

FILED

97 SEP 22 AM 9:10

CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

BY: _____

1 Elaine M. Cacheris
 Sandra J. Harris
 2 Karen Matteson
 Lisa Deitch
 3 Martin J. Murphy
 4 Attorneys for Plaintiff
 Securities and Exchange Commission
 5 5670 Wilshire Blvd., 11th Floor
 Los Angeles, CA 90036
 6 Telephone: (213) 965-3998

7
 8 UNITED STATES DISTRICT COURT
 9 CENTRAL DISTRICT OF CALIFORNIA
 10 WESTERN DIVISION

11 _____
 12 SECURITIES AND EXCHANGE COMMISSION, :
 13 Plaintiff, :
 14 v. :
 15 WHITWORTH ENERGY RESOURCES, LTD.; :
 WILLISTON BASIN HOLDING CORP.; :
 16 AMERIVEST FINANCIAL GROUP, INC.; :
 PETER SACKER; JERRY W. ANDERSON; :
 17 and ROBERT M. KERNS, :
 18 Defendants. :
 19 _____

Civil Action No. DT (SHx)
 97-6980
 COMPLAINT FOR TEMPORARY
 RESTRAINING ORDER,
 PRELIMINARY AND PERMANENT
 INJUNCTIONS AND OTHER
 LEGAL AND EQUITABLE
 RELIEF

20 Plaintiff Securities and Exchange Commission ("Commission")
 21 for its Complaint alleges:

22 JURISDICTION

23 1. This Court has jurisdiction over this action pursuant
 24 to Sections 20(b), 20(d) and 22(a) of the Securities Act [15
 25 U.S.C. §§ 78u(d)(1) & 77v(a)], and Sections 21(d), 21(e) and 27
 26 of the Exchange Act [15 U.S.C. §§ 78u(d)(3), 78u(e) & 78aa].

27 *

28 *

1 practices and courses of business of similar purport and object,
2 for other equitable relief, including disgorgement, for payment
3 of civil penalties by Defendants Amerivest, Sacker, Anderson and
4 Kerns, and for such further relief as the Court may deem
5 appropriate.

6 THE DEFENDANTS

7 4. Whitworth is a Nevada corporation doing business in
8 Woodland Hills, California. Whitworth is the managing general
9 partner of at least 13 oil and gas offerings. As the managing
10 general partner, Whitworth has exclusive authority to manage
11 operations of the wells and properties in which interests are
12 offered.

13 5. Williston is a California corporation doing business in
14 Woodland Hills, California. Williston is the managing general
15 partner of at least five oil and gas offerings, for which it has
16 exclusive authority to manage operations.

17 6. Amerivest is a California corporation doing business in
18 Woodland Hills, California. Amerivest has been registered with
19 the Commission as a broker-dealer since November 17, 1992.
20 Amerivest is a wholly owned subsidiary of Oxford Group of
21 Companies, Ltd., a Nevada corporation, co-owned by Amerivest's
22 directors, Defendants Anderson and Kerns. Amerivest is the
23 selling agent for the Whitworth and Williston offerings.
24 Amerivest, Whitworth and Williston are affiliated through their
25 common principal, Anderson, who has an ownership interest in
26 Amerivest's parent company, as well as in Whitworth and
27 Williston. Amerivest also shares office space and support staff
28 services with Whitworth and Williston and, until recently, all of

1 Amerivest's business came from selling the Whitworth and
2 Williston investments.

3 7. Sacker resides in Ventura, California. Sacker is a co-
4 owner (with Anderson) of Whitworth and Williston. Sacker is the
5 president of Whitworth and chief financial officer and a director
6 of Williston. As sole owners and managers of Whitworth and
7 Williston, Sacker and Anderson set the terms of the Offerings,
8 set the policies for the operations of Whitworth and Williston,
9 and negotiated for the purchase of oil and gas properties from
10 operator Condor and others. In addition, Sacker regularly made
11 presentations to Amerivest registered representatives, describing
12 the offerings and reporting on the performance of the wells.
13 Sacker is also the signatory on most of the Whitworth and
14 Williston bank accounts into which investor monies have been
15 deposited, as well as on the account from which distributions are
16 made to investors.

17 8. Anderson resides in Ventura, California. Anderson is a
18 co-owner (with Sacker) of Whitworth and Williston. Anderson is
19 the treasurer and a director of Whitworth and chief executive
20 officer and a director of Williston. Anderson is a signatory on
21 the account from which distributions are made to investors.

22 Anderson is also a co-owner (with Kerns) of Amerivest's parent
23 company and is a member of the board of directors of Amerivest.

24 9. Kerns resides in Redondo Beach, California. Kerns is
25 the president and a director of Amerivest. Kerns is a also co-
26 owner (with Anderson) of Amerivest's parent company.

27 *

28 *

1 offerings, investors were often initially cold-called by sales
2 people of Amerinvest, Whitworth or Williston, who touted high
3 returns. Investors then received follow-up telephone calls from
4 Amerinvest, Whitworth or Williston salespeople, in which the
5 salespeople reported on the status of investors' existing
6 investments and solicited investors to invest in further
7 offerings.

8 **A. The Defendants Have Falsely Represented That Investors**
9 **Receive Their Returns From The Sale Of Oil And Gas**

10 14. The Defendants, through the offering memoranda for the
11 Whitworth and Williston offerings, represent that distributions
12 to investors will be derived from revenue generated by the sale
13 of oil and gas (or in the case of a water disposal well, from the
14 fees charged for the transportation and disposal of water from
15 the oil and gas wells). Each distribution check to investors
16 similarly details, on a tear-off stub, the purported amount of
17 oil and gas sold to yield the monthly distribution amount of the
18 check. Contrary to these representations, at least since mid-
19 1996, only a small portion of distributions has been from oil and
20 gas sales. For example, for a ten month period from about May 1,
21 1996 through about February 28, 1997, less than 10% of the total
22 distributions paid to investors were derived from the sale of oil
23 and gas. Instead, new investor funds have been used to pay
24 distributions to other investors in a Ponzi-like scheme.

25 **B. The Defendants Have Failed To Disclose A Substantial Debt**
26 **Condor Claims Is Owed**

27 15. The Defendants fail to disclose that Condor claims that
28 Whitworth and Williston owe it a substantial debt. Nor have the

1 Defendants disclosed a dispute with Condor over the amount of any
2 debt. Specifically, in written monthly statements issued by
3 Condor to Whitworth and Williston, Condor states that the amount
4 of the claimed debt has grown from about \$386,660 in June 1996 to
5 about \$907,112 by June 1997. Moreover, the Defendants have
6 failed to disclose that, at least since mid-1996, most monies
7 generated by Condor-operated wells (over \$1 million) have been
8 applied to the debt rather than being returned to Whitworth and
9 Williston for ultimate distribution to investors.

10 **C. The Defendants Have Falsely Represented That Investor Funds**
11 **Are "Escrowed" When They Instead Have Commingled Investor**
12 **Funds In Whitworth And Williston Accounts**

13 16. The offering memoranda represent that investor checks
14 will be initially "escrowed" and that a bank account will be
15 established by Whitworth or Williston on behalf of each joint
16 venture or limited partnership. Contrary to these
17 representations, investor proceeds derived from all offerings
18 have been commingled in Whitworth or Williston checking accounts
19 and not safeguarded in escrow accounts.

20 **D. The Defendants Have Falsely Represented That Whitworth**
21 **Purchased Well Interests It In Fact Never Acquired**

22 17. Two Whitworth offerings of interests in joint ventures,
23 Production Buyers Acquisition ("PBA") #2 and PBA #3, together
24 raised over \$1.5 million. PBA #2 was offered from about May 1995
25 through September 1995 and PBA #3 was offered from about
26 September 1995 through June 1996. The offering materials for PBA
27 #2 and PBA #3 represent that Whitworth had purchased royalty
28 interests in specific wells located in North Dakota and Texas

1 from Stuart Hunt (the "Hunt Wells"). In fact, contrary to the
2 above representations, Whitworth never acquired any interest of
3 any kind in the Hunt Wells.

4 18. Furthermore, PBA #2 joint venture offering materials
5 represent that working interests in four additional specific
6 Texas wells (the "Texas Wells") had also been purchased.
7 Whitworth, however, never purchased such interests in the "Texas
8 Wells."

9 19. Through about mid-1996, the Texas Wells and some of the
10 Hunt Wells were falsely represented to be part of Whitworth's
11 purported inventory of wells purchased through previous offerings
12 in the offering memoranda for the following subsequent offerings:
13 PBA #3; Lodgepole Re-entry ("LP") #1; LP #2; Williston Preferred
14 Partners ("PP") #1; Williston Water Transportation System
15 ("WTS"); and Capa Development ("CD") #1.

16 E. Whitworth, Anderson And Sacker Have Sold The Same Interests
17 In Certain Wells To Several Groups Of Investors

18 20. Whitworth oversold interests in wells, in that its
19 assignment documents to three joint ventures, PBA #1, PBA #2, and
20 PBA #3, purport to assign the same interests in the same Condor-
21 operated wells to all three joint ventures. These assignment
22 documents are signed by Anderson, on behalf of Whitworth.

23 F. The Defendants Have Grossly Overstated Ownership Interests
24 Of Whitworth In Certain Wells

25 21. In about January 1995, Whitworth, represented by
26 Anderson, purchased a 5% interest in a joint venture managed by
27 Providence Energy Corporation ("Providence"), an entity unrelated
28 to the Defendants. The Providence joint venture owned interests

1 in about 400 wells located in eleven states.

2 22. The offering memorandum for the Whitworth PBA #1 joint
3 venture offered from March 1995 through June 1995, as well as the
4 offering memoranda for subsequent Whitworth and Williston
5 offerings PBA #2, PBA #3, LP #1, LP #2, PP #1, WTS, CD #1, CD #2
6 and CD #3, specifically list as Whitworth's purported ownership
7 interest in each of the 400 wells a percentage amount which in
8 fact reflects the entire interest owned by the Providence joint
9 venture, rather than the 5% sub-interest in the Providence joint
10 venture in fact owned by Whitworth. Whitworth's interest is thus
11 overstated by a factor of twenty. The PBA #1 offering raised
12 over \$600,000.

13 FIRST CLAIM FOR RELIEF

14 FRAUD IN THE OFFER OR SALE OF SECURITIES

15 Violations of Section 17(a) of the
16 Securities Act [15 U.S.C. § 77q(a)]

17 [Against All Defendants]

18 23. Paragraphs 1 through 22 are realleged and incorporated
19 herein by reference.

20 24. Defendants Whitworth, Williston, Amerinvest, Sacker,
21 Anderson and Kerns, and each of them, by engaging in the conduct
22 described above, directly or indirectly, in the offer or sale of
23 securities, by the use of means or instruments of transportation
24 or communication in interstate commerce or by the use of the
25 mails:

26 (a) with scienter, employed devices, schemes or artifices
27 to defraud;

28 (b) obtained money or property by means of untrue

1 statements of material fact or by omitting to state
2 material facts necessary in order to make the
3 statements made, in the light of the circumstances
4 under which they were made, not misleading; or
5 (c) engaged in transactions, practices or courses of
6 business which operated or would operate as a fraud or
7 deceit upon the purchasers of such securities;
8 in violation of Section 17(a) of the Securities Act.

9 25. By reason of the foregoing, Defendants Whitworth,
10 Williston, Amerinvest, Sacker, Anderson and Kerns, violated, and
11 unless restrained and enjoined will continue to violate, Section
12 17(a) of the Securities Act.

13 SECOND CLAIM FOR RELIEF

14 FRAUD IN CONNECTION WITH THE
15 PURCHASE OR SALE OF SECURITIES

16 Violations of Section 10(b) of the Exchange Act
17 [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder
18 [17 C.F.R. § 240.10b-5]
19 [Against All Defendants]

20 26. Paragraphs 1 through 22 are realleged and incorporated
21 herein by reference.

22 27. Defendants Whitworth, Williston, Amerinvest, Sacker,
23 Anderson and Kerns, and each of them, with scienter, by engaging
24 in the conduct described above, directly or indirectly, in
25 connection with the purchase or sale of securities, by the use of
26 means or instrumentalities of interstate commerce, or of the
27 mails:

28 (a) employed devices, schemes or artifices to defraud;

1 (b) made untrue statements of material fact or omitted to
2 state a material fact necessary in order to make the
3 statements made, in the light of the circumstances
4 under which they were made, not misleading; or

5 (c) engaged in acts, practices or courses of business which
6 operated or would operate as a fraud or deceit upon
7 other persons;

8 in violation of Section 10(b) of the Exchange Act and Rule 10b-5
9 thereunder.

10 28. By reason of the foregoing, Defendants Whitworth,
11 Williston, Amerivest, Sacker, Anderson and Kerns, violated, and
12 unless restrained and enjoined will continue to violate, Section
13 10(b) of the Exchange Act and Rule 10b-5 thereunder.

14 THIRD CLAIM FOR RELIEF

15 VIOLATION OF THE BROKER-DEALER ANTIFRAUD PROVISIONS

16 Violations of Section 15(c)(1)(A) of the Exchange Act
17 [15 U.S.C. § 78o(c)(1)(A)] and Rule 15c1-2 thereunder
18 [17 C.F.R. § 240.15c1-2]

19 [Against Defendant Amerivest]

20 29. Paragraphs 1 through 22 are realleged and incorporated
21 herein by reference.

22 30. Defendant Amerivest, a broker-dealer, directly or
23 indirectly, by engaging in the conduct described above, in order
24 to effect transactions in or to induce or attempt to induce the
25 purchase or sale of securities, by use of the mails or means or
26 instrumentalities of interstate commerce:

27 (a) engaged in acts, practices or courses of business which
28 operated or would operate as a fraud or deceit upon

1 other persons; or

2 (b) made untrue statements of material fact or omitted to
3 state material facts necessary in order to make the
4 statements made, in the light of the circumstances
5 under which they were made, not misleading, which
6 statements or omissions were made with knowledge or
7 reasonable grounds to believe that they were untrue or
8 misleading;

9 in violation of Section 15(c) (1) (A) of the Exchange Act and Rule
10 15c1-2 thereunder.

11 31. By reason of the foregoing, Defendant Amerivest
12 violated, and unless restrained and enjoined will continue to
13 violate, Section 15(c) (1) (A) of the Exchange Act and Rule 15c1-2
14 thereunder.

15 PRAYER FOR RELIEF

16 WHEREFORE, the Commission respectfully requests that the
17 Court:

18 I.

19 Issue findings of fact and conclusions of law that the
20 Defendants committed the alleged violations;

21 II.

22 Issue in a form consistent with Fed. R. Civ. P. 65, orders
23 temporarily, preliminarily and permanently enjoining the
24 Defendants and their officers, agents, servants, employees, and
25 attorneys, and those persons in active concert or participation
26 with any of them; who receive actual notice of the order by
27 personal service or otherwise, and each of them from violating
28 Section 17(a) of the Securities Act, Section 10(b) of the

1 Exchange Act and Rule 10b-5 thereunder;

2 III.

3 Issue in a form consistent with Fed. R. Civ. P. 65, orders
4 temporarily, preliminarily and permanently enjoining Defendant
5 Amerivest and its officers, agents, servants, employees, and
6 attorneys, and those persons in active concert or participation
7 with any of them, who receive actual notice of the order by
8 personal service or otherwise, and each of them, from violating
9 Section 15(c)(1)(A) of the Exchange Act and Rule 15c1-2
10 thereunder;

11 IV.

12 Issue in a form consistent with Fed. R. Civ. P. 65, a
13 temporary restraining order and a preliminary injunction freezing
14 the assets of each of the Defendants, and prohibiting each of the
15 Defendants from destroying documents, appointing a receiver over
16 Defendants Whitworth, Williston and Amerivest, and for
17 accountings;

18 V.

19 Grant such other and further relief as this Court may
20 determine to be just, equitable and necessary, including, but not
21 limited to, disgorgement;

22 VI.

23 Enter an Order directing Defendants Amerivest, Sacker,
24 Anderson and Kerns to pay civil penalties under the Securities
25 Enforcement Remedies and Penny Stock Reform Act of 1990; and

26 VII.

27 Retain jurisdiction of this action in accordance with the
28 principles of equity and the Federal Rules of Civil Procedure in

1 order to implement and carry out the terms of all orders and
2 decrees that may be entered, or to entertain any suitable
3 application or motion for additional relief within the
4 jurisdiction of this Court.

5
6 DATED: September 22, 1997

Lisa Deitch

Lisa Deitch
Attorney for Plaintiff
Securities and Exchange Commission

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28