

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

<b>UNITED STATES SECURITIES AND EXCHANGE COMMISSION,</b>	)	<b>CASE NO. 1:06cv01354-GBL</b>
	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	
	)	
<b>INTERNATIONAL FIDUCIARY CORP., S.A., DANIEL ERIC BYER, MALCOLM CAMERON BOYD STEVENSON, PRESTON DAVID PINKETT, II,</b>	)	
	)	
<b>Defendants,</b>	)	<b>Hon. Gerald Bruce Lee United States District Judge</b>
	)	
<b>TERRY MARTIN, CD2E, INC., WINCHELL CORPORATION, M&amp;M TECHNOLOGIES, ROBERT LOWREY, SZE COAST OPERATING CORP.,</b>	)	
	)	
	)	
<b>Relief Defendants.</b>	)	
	)	
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**RECEIVER’S MOTION FOR COURT APPROVAL OF  
COMPROMISE AND SETTLEMENT**

**COMES NOW** Roy M. Terry, Jr., as duly appointed receiver over International Fiduciary Corp., S.A., and files this motion for Court approval of the terms and conditions of the compromise and settlement of the Receiver’s claims against Terry Martin, CD2E, Inc., Winchell Corporation and M&M Technologies, Inc. (individually and collectively, the “Relief Defendants”), and in support thereof, represents to the Court as follows:

## BACKGROUND

1. On December 4, 2006, the United States Securities and Exchange Commission (“SEC”) filed its *Complaint* against the defendants in this action (Docket No. 1).

2. On January 3, 2007, 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* (Docket No. 19).

3. On January 19, 2007, the Court entered the *Order Directing Appointment of Receiver Over Defendant International Fiduciary Corp., S.A.* (the “Appointment Order”) (Docket No. 25) which appointed Roy Terry, Jr. (the “Receiver”) as Receiver over the estate of International Fiduciary Corp. (“IFC”).

3. On April 25, 2008, the SEC filed *Plaintiff’s Motion for Summary Judgment* (Docket No. 137) for order of summary judgment against certain parties, including the Relief Defendants.<sup>1</sup> On June 9, 2008, the Court entered its Order granting summary judgment against relief defendants Robert Lowrey and SZE Coast Operating Corp. and denying summary judgment as to the Relief Defendants.

4. By Order entered June 12, 2008 (Docket No. 173), the Court scheduled a three day non-jury trial commencing August 4, 2008, involving plaintiff SEC and the Relief Defendants.

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<sup>1</sup> There was some confusion as to the scope of the *Final Judgment as to International Fiduciary Corporation, S.A.* entered July 20, 2007 (Docket No. 106). By Order entered June 9, 2008 (Docket No. 171), the Court clarified that “the Final Judgment as to defendant IFC [Doc. No. 106] does not constitute, and was not intended to constitute, a judgment against Relief Defendants Terry Martin, CD2E, Inc., Winchell Corporation, M&M Technologies, Robert Lowery, and/or SZE Coast Operating Corp.”

## PROPOSED COMPROMISE AND SETTLEMENT

5. SEC: The Relief Defendants and staff counsel representing the Securities and Exchange Commission (“SEC”) have worked out settlement terms and language that are acceptable to the Relief Defendants and that counsel for the SEC will recommend that the full Commission accept. Under those terms, the SEC’s claims against the Relief Defendants in the SEC Civil Action will be resolved by the entry of a consent judgment in the amount of \$550,000, plus prejudgment interest of \$83,967.19, for a total of \$633,867.19 (“the Consent Judgment”). The Consent Judgment will provide for the settlement amount to be paid in installments over the course of one year. It will further provide for all such payments to be made to the Receiver, to be applied to the receivership estate. This agreement is subject to the approval of the SEC Commissioners, and the Relief Defendants may decline to consent to the entry of the Consent Judgment if this Settlement Agreement between the Relief Defendants and the Receiver is not approved by the Court.

6. The Receiver: The Relief Defendants and the Receiver have worked out settlement terms and language that are acceptable to the Relief Defendants and the Receiver, whereby the Relief Defendants would release the Receiver from all claims through the date the Settlement Agreement is executed, and upon the payment of the SEC’s consent judgment against the Relief Defendants, the Receiver would release the Relief Defendants from all claims through the date the Settlement Agreement was executed. The Settlement Agreement between the Relief Defendants and the Receiver shall not be binding on the parties until (a) the Settlement Agreement has been approved by the Court and (b) the Relief Defendants’ settlement with the SEC has been fully executed and approved by the Court. If the Court should decline to approve either agreement, the

Settlement Agreement and the releases incorporated in or executed pursuant to it shall become null and void, and the parties shall not be bound by them. Likewise, should the Relief Defendants default in their obligations pursuant to the Consent Judgment, the Receiver will not release the Relief Defendants, and will be entitled to assert the full amount of all claims against the Relief Defendants without being limited by the amount of the Consent Judgment.

7. A copy of the Settlement Agreement between the Relief Defendants and the Receiver is attached as Exhibit 1. A copy of the Consent Judgment acceptable to the relief defendants and the staff counsel representing the SEC in this matter (but not yet approved by the SEC Commissioners or executed by the parties) is attached hereto as Exhibit A to Exhibit 1.

8. The Receiver requests that the Court enter an order approving the Settlement Agreement in the form attached hereto as Exhibit 2.

#### **LEGAL STANDARD**

9. In evaluating whether to approve a compromise and settlement, the Court must look at various factors and determine whether the compromise is in the best interest of the estate and whether it is fair and equitable to the creditors of the estate. *In re Frye*, 216 B.R. 166, 177 (Bankr. E.D. Va. 1997) (discussing settlement in bankruptcy context). These factors include: (1) the probability of success in litigation; (2) the potential difficulties, if any, in collection; (3) the complexity of the litigation involved and the expense, inconveniences and delays necessary attending to it; and (4) that paramount interest of the creditors of the estate. *Id.*

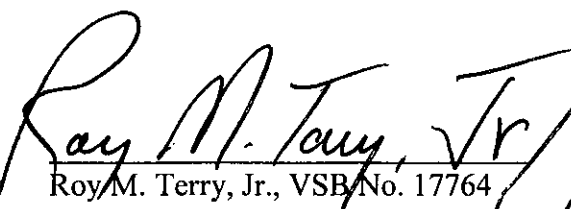
10. After discussions with the SEC, the Receiver believes the SEC's Consent Judgment against the Relief Defendants is in the best interest of the Receivership estate because it absolves risks of litigation and, especially, collection. The Receiver's release of the Relief

Defendants in the Settlement Agreement only occurs upon full payment by the Relief Defendants. If the Release Defendants default, the Receiver's release is null and void and any claims the Receiver may subsequently assert against the Relief Defendants will not be limited to the amount of the Relief Defendants' settlement with the SEC or the Consent Judgment.

11. Accordingly, the Receiver believes based upon the exercise of its considered business judgment that settlement of this matter upon the terms set forth in the proposed Settlement Agreement is in the best interest of the Receivership Estate.

**WHEREFORE**, the Receiver respectfully requests that the Court approve the proposed Settlement Agreement, and award such other and further relief as may be just and proper.

Respectfully submitted, this 17th day of July, 2008.

 *Roy M. Terry, Jr.* / *by*  
*Barnett Elgore*  
*w/ authority*

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Counsel for Receiver

**CERTIFICATE OF SERVICE**

I hereby certify that on this 17th day of July, 2008, a true copy of the foregoing Motion was delivered by electronic means and/or mailed first class mail, postage fully prepaid, to the following parties:

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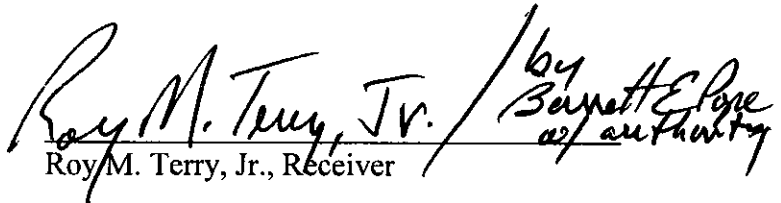
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*Relief Defendant*

  
Roy M. Terry, Jr., Receiver