

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

SECURITIES EXCHANGE COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	Case No.05-4057-SAC
)	
DAVID TANNER, et al.,)	
)	
Defendants.)	

**MEMORANDUM IN SUPPORT OF SEAFORTH MERIDIAN, LTD.’S
APPLICATION FOR LEAVE TO INTERVENE**

Seaforth Meridian, Ltd. (“Seaforth”), by and through counsel, has moved the court for leave to intervene by right as a party defendant pursuant to Fed. R. Civ. P. 24(a) for the limited purpose of seeking relief from and defending itself with respect to the Order issued by this Court on or about August 11, 2005 (Document No. 84) entitled “STIPULATED ORDER GRANTING, IN PART, RECEIVER’S MOTION FOR TURNOVER OF PROPERTY and Records OF THE RECEIVERSHIP ESTATE TRANSFERRED TO Mark D. Zarubi, Diversified Partner’s Limited f/k/a Cedax limited [sic], Seaforth Meridian, Limited, and Law offices [sic] of J.B. ‘Benton’ Moore” (“Stipulated Order”). For the reasons set forth in this memorandum, the Court should grant Seaforth’s motion.

The standard for intervention of right is set forth in Fed. R. Civ. P. 24(a). Rule 24(a) states in pertinent part as follows:

(a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: ... (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the

applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Fed. R. Civ. P. 24(a).

Under Rule 24(a), an applicant may intervene as a matter of right if (1) the application is timely, (2) the applicant claims an interest relating to the property or transaction which is the subject of the action, (3) the applicant's interest may be impaired or impeded, and (4) the applicant's interest is not adequately represented by existing parties.

Elliott Industries, Ltd. v. BP America Production Co. 407 F.3d 1091, 1103 (10th Cir. 2005)(citations omitted).

Seaforth meets each of these standards. First, this application is timely because Seaforth is subject to the Stipulated Order and the Receiver only yesterday filed a motion seeking to cite Seaforth for civil contempt for failing to comply with the Stipulated Order.

As to the second element, Seaforth claims an interest relating to the property which is the subject of this action in that the Stipulated Order requires Seaforth to transfer to the Receiver in excess of \$9 million. Seaforth already has paid \$4,110,185.00 to the Receiver. *See* Clyman Affidavit (attached hereto as Exhibit A); Motion for Show Cause Order filed November 22, 2005 (Document No. 141). Seaforth continues to work to pay remaining amount required under the Stipulated Order of \$4,888,328, less the sum of \$324,000, which reflects the Receiver's share of the loss suffered by the Seaforth investors in the Hartsfield investment. *See* Clyman Affidavit, ¶¶17, 19 (Attached as Exhibit A).

In a nutshell, the Receiver is attempting to require Seaforth to use assets rightly owned by other investors to repay Receiver's entire initial investment—to the point of moving this court to find Seaforth guilty of civil contempt for being unable to do so. This dispute is more than sufficient to satisfy the second and third elements of intervention as of right under Fed. R. Civ. P. 24(a).

As to the fourth element, no other party is representing Seaforth's interests in this litigation.

For the forgoing reasons, Seaforth respectfully requests the Court to grant its application for leave to intervene as a matter of right pursuant to Fed. R. Civ. P. 24(a), at which time Seaforth intends to file its Motion to Modify the Stipulated Order Entered on August 11, 2005 (Document No. 84) and supporting memorandum (attached hereto as Exhibit B).

Respectfully submitted,

HELDER LAW FIRM

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ATTORNEY FOR
SEAFORTH MERDIAN, LTD.

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of November, 2005, this document was electronically filed with the Court, which automatically notified the following electronic filing participants:

Timothy P. Davis, Counsel for Plaintiff SEC
Christopher M. Joseph, Counsel for Spencer Defendants
Stephen M. Joseph, Counsel for Spencer Defendants
Roger N. Walter, Counsel for Relief Defendant Vectra Resources, LLC
Christopher Bebel, Counsel for Relief Defendant Vectra Resources, LLC
Randall J. Forbes, Counsel for Relief Defendant Dynamic Environmental Solutions
Kevin M. Fowler, Counsel for Relief Defendant Dynamic Environmental Solutions
Robert L. Herskovits, Counsel for Defendant Tanner
Thomas D. Haney, Counsel for Defendant Tanner

/s/ Jan P. Helder, Jr.
Attorney for Seaforth Meridian, Ltd.