

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
Charlottesville Division**

SECURITIES AND EXCHANGE COMMISSION,)	CASE NO. 3:01CV00116
)	
)	
Plaintiff,)	
)	
v.)	
)	
TERRY L. DOWDELL, et al.)	
)	
Defendants.)	JUDGE JAMES H. MICHAEL, JR.

**RECEIVER’S MOTION FOR COURT APPROVAL OF
A FURTHER DISTRIBUTION FROM THE JOINT ACCOUNT
OF THE UNITED STATES RECEIVER AND
U.K. LIQUIDATOR FOR PAYMENT OF THE COSTS
AND EXPENSES OF THE LIQUIDATOR AND ITS COUNSEL**

NOW COMES Roy M. Terry, Jr. and the law firm of DuretteBradshaw PLC (“Receiver”), filing this motion for an order approving a further distribution from the joint escrow account of the U.S. Receiver and U.K. Liquidator created pursuant to the international co-operation agreement between the Receiver and Liquidator for the purpose of paying costs and expenses of the Liquidator and its counsel, and in support thereof respectfully represents to the Court as follows:

JURISDICTION

1. This Court has jurisdiction over this action pursuant to section 22(a) of the Securities Act [15 U.S.C. § 77v(a)], section 27 of the Securities Exchange Act [15 U.S.C. § 78aa], and 28 U.S.C. § 1331. Defendant Dowdell and the other Defendants, directly and indirectly, have

made use of the means and instrumentalities of interstate commerce and of the mails in connection with the transactions, acts, practices and courses of business alleged in the First Amended Complaint herein in the Western District of Virginia and elsewhere.

BACKGROUND

Underlying Fraud

2. During the period from at least April 1998 through the commencement of this lawsuit by the United States Securities and Exchange Commission (“SEC”) on November 19, 2001, Terry Dowdell (“Dowdell”) orchestrated a Ponzi scheme raising more than \$70 million from more than 60 investors in the United States and abroad (“Vavas seur Investors”) through the sale of fictitious securities in a trading program (the “Vavas seur Program”) purportedly being operated by Defendant Vavas seur Corporation (“Vavas seur”), a Bahamian corporation. *Consent and Stipulation of Terry L. Dowdell, Dowdell, Dutcher & Associates and Emerged Market Securities, De-LLC to Order of Permanent Injunction* ¶ 3, at 1 (docket no. 218, filed June 4, 2002).

3. Dowdell owned and controlled Vavas seur during the period from at least April 1998 through at least March 2001. *Id.* ¶ 17, at 4.

4. In March 2001, Dowdell represented to the SEC through his attorneys that Vavas seur had terminated its relationship with Dowdell and had ceased doing business in the United States. *Id.* ¶ 21, at 5.

5. Shortly after making this representation, Dowdell transferred title ownership in Vavas seur to a foreign corporation owned and controlled by Ian Collins (“Collins”), but Dowdell continued to exert full operational control over Vavas seur. *Id.* ¶¶ 22, 25, at 5.

6. After transferring title over Vavasieur in the spring of 2001, Dowdell utilized the services of Shinder Gangar (“Gangar”), Alan White (“White”) and Collins in continuing to operate the Vavasieur Program, and the Vavasieur Program raised millions of dollars of additional investor funds after March 2001. *Id.* ¶ 26, at 5-6.

7. Upon information and belief, Gangar, White and Collins are all citizens and residents of the United Kingdom. *Id.* ¶ 27, at 6.

8. Gangar and White were partners in the accounting firm of Dobb White & Company, and allegedly conducted this fraud through that partnership.

U.S. Receiver

9. This Court appointed Roy M. Terry, Jr. and the law firm of DuretteBradshaw PLC (“Receiver”) as Receiver over Terry L. Dowdell, Dowdell, Dutcher & Associates, Inc., and Emerged Market Securities, DE-LLC (pursuant to the “Dowdell Appointment Order” entered July 12, 2002); over Authorized Auto Services, Inc. (pursuant to the “AAS Appointment Order” entered September 17, 2002); and over Vavasieur Corporation (pursuant to the “Vavasieur Appointment Order” entered February 18, 2003), (collectively, the “Appointment Orders”).

10. The Vavasieur Appointment Order states in the relevant parts:

1. Roy M. Terry, Jr. and the law firm of DuretteBradshaw, PLC are appointed as Receiver for the benefit of Vavasieur’s investors to marshal, conserve, protect, hold funds, operate and, with the approval of the Court, dispose of any wasting assets, wherever those assets may be found, of Defendant Vavasieur, including . . . all other assets owned, controlled or in possession of Vavasieur and all assets in which Vavasieur has a legal or equitable interest . . . (collectively the “Receivership Property”).

2. The Receiver shall have the following powers and duties to fulfill his obligations:

(a) Use reasonable efforts to determine the nature, location, and value of all assets and property owned by Defendant Vavasseur and the Receivership Property;

(b) Engage and employ, with the approval of the Court, any individuals or entities the Receiver deems necessary to assist in his duties (“Retained Personnel”);

(c) Take such action as necessary and appropriate to prevent the dissipation or concealment of any funds or assets constituting Receivership Property and otherwise preserve any such funds and assets;

...

(e) Bring such legal actions based on law or equity in any state, federal, or foreign court as he deems necessary or appropriate in discharging his duties as Receiver or on behalf of investors whose interests he is protecting.

Vavasseur Appointment Order ¶¶ 1-2, at 2-3.

U.K. Liquidator

11. Pursuant to the Order of the Companies Court of the High Court of Justice of England and Wales (“U.K. Court”) entered December 2, 2003, the U.K.’s Official Receiver appointed Colin Haig (“Liquidator”) as Liquidator to wind up the affairs of the accounting firm Dobb White & Co. as of January 12, 2004. Colin Haig was also appointed as Trustee in Bankruptcy over both Gangar and White.

International Co-operation Agreement

12. Pursuant to Order entered April 28, 2004, this Court approved an International Cooperation Agreement (the “Agreement”) entered into by the Receiver and Liquidator for the joint, cooperative collection of non-U.S. assets resulting from this fraud, thus avoiding a costly, wasteful competition for assets. The Agreement was entered into between the Receiver and Colin Haig of Baker Tilly (the “Liquidator”). Colin Haig has since left Baker Tilly, and has been replaced as Liquidator by Ross Connock.

13. Paragraph 3.1 of the Agreement provides for the deposit of all non-U.S. funds recovered into a “Joint Account”. It was contemplated in the Agreement that the Joint Account would be established with Bank of America, London. When Bank of America proved unable to facilitate such an account, the account was instead established at Clydesdale Bank, London. RooksRider, as U.K. counsel for the Receiver, and DLA, as counsel for the Liquidator, serve as co-signatories to the Joint Account.

14. The successful resolution of the first Irish litigation resulted in a recovery for the Receiver and Liquidator of 5,066,190.92 euros. After deduction of the direct costs and expenses of recovery, 4,669,060.30 euros was deposited in June, 2004 into the Joint Account. Using the exchange rate for December 22, 2004, the latter sum equates to \$6,253,272.46.

15. The payment of costs and expenses is addressed in several paragraphs of the Agreement. Paragraph 3.4 provides initially for a carveout of £500,000 from the funds recovered in Ireland to cover costs and expenses of the Liquidator. The Agreement treats the carveout as an advance payment against sums eventually due the Liquidator from the Joint Account.

16. Paragraph 3.3 of the Agreement provides that no sums may be distributed out of the Joint Account without sanction of this Court and the U.K. Court. Both courts are to authorize DLA and RooksRider to make the necessary payments out of the Joint Account, and “for payments to be made in respect of costs”.

17. The Liquidator has now requested an additional carveout from the Joint Account of £500,000 toward the fees and costs of Baker Tilly and DLA. The Liquidator advises that approximately £320,000 of this sum has already been expended by Baker Tilly (£100,000) and DLA (£220,000). The remainder shall serve as a deposit against future costs and expenses.

18. The Receiver has confirmed that the Liquidator has received the necessary approvals for the requested carveout in the U.K. After inquiry and discussion with the Liquidator regarding certain issues of staffing and billing, the Receiver asks that the Court approve the further carveout requested by the Liquidator.

19. Upon information and belief of the Receiver, the amount ultimately due the Liquidator from a division of the Joint Account will exceed all fees and expenses of Baker Tilly and DLA. The Receivership, and thus the Vavasseur investors having allowed claims, will be affected by the Liquidator's costs and expenses only to the extent of the Receiver's claim in the Dobb White liquidation, which can ultimately be offset against the Liquidator's claim in the Vavasseur Receivership through Eryl Management.

RELIEF REQUESTED

20. The Receiver respectfully requests that the Court approve a further payment from the Joint Account toward the present and future costs and expenses of the Liquidator and its counsel, which payment shall constitute an advance against sums eventually due the Liquidator from the Joint Account. The Court is further requested to authorize the UK law firms of DLA and RooksRider, as co-signatories, to make this payment from the Joint Account. The Court is finally requested to recognize and approve Ross Connock, in the place and stead of Colin Haig, as Liquidator and party to the previously approved Agreement, and Clydesdale Bank, in the place and stead of Bank of America, as holder of the Joint Bank Account, and for such further relief as is just and proper.

WHEREFORE, the Receiver respectfully prays that the Court approve its Motion, and grant to the Receiver such other and further relief as may be just and proper.

Respectfully submitted, this the 27th day of December, 2004.

/s/ Roy M. Terry, Jr.
Roy M. Terry, Jr. and DuretteBradshaw PLC
Receiver

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CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of December, 2004, a true copy of the foregoing Motion was mailed by first class mail, postage fully prepaid, addressed to:

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