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J. DAVID NAVARRO, Clerk
By _____ DEPUTY INGA JOHNSON

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

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

Counterclaimants,

vs.

ULTIMATE VENTURES, INC., a Canadian corporation,

Counterdefendant.

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

Third-Party Plaintiff,

vs.

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

Third-Party Defendant.

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

I. BACKGROUND

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

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

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

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

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

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

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

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

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

II. SUMMARY JUDGMENT STANDARD

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

III. FINDINGS OF FACT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Paragraphs 1.7 and 1.8 provided that life insurance policies and policy proceeds of the UVI investment program would be held in trust;

(b) Paragraph 1.3 provided that commissions were payable to a "promoter, finder, or any other person or company in connection with the offering;"

(c) Paragraphs 1.7, 4.1 and 4.2 provided that UVI had appointed a trustee to hold in trust insurance policies purchased by UVI and cash proceeds of insurance policies on behalf of UVI for the benefit of the preferred shareholders;

(d) Paragraph 4.2 provided that "any cash and all insurance policies remaining in trust" will be delivered to UVI once preferred shares have been "redeemed."

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

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

16. UVI and Kuipers provided copies of certain documents to Williams concerning UVI and its preferred shares, including: (a) a document labeled "Declaration of Trust," dated July 3, 2000, between UVI and Fraser and Company, Barristers and Solicitors; (b) a letter dated October 31, 2001, confirming a trust account balance of $12,575.00; (c) a copy of the P.P.M., and (d) a copy of a document labeled "Ultimate Ventures Inc., Summary Overview" (Summary Overview). Williams relied on the information included in those documents in his sales of UVI preferred shares to Idaho residents.

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) That Kuipers had filed personal bankruptcy in Canada in 1984;

(b) That three money judgments had been entered in Canada against Kuipers between 1996 and 1998;

(c) That on or about May 4, 1999, Kuipers had filed an Affidavit and Financial Statement in The Supreme Court of British Columbia asserting that he was indigent;

(d) That on December 19, 2002, the BCSC had issued a "Cease Trade Order" against UVI;

(e) That shareholders in One-Stop Career Centres of Canada, Ltd., of which Kuipers was an officer, director, and 100% shareholder, had received approximately $2,059,000 in UVI preferred shares without paying any cash for such shares.

IV. CONCLUSIONS OF LAW

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

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

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

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

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

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

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

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

8. Rule 270.01 of The Rules Pursuant to the Idaho Securities Act, promulgated by the Department (located at IDAPA 12.01.08.270.01), provides, in pertinent part, that securities sales not

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18. Idaho Code § 30-1442(4) provides that liability for sanctions under the Act extends "to all persons who engaged in violations or who aided and abetted others in violations of [the Act] . . .

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

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

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

21. Idaho Code § 30-1403(2) provides that it is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly, 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.

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

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

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

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

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

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

(a) That three money judgments had been entered against Kuipers between 1996 and 1998;

(b) That on or about May 4, 1999, Kuipers filed an Affidavit and Financial Statement in The Supreme Court of British Columbia asserting that he was indigent;

(c) That on December 19, 2002, the BCSC issued a "Cease Trade Order" against UVI; and

(d) That shareholders in One-Stop Career Centres of Canada, Ltd., of which Kuipers was an officer, director, and 100% shareholder, had received approximately $2,059,000 in UVI preferred shares without paying any cash for such shares.

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

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

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

V. ORDER

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

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

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

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

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

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

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

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

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

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

IT IS SO ORDERED.

Dated this 28th day of April, 2005.

RONALD J. WILPER
DISTRICT JUDGE

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:

Richard A. Riley
Hawley Troxell Ennis & Hawley
P.O. Box 1617
Boise, ID 83701-1617

Mark S. Geston
Stoel Rives
101 S. Capitol Blvd., Ste 1900
Boise, ID 83702-5958

Lawrence G. Wasden
A.Rene Martin
Attorney Generals Ofice
State of Idaho
Department of Finance
P.O. Box 83720
Boise, ID 83720-0031

Michael O. Roe
Mark C. Peterson
Moffattt Thomas Barrett
Rock & Fields, Chtd.
101 S. Capitol Blvd., 10th Floor
Boise, ID 83701

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

By _____ INGA JOHNSON
Deputy Clerk