

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

**SECURITIES AND EXCHANGE)
COMMISSION)**

No. 3:01CV00116

v.)

**TERRY L. DOWDELL, BOTH)
INDIVIDUALLY AND DOING)
BUSINESS AS “T. L. DOWDELL &)
ASSOCIATES,” BIRGIT)
MECHLENBURG, KENNETH G.)
MASON, DOWDELL DUTCHER &)
ASSOCIATES, INC., VAVASSEUR)
CORPORATION, and EMERGED)
MARKET SECURITIES, DE-LLC,)**

DEFENDANTS,)

**MARY DOWDELL, MARCIA)
DOWDELL, REBECCA DOWDELL,)
ADAM DOWDELL, WENDY)
DOWDELL, DAVID DOWDELL,)
TERRY DOWDELL, JR., NONA)
PIERCE, CYNTHIA PIERCE,)
STEPHEN PIERCE, WILLOWOOD)
DESIGNS CORPORATION, AND)
AUTHORIZED AUTO SERVICE,)
INC.,)**

RELIEF DEFENDANTS.))

**JAMES H. MICHAEL, JR.
U.S. DISTRICT JUDGE**

MOTION TO APPROVE SETTLEMENT & COMPROMISE

NOW COMES Roy M. Terry, Jr. and the law firm of DuretteBradshaw PLC (the “Receiver”) in its capacity as Receiver for (i) Terry L. Dowdell (“Dowdell”), Dowdell Dutcher & Associates, Inc.(“DDA”), and Emerged Market Securities, DE-LLC (“EMS”)

pursuant to this Court's Order entered on July 12, 2002 and (ii) Vavasseur Corporation ("Vavasseur") pursuant to this Court's Order entered on February 18, 2003 (collectively, the "Appointment Orders") to move the Court to approve a certain settlement and compromise, and in support thereof,

1. Covington & Burling ("C&B") is a general partnership existing under the laws of the District of Columbia, with its headquarters being located in Washington, D.C. C&B practices law by and through its partners and associates in numerous states in the United States, including in the Commonwealth of Virginia.

2. C&B undertook to represent some of the relief defendants in this action, and as fee for such services, accepted monies from sources other than directly from its clients.

3. The Receiver asserts that monies received by C&B as fee constituted Receivership Property as that phrase is defined in the Appointment Orders.

4. The parties disagree as to whether the monies constituted Receivership Property but, without admissions, have agreed to settle all disputes between them with regard to these monies.

5. The proposed *Compromise and Settlement Agreement* is attached hereto as Exhibit A. Pursuant to the terms of the proposed *Compromise and Settlement Agreement*, C&B would pay the Receiver One Hundred Fifty Thousand Dollars (\$150,000.00 USD) in full settlement of the Receiver's claims against C&B.

6. The Receiver requests that the Court enter an order approving the *Compromise and Settlement Agreement* in the form attached hereto as Exhibit B.

LEGAL STANDARD

7. 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.*

8. The Receiver believes, and therefore alleges, based upon the exercise of its considered business judgment, that settlement of this matter upon the terms set forth in the proposed *Compromise and Settlement Agreement* is in the best interest of the Receivership Estate. The Receiver made demand on C&B for \$200,000.00. The difference between the demand and the settlement amount could have easily been spent litigating with C&B over entitlement to the monies. In light of this consideration, the Court should approve the proposed *Compromise and Settlement Agreement*.

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

Respectfully submitted, this the 21st day of June, 2005.

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

/s/ Douglas Scott _____
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CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of June, 2005, a true copy of the motion and exhibits were served electronically or by first class mail, postage fully prepaid, addressed to:

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