

APR 15 2004

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF VIRGINIA  
Charlottesville Division

JOHN F. CORCORAN, CLERK  
BY: DEPUTY CLERK

SECURITIES AND EXCHANGE )  
COMMISSION, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
TERRY L. DOWDELL, *et al.* )  
 )  
Defendants. )  
\_\_\_\_\_ )

CASE NO. 3:01CV00116

James H. Michael, Jr.  
U.S. District Judge

B. Waugh Crigler  
U.S. Magistrate Judge

**NOTICE OF FILING OF FINANCIAL STATEMENTS  
FOR THE MONTH ENDING DECEMBER 31, 2003,  
THE YEAR ENDING DECEMBER 31, 2003 AND  
THE MONTH ENDING JANUARY 31, 2004  
AND RECEIVER'S MOTION TO FILE UNDER SEAL**

COMES NOW Roy M. Terry, Jr. and the law firm of DuretteBradshaw PLC (the "Receiver"), to hereby file the Financial Statements for the month ending December 31, 2003, the year ending December 31, 2003, and the month ending January 31, 2004, and moves the Court to accept such documents under seal, subject to *in camera* review by the Court, and in support thereof respectfully represents to the Court as follows:

1. On April 30, 2002, the Securities and Exchange Commission ("SEC") filed its First Amended Complaint against the Defendants and Relief Defendants.
2. Roy M. Terry, Jr. and the law firm of DuretteBradshaw PLC ("Receiver") is Receiver for Terry L. Dowdell, Dowdell, Dutcher & Associates, Inc., and Emerged Market Securities, DE-LLC (pursuant to order entered July 12, 2002); for Authorized

Auto Services, Inc. (pursuant to order entered September 17, 2002); and for Vavasieur Corporation (pursuant to order entered February 18, 2003), (collectively, the “Appointment Orders”), in the above captioned proceeding.

3. On May 14, 2003, this Court entered an *Order Reappointing Receiver* which ordered, adjudged and decreed “that Roy M. Terry, Jr. and the law firm of DuretteBradshaw PLC (“Receiver”) is hereby reappointed as receiver for Terry L. Dowdell, Dowdell, Dutcher & Associates, Inc., Emerged Market Securities, DE-LLC, Authorized Auto Services, Inc., and Vavasieur Corporation.”

4. The Appointment Orders direct the Receiver to file periodic reports of his acts and transactions in his official capacity of Receiver with the Court.

5. The Receiver deems it prudent to supplement the public reports of its acts and transactions with periodic accountings subject to the Court’s *in camera* review.

6. The Receiver respectfully moves the Court to accept the filing of these Financial Statements under seal, subject to the Court’s *in camera* review, because the information contained therein, if obtained by persons involved in the Dowdell Ponzi scheme, could impede the Receiver’s investigation of the facts of this matter and hinder the negotiated resolution of disputes between the estate and persons obligated to it. It seems, at least to the Receiver, that specific information about assets might provide valuable evidence to knowledgeable third parties about the property that the Receiver either possesses or does not possess (or may not know exists). Innocent investors are not entitled to the return of any specific property other than money (if any is available), so they have no particularized right to information about the property in the possession of the

Receiver. Members of the public in general have no better right than the innocent investors. Persons engaged in the Ponzi scheme with Dowdell have no such right.

7. The right of access to judicial records is protected both by common law and by the First Amendment. The common law presumes a right to inspect and copy judicial records and documents. *See Nixon v. Warner Communications*, 435 U.S. 589, 597, 55 L. Ed. 2d 570, 98 S.Ct. 1306 (1978). This presumption may be overcome if competing interests outweigh the interest in access. *See Rushford v. New Yorker Magazine*, 846 F. 2d 249, 253 (4<sup>th</sup> Cir. 1988). Where the First Amendment guarantees access, access may be denied only on the basis of a compelling governmental interest and only if the denial is narrowly tailored to serve that interest. *See id.* Because the First Amendment and the common law provide different levels of protection, it is necessary for the district court to determine the source of the public's right to access before a claim may be evaluated. *See Stone v. University of Maryland*, 855 F.2d 178, 180 (4<sup>th</sup> Cir. 1988).

8. It is asserted that the interests of the Receiver in maintaining the confidentiality of the information contained in the Financial Statements exceed the interests of the investors, the general public and those persons engaged in the Ponzi scheme.

**WHEREFORE**, the Receiver prays that the Court accept the Financial Statements for the month ending December 31, 2003, the year ending December 31, 2003, and the month ending January 31, 2004, under seal; that the Court enter an Order retaining the Financial Statements (and any subsequent amended or supplemented Financial

Statements) under seal; and that the Court award to it such other and further relief as may be just and proper.

Respectfully submitted, this the 15<sup>th</sup> day of April, 2004.

Roy M. Terry, Jr. and DuretteBradshaw, PLC  
Receiver  
By Counsel



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