

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF VIRGINIA  
Charlottesville Division

SECURITIES AND EXCHANGE COMMISSION, )  
)  
Plaintiff, )

v. )

CASE NO. 3:01CV00116

TERRY L. DOWDELL, both individually and )  
d/b/a "T.L. Dowdell & Associates," )  
BIRGIT MECHLENBURG, )  
KENNETH G. MASON, )  
DOWDELL, DUTCHER & ASSOCIATES, INC., )  
VAVASSEUR CORPORATION, )  
EMERGED MARKET SECURITIES, DE-LLC, )  
and DANIEL DEROUARD, )  
)  
Defendants, )

Judge Norman K. Moon  
U.S. District Judge

MARY DOWDELL, MARCIA DOWDELL, )  
REBECCA DOWDELL, ADAM DOWDELL, )  
WENDY DOWDELL, DAVID DOWDELL, )  
TERRY DOWDELL, JR., NONA PIERCE, )  
CYNTHIA PIERCE, STEPHEN PIERCE, )  
WILLOWOOD DESIGN CORPORATION, )  
and AUTHORIZED AUTO SERVICE, INC., )  
)  
Relief Defendants. )

**SECOND MOTION FOR FINAL CLAIM DETERMINATION**

NOW COMES Roy M. Terry, Jr. and the law firm of DuretteBradshaw PLC ("Receiver") and files this second motion for approval of the Receiver's claim determination (the "Second Motion"), and in support thereof states as follows:

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.

2. By Order entered August 15, 2007, the Court ruled upon the Receiver's *[First] Motion for Final Claim Determination*.

3. In an effort to return some funds to certain investors while resolving the claims of the remaining investors, on August 31, 2007, the Receiver mailed distribution checks to holders of claims approved by the order entered August 15, 2007. The initial distribution checks totaled fifty (50%) percent of the funds on hand in the U.S. and U.K. accounts (net of reserves to cover pending claims, orphaned claims, and late-filed claims). A second distribution of 20% is anticipated upon approval of the U.K. Liquidators' claim, and a final distribution in 2008 or 2009.

4. Subsequent to the Order entered August 15, 2007, the Receiver has obtained additional information on pending claims, orphaned claims, and late-filed Proofs of Claim forms.

5. The Receiver believes this motion covers all unadjudicated claims except for the claims of Baker Tilly – U.K. Liquidators (Claim # 295), and Marcus Wide – Receiver over International Bank & Trust (formerly Overseas Development Bank & Trust)(Claim # 316).

6. As a housekeeping matter, the *[First] Motion for Final Claim Determination Exhibit Binder*, filed under seal on July 2, 2007, included Tabs 1 through 14. Because some of those exhibits are relevant to Claim Determinations covered in this Second Motion, the Receiver is supplementing those exhibits with additional exhibits, filed under seal concurrently herewith, consecutively numbered starting at Tab 15. The original exhibits and supplemental exhibits collectively will be referred to as “*Exhibits*” (abbreviated as “*Ex.*”), with the relevant Tab reference(s) to the Claim Determination being discussed.

## RELIEF REQUESTED

7. PENDING CLAIM DETERMINATIONS. Status of the four claims for which court determinations were CONTINUED by order entered August 15, 2007, are summarized as follows:

- (1) Claim # 0165 (*Ex.* at Tab 1) – As the Court may recall, Claimants submitted a five-part objection requesting dollar-for-dollar payment on the unpaid portion of their claim (which the Receiver calculates as \$5,888,240.00). At hearing held on August 13, 2007, the Receiver advised the Court it promised the Claimants it would prepare a reply which will allow the parties to assess whether they need discovery, whether to request a briefing schedule, and whether an evidentiary hearing is desired. From the bench, the Court indicated that it might refer this claim to the magistrate judge. The order entered August 15, 2007 continued final adjudication of this claim, but authorized the Receiver to commence *pro rata* interim distributions subject to further rulings of this Court. On or about August 31, 2007, the Receiver paid the Claimant a *pro rata* distribution of \$1.5 million. The Receiver has prepared a reply, which it plans to finalize once overdue discovery is received from the Claimant. Counsel for the Claimant has indicated that it would like to conduct discovery, which may include a deposition of Terry Dowdell.

**WHEREFORE**, the Receiver requests the matter be referred to the magistrate judge (if the Court is still so inclined), set an evidentiary hearing, and issue a pre-hearing order setting discovery deadlines.

- (2) Claim # 0126 (*Ex.* at Tabs 3 & 15) – The Notice of Receiver’s Claim Determination disallowed the Claimant’s individual claim and referred Claimant to the U.K. Liquidators. Claimant filed an objection expressing concern that his claim might fall between the jurisdictions of the Receiver and U.K. Liquidators. Claimant’s concern was well founded. The U.K. Liquidators subsequently stated Claimant was not a creditor of Dobb White & Co. Although the Receiver believes its initial determination was correct, after consultation with the U.K. Liquidators, the Receiver has agreed to be primarily responsible for this claim. The Receiver and the Claimant have executed a Settlement and Compromise Agreement.

**WHEREFORE**, the Receiver requests the Claimant’s objection (*Ex.* at Tab 3) be SUSTAINED, and the Settlement and Compromise Agreement (*Ex.* at Tab 15) be APPROVED.

- (3) Claim # 0272 (*Ex.* at Tabs 10 & 16) – This Claim is a difficult claim and deserving of the Court’s scrutiny.

As discussed at length in the [*First*] *Motion for Final Claim Determination*, which is incorporated herein by reference, material discrepancies exist between Claimant's Proof of Claim and records in the Receiver's possession. The Claimant's Proof of Claim is comprised of three separate claims: (1) an investment made by a woman the Claimant married in 2006 ("Spouse's Claim"); (2) Starlight Crest (an entity the Claimant purchased for \$400,000 from a third party in March 2002, then gave to his children who purportedly invested another \$180,000 in April & May 2002); and (3) Vimachel (an entity in which all profit distributions were rolled over except Claimant took two large distributions in March 2002 to help pay for the Starlight Crest buyout). The Claimant asserts that his records have been destroyed, and he cannot get information from the banks because Danish law only requires banks to keep records for three years.

The Receiver's First Motion for Final Claim Determination recommended that the Court disallow Claim # 0272 in its entirety due to lack of documentation. Because the Claimant filed an objection to the Receiver's original determination, the Receiver requested the Court defer a ruling at that time so the Claimant could provide a completed Proof of Claim form Schedule A (Investment History) for each entity and a completed Schedule B (Commission Payments). Notwithstanding numerous subsequent emails between the Receiver and the Claimant, progress has been slow and the Claimant never completed Schedule A for each entity or Schedule B for himself.

The Receiver has spent much time and effort analyzing this Claim. The Claimant apparently disputes the Receiver's calculations of Profit Payments but, without his records, appears to have grudgingly accepted the Receiver's calculations. The Claimant also does not like the fact that the Starlight Crest distributions taken by the prior owner are counted by the Receiver against the new assignees (*i.e.*, his children & ultimately him).<sup>1</sup> The Receiver's calculation of Commissions Payments received by Claimant of \$218,854.17 approximates Mechlenberg's records which indicate actual Commissions of \$205,206.25.

The Claimant meets the Plan of Distribution's definition of a Substantial Marketer. Under the Plan of Distribution, the Allowed Claim for a Substantial Marketer is the Gross Amount Invested first reduced by ninety percent, and then minus the sum of all Principal Returns, Profit Payments and Commission Payments. However, the Plan of Distribution further provides: "Notwithstanding the foregoing, the Receiver may alter its classification or the reduction percentage applicable for ... a

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<sup>1</sup> Under the Plan of Distribution, approved claims are paid *pro rata* on the "Net Shortfall Amount" (which is defined as the Gross Amount Invested minus the sum of all Principal Returns, Profit Payments and Commission Payments). The assignees of Starlight Crest's Claim take it subject to any defenses Vavasseur has against the Claim, including Profit Payments made during the course of the investment.

Substantial . . . Marketer who substantially cooperates with the Receiver . . .” See Plan of Distribution § 3.05. On March 25, 2008, the Receiver issued its *Amended Notice of Receiver’s Claim Determination* which split the Claim into three separate Claims, classified the Spouse’s Claim and Starlight Crest’s Claim as Non-Marketer,<sup>2</sup> and classified Vimachel’s Claim as a Marketer but recommended altering the reduction percentage in Vimachel’s favor from ninety percent (90%) to fifty percent (50%) due to Claimant’s cooperation in providing information early in the Receivership. The reduction in percentage is equivalent to altering Vimachel’s classification from Substantial Marketer to Insubstantial Marketer. However, even with such reduction, the Allowed Claim for Vimachel is zero. The Claimant filed an objection to the classification of Vimachel as a Substantial Marketer, alleging he only owns 10% of the corporation.

The Receiver is deeply troubled by Claim # 0272, including, but not limited to:

- a) the lack of complete and accurate information;
- b) the lack of adequate supporting documentation;<sup>3</sup>
- c) possible untruthful or misleading statements made by Claimant, *see, e.g.*, email from John Smith (Counsel for Receiver) to Claimant, dated August 29, 2007 (discussing discovery of undisclosed transfer of \$215,341.00 from Vavasseau to Claimant);
- d) whether claims assigned to (*e.g.*, Spouse’s Claim and Starlight Crest’s Claim) or indirectly owned by (*e.g.*, Vimachel) Claimant should be classified as a Substantial Marketer;<sup>4</sup>
- e) whether the proposed determination unfairly treats a Substantial Marketer (who received substantial commissions in furtherance of the fraud) the same as, or better than, innocent defrauded investors;<sup>5</sup>

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<sup>2</sup> If the Spouse’s Claim and Starlight Crest’s Claim were filed by the original owners, they would have been classified as Non-Marketers. Should the fact that the claims were assigned to the Claimant/Marketer change this classification?

<sup>3</sup> The Exhibits at Tab 10 & 16 are substantially all documents in the claim file for Claim # 0272.

<sup>4</sup> Appendix A to the Plan of Distribution defines “Substantial Marketer” as “a Person who received, directly or indirectly, more than \$1,000.00 in compensation or commissions or any other financial benefits in connection with obtaining investor funds ultimately invested in any trading program involving Vavasseau Corporation or Terry L. Dowdell, or any other financial venture which is or becomes the subject of this proceeding.

<sup>5</sup> *See, e.g.*, e-mail from spouse of Claimant for Claim # 0234 to John Smith (Counsel for Receiver), dated June 25, 2007, Tab 9 at 4 (irately alleging, *inter alia*, “No-one that knows the ‘players’ has the slightest doubt that Mr. [Claimant] was behind the scenes in all dealings and processes regarding the Vavasseau program in Denmark and Sweden – though he managed to stay more or less invisible and ‘hid’ behind [redacted], Mechlenberg, and [redacted] . . . .”); *id* at 6 (“The principle marketers in the Danish-Swedish part of the Vavasseau program; [*sic*] [Claimant of Claim # 272], [Claimant of Claim # 0156], Mechlenburg, and [redacted] success’s [*sic*] in their efforts in collecting very large amounts and transferring these to Dowdell & Dobb-White was based on a cleverly designed web of misinformation.”).

f) possible disparate treatment among marketers, *compare* Claim # 0156, Tab 4 (denying claim of daughter of fellow marketer for lack of documentation), *with* Claim # 0272 (this Claim);

g) to what extent Commissions received directly by a Substantial Marketer should be deducted, offset or recouped from Claims assigned to or indirectly owned by that Substantial Marketer;

h) if the Claim # 0272 is split into three Claims, to what extent, if any, should one Claim's Net Shortfall, or lack thereof, be offset against the other Claims owned by Claimant, *see* Plan of Distribution §§ 3.03 & 3.05; and

i) fundamental notions of fairness.

**WHEREFORE**, the Receiver requests the Claimant's objections be OVERRULED and the Court enter an order that the Receiver's Claim Determinations, as amended, are APPROVED; or alternatively, denies all three Claims due to lack of documentation.<sup>6</sup>

- (4) Claim # 0285 (*Ex.* at Tabs 11 & 17) – The Notice of Receiver's Claim Determination allowed the Claimant's claim, but classified Claimant as an Insubstantial Marketer. Claimant filed an objection disputing the classification as an Insubstantial Marketer. After receiving additional information from Claimant, the Receiver and the Claimant have executed a Settlement and Compromise Agreement.

**WHEREFORE**, the Receiver requests the Claimant's objection (*Ex.* at Tab 11) be SUSTAINED as to classification, and the Settlement and Compromise Agreement (*Ex.* at Tab 17) be APPROVED.

8. RE-DETERMINATION OF ORPHANED CLAIMS. Claim ## 0095, 0148, 0218, and 0275 (*Ex.* at Tabs 18, 19, 20, and 21, respectively). Four claims are at risk of falling through the cracks: the *Notice of Receiver's Claim Determination* disallowed the Claimants' individual claim and referred Claimants to the U.K. Liquidators; the Claimants did not object to the respective determination; the Order entered August 15, 2007 approved those determinations; but now the U.K. Liquidators do not recognize these claims. Upon further consideration and after

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<sup>6</sup> The Receiver believes the Claim Determinations, as amended, are correct; but if the Claimant successfully objects to any part of the Receiver's Claim Determination, it calls into question the Receiver's assumptions, and the Receiver requests that Court hold the Claimant to strict proof of his Claims.

discussion with the U.K. Liquidators, the U.S. Receiver proposes changing its determination to recognize and take primary responsibility over each of these Claims. The Receiver and each of the Claimants have executed a Settlement and Compromise Agreement.

**WHEREFORE**, the Receiver requests that each of the proposed Settlement and Compromise Agreements (*Ex.* at Tabs 18, 19, 20, and 21, respectively) be APPROVED.

9. LATE-FILED CLAIMS. Plan of Distribution § 3.02 allows the Receiver to waive the Bar Date for certain claims. The Receiver believes there are two groups of late-filed claims for which this might be appropriate: a) the Olsen claims, and b) the FCI Invest AB claims.

A. The Olsen Claims. As stated in the Receiver's [*First*] *Motion for Final Claim Determination*, Chris Olsen, a Substantial Marketer, discouraged certain people (including members of his family), from filing Proof of Claim forms with the Receiver. The Receiver advised Olsen's acquaintances and colleagues to spread the word that the Receiver would be willing to consider Proofs of Claim from such sub-investors if it received them in the near future. The Receiver has received eight Proofs of Claim from these Claimants (Claim ## 0332 through 0339). On August 20, 2007, the Receiver mailed each Claimant a *Notice of Receiver's Claim Determination* with instructions that the Claimant should file an *Objection to Receiver's Claim Determination* form with the Receiver if they disagreed with the Receiver's claim determination. See Plan of Distribution §§ 3.08 & 3.09. The Receiver's claim determinations, for which no objections were received, are summarized Exhibit A – Receiver's Claim Determination.

**WHEREFORE**, the Receiver requests the Court enter an order that approves the Receiver's claim determinations for which no objections were received, as set forth in Exhibit A, and grants the Receiver such other and further relief as may be just and proper.

B. The FCI Invest AB Claims. FCI Invest AB (“FCI”) is a Vavasseur marketer in Sweden that introduced several sub-investors to the Vavasseur program.<sup>7</sup> The Receiver’s dealings with FCI have been difficult due to the language barrier and FCI’s habitual tardiness. By Order entered August 15, 2007, the Court approved the Receiver’s determination denying FCI’s claim (Claim # 157) due to lack of supporting documentation,<sup>8</sup> but approved the claims of four sub-investors. By email from John Smith (Counsel for Receiver) to Leo Franzen (FCI), dated August 16, 2007, the Receiver stated “[w]e will consider individual claims of other FCI AB investors, but only if you or those other investors provide information for those individual claims within the next few weeks.” By email from Leo Franzen to John Smith, dated September 10, 2007, FCI indicated that it has decided to inform the sub-investors to contact the Receiver directly and will send a letter to that effect to its sub-investors. The Receiver has received seven Proofs of Claim from these Claimants (Claim ## 0340 through 0346). In January, 2008, the Receiver mailed each Claimant a *Notice of Receiver’s Claim Determination* with instructions that the Claimant should file an *Objection to Receiver’s Claim Determination* form with the Receiver if they disagreed with the Receiver’s claim determination. *See* Plan of Distribution §§ 3.08 & 3.09. The Receiver’s claim determinations, for which no objections were received, are summarized Exhibit A – Receiver’s Claim Determination.

**WHEREFORE**, the Receiver requests the Court enter an order that approves the Receiver’s claim determinations for which no objections were received, as set forth in Exhibit A, and grants the Receiver such other and further relief as may be just and proper.

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<sup>7</sup> The Receiver did not publish the Notice of Bar Date in any Swedish newspapers because it did not believe there were Vavasseur investors in Sweden other than FCI, and the Receiver did not know that FCI had sub-investors.

<sup>8</sup> Originally the Receiver was not concerned with the lack of documentation supporting FCI’s Proof of Claim because Vavasseur distributions to FCI exceeded FCI’s principal investments (*i.e.*, FCI would not receive any distributions under the Plan of Distribution because FCI did not have a Net Shortfall). Because FCI kept a large percentage of the Vavasseur distributions as an administrative fee, several sub-investors may individually have a Net Shortfall.

Respectfully submitted, this 2<sup>nd</sup> day of June, 2008.

Roy M. Terry, Jr. and DuretteBradshaw PLC

/s/ John C. Smith  
Counsel for the Receiver

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### CERTIFICATE OF SERVICE

I hereby certify that on this 2<sup>nd</sup> day of June, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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