

**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**

**MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF RECEIVER'S MOTION TO APPROVE
SUMMARY PROCEDURES FOR CLAIMS ADMINISTRATION
AND PLAN OF DISTRIBUTION**

Summary Procedures

The decision to use summary proceedings, as opposed to the use of plenary proceedings under the Federal Rules of Civil Procedure, to determine appropriate relief in an equity receivership is within the jurisdiction of the district court. *SEC v. Basic Energy & Affiliated Resources, Inc.*, 273 F.3d 657, 668 (6th Cir. 2001); *SEC v. Hardy*, 803 F.2d 1034, 1040 (9th Cir. 1986); *SEC v. Lincoln Thrift Ass'n*, 577 F.2d 600, 609 (9th Cir. 1978); *SEC v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992).

There are no specific statutory provisions or rules concerning the administration of an equity receivership. However, two general principles emerge from the case law. *Hardy*, 803 F.2d at 1037. First, the district court's power to determine the appropriate procedures for conducting the receivership is extremely broad. *Id.*; accord *Safety Fin. Serv., Inc.*, 674 F.2d 368, 372 (5th Cir. 1982); *Basic Energy & Affiliated Resources*, 273 F.3d at 668; *Lincoln Thrift Ass'n*, 577 F.2d at 609; *Elliott*, 953 F.2d at 1566. (The basis for this broad deference derives from the inherent powers of an equity court to fashion relief.) *Safety Finance*, 674 F.2d at 372; *SEC v. Wencke*, 783 F.2d 829, 837 (9th Cir. 1986). Second, the primary purpose of an equity receivership is to promote the orderly and efficient administration of the estate for the benefit of the creditors. *Hardy*, 803 F.2d at 1038.

There are compelling reasons to use summary proceedings in receivership cases. *Wencke*, 783 F.2d at 837 n.9. The use of such proceedings enables a receiver to consolidate all litigation concerning the receivership in a single district court and before a single district judge, and to avoid formalities that would slow down the resolution of disputes. *Id.* This promotes judicial efficiency, reduces litigation costs for the receiver, and prevents further dissipation of receivership assets. *Id.* (citing *Smith v. Am. Indus. Research Corp.*, 665 F.2d 397, 399 (1st Cir. 1981)).

Although the phrase "summary procedures" connotes abbreviated procedures, it does not mean no procedures. *Elliott*, 953 F.2d at 1567. Due process requires notice and a meaningful opportunity to be heard, *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542, 105 S.Ct. 1487, 1493, 84 L.Ed.2d 494, 503 (1985); *Greene v. Lindsey*, 456 U.S. 444, 102 S.Ct. 1874, 72 L.Ed.2d 249 (1982); and that the procedures employed be fair, *In re Murchison*, 349 U.S. 133, 136, 75 S.Ct. 623, 625, 99 L. Ed. 942 (1955). But a hearing is not required if there is no factual dispute. *Codd v. Velger*, 429 U.S. 624, 97 S.Ct. 882, 51 L.Ed.2d 92 (1977)(*per curiam*)(a discharged employee had no right to a hearing since he did not challenge the fact upon which the dismissal

was based). If there is a factual dispute, summary procedures that permit parties to present evidence and to make arguments regarding those facts pass constitutional muster. *Elliott*, 953 F.2d at 1567. If parties are given an opportunity to prepare and present their contentions, receivership courts have the power to use summary procedures in allowing, disallowing, and subordinating claims of creditors. *Hardy*, 803 F.2d at 1040; *Wencke*, 783 F.2d at 837 n.9.

Claims Administration

The Claims Procedure is designed to provide notice by mail and publication to investors and other parties in interest of the summary procedures for claims administration to be utilized in the case, including the rules for filing a Proof of Claim, the classification and treatment of claims against the estate, the circumstances under which an objection to a claim determination might be filed, and the consequences of failing to meet deadlines. The proposed procedure will give claimants more than two-and-one-half-months to file a Proof of Claim. *Hardy*, 803 F.2d at 1038 (holding two-and-one-half-month period during which claimants could file a Proof of Claim is a reasonable length of time to respond to these notices). Such procedures are a reasonable and practicable attempt to administer the receivership without depriving the creditors of fair notice and a reasonable opportunity to respond. *Id.* at 1040.

Under the proposed Claims Procedure, non-administrative claims are to be approved by the Court before any distribution is made. The Receiver will review the supporting documentation of every Proof of Claim for propriety and will make a recommendation to the Court whether to accept, reduce or reject each claim.

Plan of Distribution

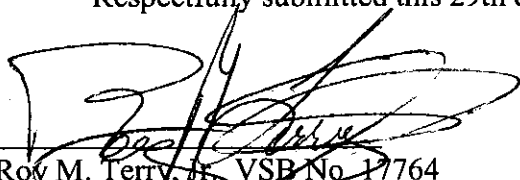
The Plan of Distribution proposed by the Receiver aggregates all assets into one pool. As the Supreme Court noted in the original Ponzi case, such cases “call strongly for the principle that equality is equity.” *Cunningham v. Brown*, 265 U.S. 1, 13, 44 S.Ct. 424, 68 L. Ed. 873 (1924).

Claimants would not be permitted to bring claims for rescission or restitution. *United States v. Vanguard Inv. Co., Inc.*, 6 F.3d 222, 227 (4th Cir. 1993)(holding that “a district court in its discretionary supervision of an equitable receivership may deny remedies like rescission and restitution where the equities of the situation suggest such a denial would be appropriate”).

The Plan of Distribution classifies claims into Professional fees, administrative expenses and claims of investors. The Plan of Distribution further classifies claims of investors into four categories (defendant, substantial marketer, insubstantial marketer, and non-marketer), and reduces the percentage of their allowed claim(s) according to a formula that takes into account culpability in marketing the Ponzi scheme. This treatment is similar to that upheld by the U.S. Court of Appeals for the Sixth Circuit in *SEC v. Basic Energy & Affiliated Resources, Inc.*, 273 F.3d at 660-61.

WHEREFORE, the Receiver respectfully requests the Court approve the summary procedures for claims administration and plan of distribution proposed in the related Motion.

Respectfully submitted this 29th day of May, 2008.



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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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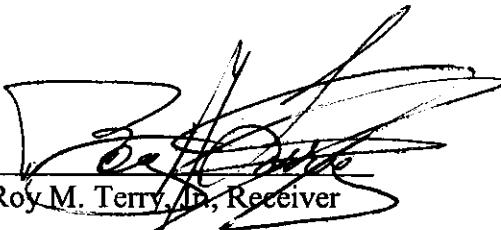
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