

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
2007 APR 13 P 2:08
CLERK US DISTRICT COURT
ALEXANDRIA, VIRGINIA

UNITED STATES SECURITIES
AND EXCHANGE COMMISSION,

Plaintiff,

v.

INTERNATIONAL FIDUCIARY CORP., S.A.,
DANIEL ERIC BYER,
MALCOLM CAMERON BOYD STEVENSON,
and PRESTON DAVID PINKETT II,

Defendants.

CIVIL ACTION NO. 1:06-cv1354

**MEMORANDUM IN SUPPORT OF JOINT
MOTION TO MODIFY SCHEDULING ORDER**

Pursuant to Rule 16 of the Federal Rules of Civil Procedure and this Court's February 7, 2007 Scheduling Order, Defendant Preston David Pinkett II ("Pinkett") and Plaintiff Securities and Exchange Commission (the "Commission" or the "SEC"), hereby respectfully submit this Memorandum in support of their Joint Motion to Modify Scheduling Order. The proposed modifications are sought in order for the parties to have additional time to properly prepare and present this action at trial and to engage in settlement negotiations, all as more fully set forth below.

PROCEDURAL HISTORY

The Commission filed its original Complaint in this action on December 4, 2006. The Court granted a Temporary Restraining Order on December 4, 2006 which provided assorted relief including enjoining the defendants from further violations of the securities laws and

freezing their assets. On December 11, 2006, the Court entered a Preliminary Injunction which extended the asset freeze as to each of the defendants pending a hearing on a permanent injunction. On January 22, 2007, the Court entered an Order fixing the close of discovery in this matter at March 30, 2007. By Order of February 7, 2007, the discovery cutoff was extended to April 30, 2007. The February 7, 2007 Order also provided that “[a]ny motion to amend the pleadings or to join a party shall be made as soon as possible after counsel becomes aware of the grounds for the motion.”

On January 19, 2007, the Court entered an Order appointing a receiver over defendant IFC. Defendants Pinkett and IFC filed an Answer to the Complaint on February 12, 2007. On February 23, 2007, Plaintiff filed a motion for entry of default judgment against defendants Byer and Stevenson, who have failed to answer the original Complaint. On March 29, 2007, Magistrate Jones entered a Report and Recommendation concluding that the motion for entry of default against both Byer and Stevenson should be granted.

On April 10, 2007, the Commission filed Plaintiff’s Motion for Leave to File Amended Complaint together with its Memorandum and proposed First Amended Complaint.

BASIS FOR MOTION

The objective of Rule 16 as set forth in subparagraph (a) is to obligate the parties and their representatives before the Court to engage in all reasonable efforts to expedite the disposition of matters through efficient performance of pretrial activities designed to minimize the involvement of the Court. In this regard, the parties hereto have conducted their efforts in a manner to accomplish these objectives such that much progress has been made both to prepare the matter for trial and to explore settlement possibilities. However, certain events have arisen

which lead these parties to respectfully suggest the Court's oversight and guidance through trial will be more effectively facilitated by the granting of this Motion for the following reasons:

1. Discovery: The Scheduling Order as previously modified designates April 30, 2007 as the discovery cutoff. The Commission seeks to take one or more additional depositions that cannot be scheduled before April 30, 2007.

In addition, Pinkett is presently analyzing the First Amended Complaint to determine what, if any, discovery will be necessary as a result of the new issues raised therein. Out of 43 paragraphs setting forth the Commission's factual allegations in the First Amended Complaint, six paragraphs are entirely new and approximately 19 paragraphs contain significant changes from the original Complaint, all of which raise both procedural and factual issues with respect to Pinkett. Pinkett needs additional time to respond and to conduct appropriate discovery with regard to these new allegations.

For the above reasons, the parties request a discovery extension until June 29, 2007.

2. Summary Judgment: The Commission has advised Pinkett that it intends to file a motion for summary judgment and under the present Scheduling Order, Pinkett would not have sufficient time to adequately respond to such a motion and to prepare for a hearing. Accordingly, the parties request that the Court permit summary judgment motions, if any, to be filed by July 20, 2007.

3. Requirements for Final Pretrial Conference: The Scheduling Order calls upon the parties to bring to the Final Pretrial Conference a list of exhibits to be used at trial, a list of witnesses to be called at trial and a written stipulation of uncontested facts.

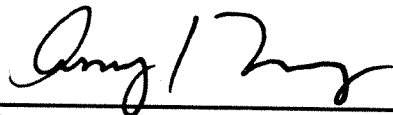
The parties urge that due to the present status of discovery, the filing of the First Amended Complaint and the anticipated motion for summary judgment, they are presently unable to adequately comply with this mandate. A postponement of the Final Pretrial Conference would promote the orderly yet efficient preparation of this action without an unnecessary imposition on the time and resources of the Court.

4. Settlement Efforts: One of the major goals of Rule 16(a) is to facilitate settlement. The parties have engaged in preliminary settlement discussions and intend for those discussions to move forward in the coming weeks. Accordingly, it is respectfully suggested that allocating additional time will promote the likelihood of success in this effort.

CONCLUSION

For the above reasons, Defendant Preston David Pinkett II and Plaintiff Securities and Exchange Commission respectfully request this Court to consider and grant their Joint Motion to Modify Scheduling Order.

Respectfully submitted,



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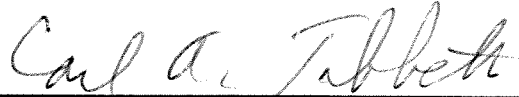
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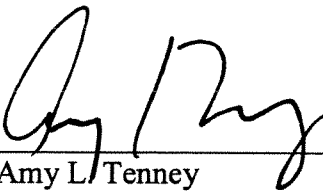
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on 13th day of April, 2007, I caused to be served on the following parties and/or their counsel of record a copy of the foregoing by the means noted below:

(by U.S. Mail)
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Amy L. Tenney