

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

**UNITED STATES SECURITIES AND
EXCHANGE COMMISSION,**)

Plaintiff,)

v.)

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

Defendants,)

**TERRY MARTIN, CD2E, INC.,)
WINCHELL CORPORATION,)
M&M TECHNOLOGIES,)
ROBERT LOWREY,)
SZE COAST OPERATING CORP.,**)

Relief Defendants.)

CASE NO. 1:06cv01354-GBL

**Hon. Gerald Bruce Lee
United States District Judge**

**RECEIVER’S MOTION FOR COURT APPROVAL OF
SUMMARY PROCEDURES FOR CLAIMS ADMINISTRATION AND
PLAN OF DISTRIBUTION**

COMES NOW Roy M. Terry, Jr., duly appointed receiver (“Receiver”) for International Fiduciary Corp., S.A. (“IFC”), and files this motion for Court approval of the Receiver’s proposed *Summary Procedures for Claims Administration and Plan of Distribution*, and in support thereof states as follows:

BACKGROUND

1. On December 4, 2006, the United States Securities and Exchange Commission (“SEC”) initiated this case against defendant IFC, and others, by filing a Complaint that alleged IFC defrauded investors out of millions of dollars. (Docket No. 1).

2. The SEC filed *Plaintiff’s Motion for Entry of an Order Directing Appointment of Receiver for International Fiduciary Corp., S.A. and Points and Authorities in Support Thereof* on January 3, 2007. (Docket No. 19).

3. By *Order Directing Appointment of Receiver over Defendant International Fiduciary Corp., S.A.*, entered January 19, 2007, this Court: took exclusive jurisdiction and possession of the assets of IFC, or that were attributable to funds provided by an investor in an investment contract offered by any of the defendants (Order, Docket No. 25, § I, at 1); appointed Roy M. Terry as Receiver over Defendant IFC (*id.* § II, at 2); ordered that “[t]he Receiver shall have and possess all powers and rights to administer and manage the Receivership Estate, including, . . . (f) to contact and negotiate with any creditors of the Defendant IFC for the purpose of compromising or settling any claim, . . . and, (o) to take such other action as may be approved by this Court (*id.* § III, at 2-4); and authorized, directed and empowered the Receiver to apply to this Court, with notice to the Commission and Defendants, for issuance of such other orders as may be necessary and appropriate in order to carry out the mandate of this Court (*id.* § XVIII, at 12).

4. On April 10, 2007, the SEC filed its First Amended Complaint. (Docket No. 61).

5. The *Final Judgment as to Defendant International Fiduciary Corporation, S.A.* (the “Judgment Order”), entered July 20, 2007, stated in the relevant part:

IT IS HEREBY FURTHER ORDERED, ADJUDGED,
AND DECREED that Defendant [IFC] is liable . . . for the total

amount of \$25,008,472.41, representing profits gained as a result of the conduct alleged in the Amended Complaint, together with prejudgment interest thereon. However, no payment obligation is imposed on Defendant based on the fact that the Receiver for IFC instead will seek to collect and hold these amounts as part of his Receivership Estate and prepare a plan to distribute these funds (together with all assets disgorged or paid as penalties by all other defendants and relief defendants in this case) (the “Disgorged Assets”) to investor victims in the United States, Canada, and any other countries (the “Distribution Plan”). The Receiver for IFC will prepare the Distribution Plan (subject to the SEC’s consent) and file a motion presenting it to the Court for consideration. Defendant acknowledges that it relinquishes all legal and equitable right, title, and interest in the Disgorged Assets, and no part of the Disgorged Assets shall be returned to Defendant. The Distribution Plan may provide that the Disgorged Assets shall be distributed pursuant to the Fair Funds provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002.¹

Judgment Order, § IV, at 4-5 (Docket No. 106).

6. In accordance with the Judgment Order, the Receiver has developed the *Summary Procedures for Claims Administration and Plan of Distribution* (“Distribution Plan”), attached hereto as Exhibit A, to return assets held by IFC to the defrauded investors.²

¹ The Fair Funds provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002 provides in its entirety:

FAIR FUNDS FOR INVESTORS.

(a) Civil Penalties Added to Disgorgement Funds for the Relief of Victims.--If in any judicial or administrative action brought by the Commission under the securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)) the Commission obtains an order requiring disgorgement against any person for a violation of such laws or the rules or regulations thereunder, or such person agrees in settlement of any such action to such disgorgement, and the Commission also obtains pursuant to such laws a civil penalty against such person, the amount of such civil penalty shall, on the motion or at the direction of the Commission, be added to and become part of the disgorgement fund for the benefit of the victims of such violation.

Sarbanes-Oxley Act of 2002 § 308(a), 15 U.S.C. § 7246(a).

² Because IFC does not have any assets apart from those held for the defrauded investors pursuant to the Judgment Order, no provision has been made in the Distribution Plan for IFC’s trade creditors, if any.

7. The Claims Bar Date is defined in the Distribution Plan – Appendix A, as incorporated therein by reference in Section 1.01, as follows:

“CLAIMS BAR DATE” refers to a date set by an order of the Court by which all Proofs of Claim must be filed with the Receiver. The Claims Bar Date shall serve as the bar date after which any investor, creditor, party in interest or potential Claimant shall be estopped from forever asserting claims against the Receivership Property.

Distribution Plan – Appendix A, at 1.

8. The consequences of failure to file a Proof of Claim form by the Claims Bar Date is as follows.

Section 3.02: Filing Requirement . . . Unless waived by the Receiver in writing, in the Receiver’s sole discretion and for good cause shown, any Claimant that does not file a properly completed and documented Proof of Claim on the prescribed Proof of Claim Form before the Claims Bar Date shall be forever barred from asserting a claim against the Receivership Property. Any purported filing of a Proof of Claim that is not properly documented, does not conform to the provisions of the Order Establishing Summary Procedures for Claims Administration and Plan of Distribution, or reasonably comply with the instructions in the Proof of Claim Form, may be rejected by the Receiver and shall be treated as if no Proof of Claim had been timely filed by the Claimant. The burden shall be upon the Claimant to ensure that its Proof of Claim has been properly received by the Receiver and that all requested information has been provided.

Distribution Plan, at 2.

9. Unlike many cases where the claimants are unknown, in this case we know most of the investors (although there may be yet unknown sub-investors under those investors). Upon information and belief, most of the defrauded investors reside in: the Canadian Province of British Columbia, the State of Washington, and the State of Florida. Accordingly, after consultation with the SEC, in an effort to minimize costs of the Receivership and maximize the return to defrauded investors, the Receiver recommends that in addition to mailing notice to each investor’s last

known address, notice be published in select local newspapers where known investors are concentrated rather than incurring the expense of published notice in national newspapers.

10. The notice requirements that the Receiver must give to Claimants is as follows:

Article 2 – Notice

Section 2.01: Notice to Investors. The Receiver shall cause a Claim Packet to be mailed to those Claimants whose mailing address is known to the Receiver by United States First Class Mail, the official mail service of other relevant countries, overnight delivery, courier service, or any other means determined by the Receiver to be an effective means of service. Where the Receiver is aware of the last known e-mail address for a potential Claimant, the Receiver may also publish the Claim Packet by e-mail, including where the Receiver has no mailing address for the potential Claimant. The Receiver shall also post a copy of the Claim Packet on the Receiver's Web-site, and use its best efforts to cause a notice to be placed on the web-sites of the SEC and British Columbia Securities Commission.

Section 2.02: Further Notice by Publication. The Receiver may, in its sole discretion, publish the Notice to File Claims once in select editions of local newspapers in the Canadian Province of British Columbia, the State of Washington, the State of Florida, and such other local newspapers, whether in the United States or foreign countries, where a significant number of potential Claimants are believed to reside.

Section 2.03: Notice upon Inquiry. The Receiver shall promptly provide a Claim Packet to any Claimant that requests a Claim Packet in writing.

Id. at 1-2.

RELIEF REQUESTED

11. After consultation with the SEC, the Receiver respectfully requests that the Court:
 - a. approve the *Summary Procedures for Claims Administration and Plan of Distribution* attached to the Motion as Exhibit A;

- b. set a specific Claims Bar Date that is at least three (3) months from date of entry of the order (a date intended to be more than two and one-half months from the date of notice by publication);
- c. approve the notice to file claims substantially in the form attached as Exhibit B (“Notice to File Claims”);
- d. approve the notice to be given by publication substantially in the form attached as Exhibit C (“Publication Notice”);
- e. find that publication of the Publication Notice one time in the following newspapers (at the following approximate cost) is reasonably calculated to give notice under the circumstances of this case and fulfills the requirements of Section 2.02 of the Plan of Distribution:

i	<i>Vancouver Sun</i> – Weekend Edition (Vancouver, British Columbia, Canada)	\$2,554.74 CND
ii	Black Press Community Newspaper (lower British Columbia, Canada) ³	\$5,391.96 CND
iii	<i>Bellingham Herald</i> (northern Washington, USA)	\$417.76 USD
iv	<i>Lynden Tribune</i> (northern Washington, USA)	\$259.00 USD
v	<i>Seattle Times</i> – Weekday Edition ⁴ (Seattle, Washington, USA)	\$1,377.00 USD
vi	<i>Star Banner</i> – Weekday Edition (Ocala, Florida, USA)	\$268.40 USD

³ Black Press Community Newspaper owns the following community newspapers (which are distributed to every household): Surrey Leader (86,700 households), Langley Times (39,000), Aldergrove Star (10,000), Abbotsford News (32,000) and Chilliwack Progress (30,000). Investors are known to reside in each of these communities.

⁴ The known pocket of investors in northern Washington are more likely to see a legal notice published in the Bellingham Herald and Lynden Tribune (local papers circulated in Whatcom County), than the Seattle Times (a regional newspaper). To reach the target audience, the Receiver recommends publishing in the Bellingham Herald and Lynden Tribune as a primary source, and the Seattle Times as a secondary source. However, to reduce expenses, the Receiver recommends publishing in the Seattle Times during the week (at \$1377.00) rather than the weekend edition (at \$2,925.70).

f. authorize the Receiver to publish the aforementioned Publication Notice two (2) weeks after entry of this order, or as soon thereafter as is reasonably possible (a date intended to allow the ten (10) day period allowed in Federal Rule of Civil Procedure 59(e), as calculated by Federal Rule of Civil Procedure 6, to lapse before incurring such publication expense);

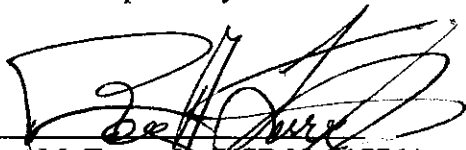
g. authorize the Receiver to pay newspaper fees and costs, as stated in the Motion, as an Administrative Expense to effect publication of the Publication Notice;

h. approve the proof of claim form to be completed by claimants, substantially in the form attached as Exhibit D ("Proof of Claim Form");

i. approve the form to be completed by claimants if they object to the Receiver's claim determination, substantially in the form attached as Exhibit E ("Objection to Receiver's Claim Determination").

WHEREFORE, the Receiver respectfully prays that the Court enter an order substantially in the form attached as Exhibit F, and grant to the Receiver such other and further relief as may be just and proper.

Respectfully submitted this 29th day of May, 2008.



Roy M. Terry, Jr., VSB No. 17764

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Counsel for Receiver

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of May, 2008, a true copy of the foregoing Notice and Motion was delivered by electronic means and/or mailed first class mail, postage fully prepaid, to the following parties:

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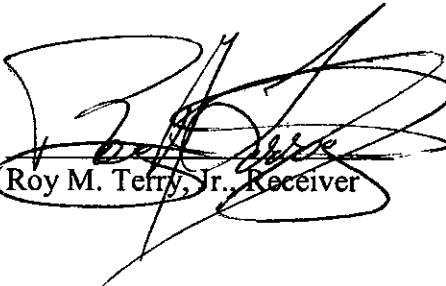
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Roy M. Terry, Jr., Receiver

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