Supreme Court of British Columbia asserting that he was indigent.

22 8. Beginning in January of 1996, Kuipers was a director, officer, and 100% shareholder in
23 the Canadian company One Stop Career Centres of Canada, Ltd. In approximately October of 1999,

1 that company began experiencing financial losses. In approximately mid-2000, preferred
2 shareholders in One Stop Career Centres of Canada, Ltd. Were issued preferred shares in Defendant
3 Ultimate Ventures, Inc. with a value of at least \$2,059,000 in exchange for their interests in One
4 Stop Career Centres, without paying any cash consideration for such preferred shares.

5 9. In approximately February of 2000, Kuipers incorporated UVI in Canada. UVI engages
6 in or has engaged in the business of purchasing beneficiary rights in life insurance policies, pooling
7 such life insurance policies, and selling investments in such pool in the form of preferred shares in
8 UVI.

9
10 10. At all times pertinent hereto, Kuipers was a director, the president, sole shareholder of
11 UVI, and controlled UVI.

12 11. Preferred shares in UVI have never been registered with the Idaho Department of
13 Finance as a security under the Idaho Securities Act.

14 12. Kuipers and Fraser & Company, a Canadian law firm, drafted a "Confidential Private
15 Placement Offering Memorandum" (P.P.M.) for UVI dated July 4, 2000, relating to the offer of
16 10,000,000 UVI preferred shares. Kuipers signed two pages of such P.P.M.

17
18 13. The P.P.M. set forth the material terms of an investment in preferred stock in UVI by
19 investors residing in the United States. The P.P.M. included the following provisions:

- 20 (a) Paragraphs 1.7 and 1.8 provided that life insurance policies and policy
21 proceeds of the UVI investment program would be held in trust;
- 22 (b) Paragraph 1.3 provided that commissions were payable to a "promoter,
23 finder, or any other person or company in connection with the offering;"
24

- 1 (c) Paragraphs 1.7, 4.1 and 4.2 provided that UVI had appointed a trustee to hold
2 in trust insurance policies purchased by UVI and cash proceeds of insurance
3 policies on behalf of UVI for the benefit of the preferred shareholders;
- 4 (d) Paragraph 4.2 provided that “any cash and all insurance policies remaining in
5 trust” will be delivered to UVI once preferred shares have been “redeemed.”

6 14. In approximately December of 2001, Barth Williams, an Idaho resident and insurance
7 agent, through contract with Kuipers, entered into a contractual relationship with UVI to sell UVI
8 preferred shares to Williams’ clients, most of whom then held viatical interests sold to them by
9 Williams. The contract between UVI and Williams stated that Williams would “arrange, organize,
10 facilitate, execute, oversee and otherwise assume full responsibility for the sale of [UVI’s] preferred
11 stock to Williams’ clients in Idaho.”

12 15. Williams was not licensed as a securities salesperson during all times pertinent hereto.

13 16. UVI and Kuipers provided copies of certain documents to Williams concerning UVI
14 and its preferred shares, including: (a) a document labeled “Declaration of Trust,” dated July 3,
15 2000, between UVI and Fraser and Company, Barristers and Solicitors; (b) a letter dated October
16 31, 2001, confirming a trust account balance of \$12,575.00; (c) a copy of the P.P.M., and (d) a copy
17 of a document labeled “Ultimate Ventures Inc., Summary Overview” (Summary Overview).

18 Williams relied on the information included in those documents in his sales of UVI preferred shares
19 to Idaho residents.

20 17. The Summary Overview provided to Williams included the following provisions:

- 21 (a) Paragraph 1.7 provided that UVI had appointed Fraser and Company as
22 Trustee to hold in trust the insurance polices purchased by UVI on behalf of
23 UVI and for the benefit of preferred shareholders;

1 (b) Paragraph 1.8 provided that the trust would hold all insurance policies
2 acquired by UVI in trust for the benefit of preferred shareholders. It further
3 provided that after all UVI preferred shareholders had received their
4 redemption amounts, the trustee would deliver the balance of cash and
5 insurance policies held in the trust to UVI.

6 18. In February of 2002, Kuipers came to Idaho and spoke at several meetings arranged by
7 Williams and attended by Williams and Williams' viatical clients. At such meetings, Kuipers
8 discussed UVI with Williams' clients and contacts and the general nature of viatical investments.
9 Kuipers admitted that "Barth would introduce me to them, both jointly, family members, in groups,
10 that sort of thing. So, I was introduced to all of them because again, we wanted to show them the
11 advantages of Ultimate versus the independent policies that they purchased on their own behalf."

12 19. Tim Yoder was a viatical client of Williams who attended one of the February 2002
13 meetings with Kuipers. Kuipers sent a letter dated March 4, 2002 addressed to Tim Yoder. Such
14 letter consisted of a proposal for Tim Yoder to invest in UVI's "investment trust." Tim Yoder was
15 one of the Idaho residents who later invested in UVI preferred shares.
16

17 20. During the time period beginning in April of 2002 and continuing to at least May 1,
18 2003, Idaho residents and a few residents of other states made cash purchases of UVI preferred
19 shares in the total amount of \$1,741,378.10. Idaho residents also exchanged existing viatical
20 interests for UVI preferred shares in the amount of \$2,743,520.47 by entering into contracts with
21 UVI for such exchanges. The cash purchases of UVI stock and the exchanges of existing viatical
22 interests for UVI preferred shares by Idaho residents involved 103 separate transactions. The
23 transactions involved 13 couples, 52 individuals, and 4 trusts.
24

1 21. Williams handled the details of the sales of UVI preferred shares to Idaho residents.
2 UVI paid Williams at least \$274,000 in commissions for such sales

3 22. The cash proceeds of sale of UVI preferred stock in the amount of \$1,741,378.10 were
4 deposited in UVI's bank account at Mountain West Bank in Idaho; and \$1,178,092.10 was
5 subsequently transferred from UVI's Mountain West account to and deposited in UVI's Canadian
6 bank accounts.

7 23. In connection with the offer and sale of UVI preferred shares to the Idaho investors, it
8 was represented by Defendants and Williams that the life insurance policies purchased with investor
9 monies would be held in trust. Life insurance policies purchased with investor monies were not
10 continuously held in trust.
11

12 24. Some proceeds from the sale of UVI preferred shares to Idaho residents were transferred
13 to Pinnacle Ventures, a company controlled by Kuipers.

14 25. On or about December 19, 2002, the BCSC issued a "Cease Trade Order" against UVI.

15 26. On September 23, 2003, an investigator with the BCSC took testimony of Defendant
16 Cameron Kuipers under oath pursuant to an investigation order issued by that Commission
17 (Canadian Testimony). That testimony was transcribed by McEachern & Associates, Ltd., of
18 British Columbia, Canada. A copy of the Canadian Testimony is found at Exhibit 1-B, pp. 00004-
19 00108, attached to the Affidavit of A. René Martin (Martin Affidavit), on file in this action.
20

21 27. Idaho residents who purchased UVI preferred shares were not informed of the
22 following:

- 23 (a) That Kuipers had filed personal bankruptcy in Canada in 1984;
24 (b) That three money judgments had been entered in Canada against Kuipers
25 between 1996 and 1998;

- 1 (c) That on or about May 4, 1999, Kuipers had filed an Affidavit and Financial
2 Statement in The Supreme Court of British Columbia asserting that he was
3 indigent;
- 4 (d) That on December 19, 2002, the BCSC had issued a "Cease Trade Order"
5 against UVI;
- 6 (e) That shareholders in One-Stop Career Centres of Canada, Ltd., of which
7 Kuipers was an officer, director, and 100% shareholder, had received
8 approximately \$2,059,000 in UVI preferred shares without paying any cash
9 for such shares.
10

11 **IV. CONCLUSIONS OF LAW**

12 1. The Canadian testimony referred to above is properly authenticated and admitted as
13 evidence in this summary judgment proceeding.

14 2. Idaho Code § 30-1416 provides that it is unlawful for any person to sell or to offer to
15 sell any security in Idaho, except securities exempt under § 30-1434, Idaho Code, or except
16 securities sold in transactions exempt under § 30-1435, Idaho Code, unless such security is
17 registered with the Department under the Act, or is a federal covered security is registered with the
18 Department under the Act, or is a federal covered security.
19

20 3. Idaho Code § 30-1406(1) provides that it is unlawful for any person to transact business
21 in Idaho as a securities salesman unless he is registered under the Act, and it is unlawful for any
22 issuer to employ a salesman unless the salesman is registered under the Act.

23 4. The Department has established, and the Defendants do not dispute, that preferred shares
24 in UVI constitute a security under the Act, that UVI preferred shares were not registered with the
25

1 Department as a security under the Act, that Kuipers and Williams were not registered as securities
2 salespersons under the Act, and that UVI securities were sold to Idaho residents.

3 5. "Issuer" is defined in § 30-1402(7) of the Act as: "... any person who issues or proposes
4 to issue any security . . ." Applying that definition to the established facts in this case, the Court finds
5 as a matter of law that UVI is the issuer of UVI preferred shares, the security in the case at bar.

6 6. The Defendants do not dispute that UVI preferred shares were not registered as a
7 security; that Kuipers and Williams were not registered as securities salespersons under the Act; that
8 UVI contracted with Williams, an unlicensed salesperson to sell UVI securities to Idaho residents;
9 and that Williams sold unregistered UVI shares to Idaho residents while he was not a registered
10 securities salesperson. However, Defendants assert that the non-public offering exemption of Idaho
11 Code § 30-1435(1)(b) exempts the Defendants' offer and sale of UVI preferred shares from the
12 registration requirements of the Act, and thus the Defendants are not subject to the registration
13 requirement of § 30-1406 of the Act.
14

15 7. Idaho Code § 30-1435(1)(b) of the Act provides that the registration requirements of §§
16 30-1416 through 30-1433A of the Act do not apply to "sales not involving a public offering,
17 whether effected through a broker-dealer or not . . . While the registration requirement of § 30-
18 1406 of the Act is not specified in the exception set forth in § 30-1435(1)(b), because the definition
19 of "salesman" under § 30-1402 (2) of the Act excludes "an individual who represents ... an issuer in
20 ... effecting transacting exempted by section 30-1435, Idaho Code...", the Defendant should not be
21 subject to the registration requirement of § 30-1406 if the non-public offering exemption were to
22 apply.
23

24 8. Rule 270.01 of The Rules Pursuant to the Idaho Securities Act, promulgated by the
25 Department (located at IDAPA 12.01.08.270.01), provides, in pertinent part, that securities sales not
26 MEMORANDUM DECISION AND ORDER CONSITUTING FINDINGS OF FACT
AND CONCLUSIONS OF LAW – Page 12

1 involving a public offering may be made without compliance with the registration requirements of the
2 Act “if such sales completely satisfy all criteria set forth in Idaho court decisions interpreting Sections
3 3-1435 (1) (a) and (b), Idaho Code, in effect at the time the exemption ... is to be relied upon. ...”

4 9. The Idaho Supreme Court has issued two decisions interpreting Idaho Code § 30-
5 1435(1)(b)----*Frachiseur v. Mountain View Irrigation Company, Inc.*, 100 Idaho 336, 597 P.2d 222
6 (1979) and *State v. Shama Resources Limited Partnership*, 127 Idaho 267, 899 P2d 977 (1995).

7 (a) In *Frachiseur*, the Idaho Supreme Court found the nonpublic offering
8 exemption applicable only to the limited circumstances “where it appears
9 that an offering is limited to those persons who are able to fend for themselves, i.e.
10 have access to the type of information that would be made available by a registration
11 statement.” 100 Idaho at 339. Further, the court in *Frachiseur* stated that “if the buyer
12 is in need of the protection afforded by the Securities Act[,], the disclosures provided
13 in an approved prospectus[,] the sales does not involve a public offering.” *Id.* The
14 *Frachiseur* court noted that, pursuant to Idaho Code § 30-1456, the party asserting the
15 exemption has the burden of proving it, and found that the party asserting the
16 exemption in that case had not sustained its burden. *Id.*

17 (b) In *Shama*, the Idaho Supreme Court noted that § 30-1435 (1) does not define a non-
18 public offering, and held that to qualify for the exemption, the person asserting it
19 “must make a showing that each of the offerees had access to the type of information
20 available in a registration statement such that they did not require the protections of a
21 registration statement.” 127 Idaho at 273.

22 A review of the record in this case shows that Defendants have made no showing of all
23 offerees to whom UVI preferred shares were offered for sale. Idaho Code § 30-1423 sets forth the
24

1 requirements for registration of a security by qualification under the Act. From a review of the
2 documents provided to investors by Williams, such documents did not include all of the information
3 required by Idaho Code § 30-1423 to be included in a registration statement. To rely on “access” to
4 the type of information available in a registration statement, the Defendants must show that the
5 offerees occupied a privileged position with respect to the issuer, UVI, that would provide them with
6 access to the type of information available in a registration statement. *See Doran v. Petroleum*
7 *Management Corp.*, 545 F.2d 893 (5th Cir. 1977). The Defendants have made no such showing.
8 Exemptions from registration provisions are construed narrowly. *Securities and Exchange*
9 *Commission v. Murphy*, 626 F.2d 633 (9th Cir., 1980). Based on the foregoing, the Court hereby
10 concludes as a matter of law that the Defendants have failed to meet their burden of showing that the
11 non-public offering exemption set forth in Idaho Code § 30-1435(1)(b) applies in the instant case.
12 Therefore, the non-public offering exemption of that statute is not available to the Defendants in this
13 action.
14

15 10. Idaho Code § 30-1416 imposes liability on the owner of a security who ^aposses title or
16 other interest in the security to the buyer for value. Because UVI preferred shares were unregistered
17 as required under § 30-1416, the Court concludes as a matter of law that UVI, as the owner of the
18 shares, violated that section. UVI

19
20 11. The Defendants admit that UVI employed Williams, who was not registered as a
21 securities salesperson, and Williams offered and sold unregistered UVI securities to Idaho residents.
22 Thus, the Court concludes as a matter of law that UVI violated Idaho Code § 30-1406(1). UVI

23 12. The Court next considers whether Kuipers is liable for violation of the registration
24 provisions of the Act. Idaho Code § 30-1402(10) defines “sale” or “sell” to include “every contract
25 of sale or contract to sell or dispose of, a security or interest in a security for value,” and the terms

1 “offer” or “offer to sell” include “every attempt to offer to dispose of, and every solicitation of an
2 offer to buy, a security or interest in a security for value.”

3 13. The Idaho Supreme Court has attempted to maintain uniformity and continuity with the
4 federal securities acts and similarly worded laws of other states, consistent with the stated policy of
5 the Act in § 30-1457. *See Meyers v. Lott*, 133 Idaho 846, 850 (2000). Therefore, federal case law
6 and the case law of other states is useful in interpreting similar laws in the Idaho Securities Act.

7 14. The United States Supreme Court in *Pinter v. Dahl*, 486 U.S. 622, 643 108 S.Ct. 2063
8 (1988), stated that the statutory terms “offer” and “sell” under the federal securities registration
9 states are defined broadly, and are “expansive enough to encompass the entire selling process . . .”
10 The Oregon federal district court has stated that in interpreting the term “offer to sell” under the
11 securities registration statutes, the appropriate inquiry is “whether defendants’ conduct conditioned
12 the public mind.” *Securities and Exchange Commission v. Thomas D. Kienlen Corporation*, 755
13 F.Supp. 936, 940 (D. Or. 1991).

14 15. Kuipers admitted that he came to Idaho and spoke at several meetings arranged by
15 Williams and attended by Williams and Williams’ viaticals clients. Kuipers also admitted that at
16 such meetings he discussed UVI with Williams’ clients and contacts and the general nature of
17 viatical investments. Kuipers stated that “Barth [Williams] would introduce me to them, both
18 jointly, family members, in groups that sort of thing. So, I was introduced to all of them because
19 again, we wanted to show them the advantages of Ultimate [Ventures, Inc.] versus the independent
20 policies that they purchased on their own behalf.” Kuipers’ admissions of those acts clearly shows
21 that he actively engaged in the soliciting of UVI investors, and his conduct at those Idaho meetings
22 “conditioned the public mind” of the attendees as part of the selling process of UVI preferred
23 shares.
24
25

1 16. Further, Kuipers admitted sending the letter dated March 4, 2002 to Tim Yoder. A
2 review of that letter shows that it was clearly an “offer to sell” UVI securities to Mr. Yoder, within
3 the definition of Idaho Code § 30-1402(10). Thus, Kuipers sold or offered to sell unregistered, non-
4 exempt securities in UVI, within the meaning of Idaho Code §30-1416.

5 17. In *Meyers v. Lott*, 133 Idaho 846, 993 P.2d 609 (2000), the Idaho Supreme Court
6 adopted the “financial benefit test” for a statutory seller of securities of *Pinter v. Dahl*, 486 U.S. at
7 647. The Idaho Supreme Court in *Meyers* defined a “seller of securities [under Idaho’s securities
8 registration statutes] as one who is motivated at least in part by desire to serve his own financial
9 interest or those of the securities owner.” 133 Idaho at 850. From the application of the *Meyers v.*
10 *Lott* “financial benefit test” to the facts of this case, it is clear that Kuipers’ actions in soliciting
11 investors in UVI preferred shares was motivated by pecuniary gain. For example, Kuipers stood to
12 gain from the sale of UVI securities to Idaho investors in several respects, including: (a) Kuipers
13 qualified to receive commissions for the sale of UVI securities, as set forth in the P.P.M.; (b) UVI
14 investor funds were transferred to Pinnacle Ventures, a company controlled by Kuipers; and (d)
15 under paragraph 4.2 of the P.P.M., after all preferred shares were redeemed, any polices or cash
16 remaining in the trust would be returned to UVI, which was controlled and owned by Kuipers.
17 Further, as 100% owner of the common shares of UVI, Kuipers stood to benefit from any financial
18 gain to UVI resulting from the sale of its preferred shares to Idaho residents. Because Kuipers’
19 efforts to offer and sell UVI shares to Idaho residents was clearly financially motivated, the
20 “financial benefit test” of *Meyers v. Lott* was met to establish Kuipers as a “statutory seller” for the
21 purposes of the registration provisions of the Act, and the Court thus concludes the same.

22 18. Idaho Code § 30-1442(4) provides that liability for sanctions under the Act extends “to
23 all persons who engaged in violations or who aided and abetted others in violations of [the Act] . . .
24 MEMORANDUM DECISION AND ORDER CONSITUTING FINDINGS OF FACT
25 AND CONCLUSIONS OF LAW – Page 16
26

Kuipers

1 Officers and directors of corporations shall not be exempt from actions brought for violations,
2 merely because of their capacity as officers or directors, if they have participated in acts making the
3 violations possible or if they have actual or constructive knowledge of violations by the corporation
4 while acting as an officer.” Kuipers was an officer and director of UVI during all times pertinent
5 hereto. The Court concludes that Kuipers is not exempt from violations of the Act due to that
6 status, as he participated in acts making the violations possible, and he also had actual or
7 constructive knowledge of UVI’s violations while acting as an officer.
8

9 19. Based on the undisputed facts, the Court concludes as a matter of law that Kuipers
10 violated Idaho Code § 30-1416 by offering unregistered, non-exempt, UVI securities in Idaho.

11 20. Idaho Code § 30-1406(1) provides that it is unlawful for any person to transact business
12 in Idaho as a securities salesperson as to non-exempt securities unless he is registered under the Act.
13 “Transact[ing] business” is defined at IDAPA 12.01.08.300.01 as “to buy or to sell or contract to
14 buy or to sell or dispose of a security or interest in a security for value. It shall also mean any offer
15 to buy or offer to sell or dispose of, and every solicitation of clients or of any offer to buy or to sell,
16 a security or interest in a security for value.” Based on the undisputed facts concerning Kuipers’
17 acts of offering UVI securities in Idaho, the Court concludes as a matter of law that Kuipers violated
18 Idaho Code § 30-1406(1) by transacting securities business in Idaho while he was unregistered as a
19 securities salesperson under the Act.
20

21 21. Idaho Code § 30-1403(2) provides that it is unlawful for any person, in connection with
22 the offer, sale, or purchase of any security, directly or indirectly, to make any untrue statement of a
23 material fact or to omit to state a material fact necessary in order to make the statements made, in
24 the light of the circumstances under which they are made, not misleading.
25

1 22. To establish securities fraud under § 30-1403(2) of the Act, the Department must show
2 that the Defendants made untrue statements of material fact or omitted to state any material facts in
3 connection with the offer, sale, or purchase of any security. *State v. Shama Limited Partnership* 127
4 Idaho 272, 899 P.2d 977 (1995).

5 23. A fact is material to offerees and investors if such information may have resulted in an
6 alteration of the offerees' or investors' investment decision. 127 Idaho at 273.

7 24. In connection with the offer and sale of UVI securities to Idaho investors, Defendants
8 and their agent, Barth Williams, represented to such investors that life insurance policies and policy
9 proceeds of the UVI investment program would be held in trust. Because such life insurance
10 policies in the UVI investment program were not continuously held in trust, the Court concludes
11 that had offerees or investors been provided with that information, it would likely have resulted in
12 an alteration of their investment decision. Thus, the Court concludes that with respect to the
13 information concerning the trust aspect of an investment in the UVI securities, the Defendants
14 misrepresented a material fact to Idaho offerees and investors in connection with the offer or sale of
15 UVI securities, constituting securities fraud under Idaho Code § 30-1403(2).
16

17 25. In their brief opposing summary judgment, the Defendants relied on *TSC Industries,*
18 *Inc. v. Northway, Inc.*, 426 U.S. 438 (1976) to define "materiality" of omissions in a securities fraud
19 case. The cited language provides as follows: "Only if the established omissions are 'so obviously
20 important to an investor, that reasonable minds cannot differ on the question of materiality' is the
21 ultimate issue of materiality appropriate resolved 'as a matter of law' by summary judgment." 426
22 U.S. at 450.
23

24 26. Applying the *TSC Industries, Inc. v. Northway* standard to the omissions of fact
25 established in this case, the Court concludes as a matter of law that the following omissions of facts

1 by the Defendants and their agent, Barth Williams, in connection with the offer or sale of UVI
2 securities to Idaho residents were material under that standard: (although the Court finds that in
3 1984 Kuipers declared personal bankruptcy in Canada, the Court does not find as a matter of law
4 that the omission of that particular fact was material, however, the omissions of the following facts
5 were material under that standard).

- 6 (a) That three money judgments had been entered against Kuipers between 1996
7 and 1998;
- 8 (b) That on or about May 4, 1999, Kuipers filed an Affidavit and Financial
9 Statement in The Supreme Court of British Columbia asserting that he was
10 indigent;
- 11 (c) That on December 19, 2002, the BCSC issued a "Cease Trade Order" against
12 UVI; and
- 13 (d) That shareholders in One-Stop Career Centres of Canada, Ltd., of which
14 Kuipers was an officer, director, and 100% shareholder, had received
15 approximately \$2,059,000 in UVI preferred shares without paying any cash
16 for such shares.
17
18

19 The Court concludes as a matter of law that each of the foregoing factual omissions in
20 connection with the offer or sale of UVI preferred shares to Idaho residents was a material omission
21 as a matter of law, constituting securities fraud within the meaning of Idaho Code § 30-1403(2).

22 27. Idaho Code § 30-1403(3) provides that it is unlawful for any person, in connection with
23 the offer, sale or purchase of any security, directly or indirectly, to engage in any act, practice or
24 course of business which operates or would operate as a fraud or deceit upon any person.
25

1 28. Based on the Court's findings concerning the Defendants' acts, practices, and course of
2 business in connection with the offer and sale of UVI securities in Idaho as set forth above, the
3 Court concludes as a matter of law that the Defendants have engaged in a course of action that
4 operated as a deceit upon Idaho investors, constituting securities fraud in violation of Idaho Code §
5 30-1403(3).

6 **V. ORDER**

7 NOW THEREFORE, based on the foregoing Findings of Fact and Conclusions of Law, the
8 Court enters the following ORDER:

9 THE COURT HEREBY FINDS that the Defendants have violated §§ 30-1416, 30-1406(1),
10 30-1403(3), and 30-1403(3), as set forth above;

11 THE COURT FURTHER FINDS that all contracts entered into by Idaho investors with UVI
12 for the exchange of their existing viatical interests for UVI preferred shares are void and
13 unenforceable, in that they are in violation of the Idaho Securities Act;

14 THEREFORE, THE COURT GRANTS the following relief to the Plaintiff:

15 The Court enters a permanent injunction against the Defendants, pursuant to Idaho Code
16 §30-1442(3), as sought by the Department in its Verified Complaint filed herein;

17 The Court orders the Defendants, jointly and severally, to pay the Department the sum of
18 \$1,741,378.10, as restitution for Idaho investors injured by the Defendants' violation of the Idaho
19 Securities Act;

20 The Court orders the Defendants, jointly and severally, to pay the Department the sum of
21 \$1,030,000 in penalties pursuant to Idaho Code § 30-1442(3)(b), reflecting the amount of \$10,000
22 for each of the 103 securities transactions entered into by the Defendants;

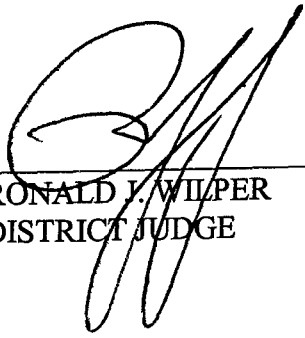
1 The Court orders the Defendants to pay to the Department costs, including reasonable
2 attorney fees and reimbursement for investigative efforts, pursuant to Idaho Code § 30-1442(3)(c);

3 IT IS FURTHER ORDERED that the Defendants take all necessary steps to place the Idaho
4 investors who engaged in exchanges of existing viatical interests for shares of UVI stock in their
5 original position prior to such exchanges.

6 IT IS FURTHER ORDERED that the Plaintiff shall prepare a cost bill and proposed
7 judgment.

8 IT IS SO ORDERED.

9 Dated this 28th day of April, 2005.

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12 _____
13 RONALD J. WILPER
14 DISTRICT JUDGE
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CERTIFICATE OF MAILING

I, J. David Navarro, the undersigned authority, do hereby certify that I have mailed, by United States Mail, on this 29 day of April, 2005, one copy of the MEMORANDUM DECISION AND ORDER as notice pursuant to Rule 77(d) I.C.R. to each of the attorneys of record in this cause in envelopes addressed as follows:

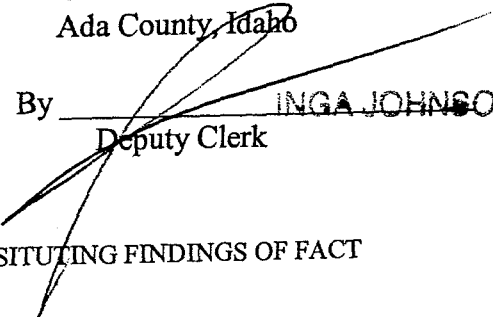
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J. DAVID NAVARRO
Clerk of the District Court
Ada County, Idaho

By  INGA JOHNSON
Deputy Clerk