

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

TERRY L. DOWDELL, et al.,

Defendants

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: Civil Action No. 3:01CV00116
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: Judge Norman K. Moon
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**PLAINTIFF’S MOTION FOR CLARIFICATION OF
JUDGMENTS AND DISGORGEMENT ORDERS**

Now comes the Securities and Exchange Commission (the “Commission”) and moves this Court for an order clarifying the disgorgement orders imposed against the various defendants in this action. In support of this motion, the Commission states as follows:

1. On February 18, 2003, the Court entered a Final Order of Permanent Injunction and Other Relief by Default Against Defendant Vavas seur Corporation (“Vavas seur”). (Docket No. 382). In that order, the Court required Vavas seur to pay disgorgement in the amount of \$121,235,000, plus prejudgment interest in the amount of \$8,611,214.42. The order further provided that Vavas seur was jointly and severally liable for these amounts with any other defendant whom this Court subsequently ordered to pay disgorgement and prejudgment interest in this case.

2. On June 4, 2003, the Court entered an Order Setting Amount of Disgorgement and Civil Penalties Owed by Defendants Terry L. Dowdell (“Dowdell”),

Dowdell, Dutcher & Associates, Inc. (“DDA”) and Emerged Market Securities, DE-LLC (“EMS”) (collectively, “the Dowdell Defendants”) (this order is hereinafter referred to as “the Dowdell Defendants Judgment”). (Docket No. 430). The Court ordered Dowdell, jointly and severally, to pay disgorgement in the amount of \$121,235,000, plus prejudgment interest in the amount of \$8,611,214.42. In Section II of the Dowdell Defendants Judgment, the Court decreed that this disgorgement amount shall be reduced, pursuant to further orders of the Court, by the following amounts: “(i) all assets collected by the Receiver pursuant to any of the orders appointing Receiver in this lawsuit, less fees and expenses as permitted pursuant to such orders; and (ii) any amounts that the Receiver determines, through a claims process established in the Plan of Distribution approved by the Court, has been returned to the beneficial owners of the funds invested in the Vavas seur Program at any time since the program commenced in April 1998.” The Dowdell Defendants Judgment did not, however, specifically refer to the Vavas seur Judgment.

3. At various times, both before and after entry of the Dowdell Defendants Judgment, the Court has entered final judgments or other orders requiring various other defendants and persons to pay smaller disgorgement amounts and authorizing the Receiver appointed in this action to collect these judgment amounts. (See, e.g., Docket Nos. 243, 288, 382, 412, 428, 429, 509, 510, 521, 529, 592, 606.)

4. Although the Dowdell Defendants Judgment indicated that amounts collected by the Receiver should be applied toward partial satisfaction of the disgorgement obligations of the Dowdell Defendants, the separate judgments and orders

entered against other defendants and persons did not refer to the Vavasieur or Dowdell Defendants Judgments or indicate their relationship to them.

5. Consequently, this motion seeks formally to clarify the relationship between the various disgorgement orders entered in this case, to aid the SEC and the Receiver in properly accounting for payments.

6. It was the intention of the SEC at the time of the entry of the Vavasieur and Dowdell Defendant judgments that the total amount of disgorgement plus prejudgment interest collected from all defendants in this lawsuit would not exceed \$129,846,214.42 (\$121,235,000 plus \$8,611,214.42), since this amount constitutes the total known amount raised from Vavasieur investors (plus prejudgment interest) during the entirety of Dowdell's unlawful scheme.

7. Consistent with this aim, it was also the intention of the SEC that any amounts collected by the Commission or Receiver from any source in connection with this lawsuit would operate as a partial satisfaction of the disgorgement amount plus prejudgment interest jointly and severally owed by the Dowdell Defendants and Vavasieur.

8. The proposed order clarifies this intention, and will serve to properly credit the Dowdell Defendants and Vavasieur for any disgorgement payments received or collected from any other source.

9. The Commission notes that the proposed order does not apply to any civil penalty amounts owed or paid by any defendants, since civil penalty amounts are individually owed, and are not joint and several.

10. The Commission further notes that this proposed order does not increase the disgorgement obligations of any parties to this litigation. It serves merely to ensure that the Vavasseur and Dowdell Defendants are properly credited for payments received from other sources, thereby ensuring that the total amount of disgorgement collected does not exceed \$121,235,000.

Conclusion

WHEREFORE, for the foregoing reasons, the Commission respectfully requests that the Court grant this motion and enter the attached proposed order clarifying the disgorgement and prejudgment interest amounts ordered against Vavasseur and the Dowdell Defendants to make clear that: (1) the disgorgement (and pre- and post-judgment interest) obligations of the Vavasseur and the Dowdell Defendants are joint and several; and (2) Vavasseur and the Dowdell Defendants in this action shall receive a credit toward the satisfaction of their joint and several disgorgement obligation in this case for any amounts collected by the Receiver or the Commission in connection with this litigation from any sources other than Vavasseur and the Dowdell Defendants, including, but not limited to, all disgorgement amounts already collected from other defendants named in this action.

**For Plaintiff, U.S. Securities and
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