

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS
TOPEKA DIVISION**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

DAVID TANNER, Individually, and d/b/a
CAPITAL ENHANCEMENT CLUB,
ROCKY D. SPENCER,
MARROC CORP., and
RICHARD P. KRINGEN,

Defendants,

and

MARGARET F. SPENCER,
OMNIBUS LLC,
VECTRA RESOURCES, LLC, and
DYNAMIC ENVIRONMENTAL SOLUTIONS, INC.,

Relief Defendants.

Civil Action No.
05-4057-SAC

**PLAINTIFF'S CONSOLIDATED (1) STATUS REPORT AND (2) UNOPPOSED
MOTION FOR ADDITIONAL TIME TO COMPLETE SETTLEMENT
WITH THE SPENCER PARTIES**

Pursuant to the Court's order of June 20, 2006 [Doc 224], the Commission is to report to the Court the status of settlement efforts with the Spencer Parties by August 21, 2006. The Commission reports that, due to recently discovered information relating to Defendant David Tanner, it is unable to complete settlement with the Spencer parties and respectfully requests that the Court allow additional time so that the Commission may reexamine the involvement of the Spencer parties in light of this new and important information. Specifically, the Commission reports that:

I. Current Status of the remaining parties

A. *David Tanner, d/b/a Capital Enhancement Club*

On June 20, 2006, the Court allowed the Commission an additional 90 days to conduct discovery to determine the true identity of Defendant Tanner who, as previously explained, uses the alias James Tucker [Doc. 222]. The Commission has used that time to issue subpoenas and pursue investigative leads. As a result of this investigation, and additional work of the court-appointed receiver, the Commission now believes it has definitively determined the true identity of Defendant Tanner and mastermind of the CEC scheme.

Based upon current information and belief, Tanner and Tucker are actually aliases of securities fraud recidivist Scott Fraiser Klion, a 38 year-old, white male, former resident of Copperas Cove, Texas. Klion fled to the Lesser Antilles Islands in 1998 after he was named as the primary defendant in *SEC v. Scott L. Klion, d/b/a Cen-Tex Alchemy Guild, et al.* No. 6:98-CV-186, USDC, WD TX (Waco Division).¹ Like CEC, the *Cen-Tex* ponzi scheme involved the sale of fictitious high-yield securities.² Some of the information collected thus far to support the Commission's conclusion that Klion (using the aliases Tanner and Tucker) is the real CEC mastermind includes:

- A photo of "James Tucker" previously produced in this case and identified as Tucker by multiple witnesses was also positively identified as Klion by employees of the court-appointed receiver in the *Cen-Tex* case and by Klion's estranged father who lives in the United States.

¹ Klion's middle initial is incorrect in the *Cen-Tex* case styling.

² A copy of the SEC's *Cen-Tex* litigation release is attached as Ex. A.

- The photo of Tucker also matches the expired Texas driver's license photo of Klion.³
- Multiple witnesses who met with Tucker in the Antilles reported meeting a female companion named Liz or Elizabeth who has a daughter named Patricia Alainz. A woman named Elizabeth Alainz was Klion's co-defendant girlfriend in the *Cen-Tex* case.
- When the *Cen-Tex* receiver took possession of Klion's house in 1998, he found information on obtaining "economic citizenship" from the Lesser Antilles Island of Domenica. Tucker holds a passport from the Island of Domenica.⁴
- Multiple witnesses who met Tucker described that he wore a distinctive Virginia Military Institute ("VMI") ring and discussed being a VMI graduate. Klion is a VMI graduate and the *Cen-Tex* receiver identified the VMI ring from the Tucker photograph.

Recently, the Commission informed counsel for Tanner and new prospective counsel for Tucker (who have not yet made an appearance in this case) of its belief that Klion is actually the real identity of both Tanner and Tucker. No one has disputed the claim and two of Tanner's three attorneys are seeking to withdraw from the case for unspecified reasons [Doc. 244 and 261]. The Commission is currently working on additional points

³ The photo of Tucker and the Driver's License information are attached as Exs. B and C respectively.

⁴ A copy of Tucker's application to be a managing member of Seaforth Meridian is attached as Ex. D. The application identifies Tucker's Dominican Passport. Prior to September 11, 2003, obtaining economic citizenship from the Island of Dominica was promoted as an easy way to change identities and obtain a widely accepted passport. Not surprisingly, this technique was apparently used by a number of persons sought by United States law enforcement authorities.

of verification concerning Klion/Tanner/Tucker as well as investigating any financial accounts where Klion has a beneficial interest.

Based on Klion's identification, Commission counsel is in the process of obtaining formal authority from the Commission to seek leave of this Court to modify the current judgment against Tanner [Doc. 113] to include Klion. In order to ask the Court to include Klion (a/k/a David Tanner and James Tucker; d/b/a Capital Enhancement Club) as a party, Commission counsel must prepare a formal recommendation and submit the recommendation for a formal review and vote of the five SEC commissioners. Counsel believes he can complete the formal approval process and file a motion relating to Klion/Tanner/Tucker within sixty days.

B. The Spencer Parties

The Commission has alleged that defendants Rocky Spencer and Marroc Corp. participated in the CEC scheme by, among other things, promoting the CEC scheme on Marroc's website, accepting funds from CEC investors and disbursing those funds at the direction of CEC's mastermind. Rocky Spencer, who after being sued asserted his Fifth Amendment Right, provided some information and account records demonstrating that he participated in hundreds of CEC financial transactions including transferring millions of dollars offshore. Relief Defendant Margaret Spencer, the Commission alleges, received CEC investor funds for no apparent consideration.

For several months, the Commission and Spencer parties have held an agreement in principle to settle. Once completed, the contemplated settlement would allow for the dismissal of Marroc and Margaret Spencer and less than the full monetary relief originally requested by the Commission against Defendant Rocky Spencer.

But given the recent revelations relating to Klion, the Commission believes that before settling with the Spencer parties it is prudent to finish the investigation relating to any new financial accounts that may be controlled by Klion. Specifically, the Commission and the Receiver will examine these accounts to verify that Rocky Spencer did not receive additional funds beyond what he already disclosed and was known at the time the settlement agreement was struck. The Commission believes that it can complete the process for resolving this case and provide to the Court agreed or proposed final judgments in 60 days. The Spencer parties do not oppose an additional 60-day extension.

C. Remaining Parties

As summarized below, resolution of the above-described issues relating to Klion/Tanner/Tucker and the Spencer Parties completely resolves this case. For the remaining defendants and relief defendants in this matter a final judgment has already been entered or a motion for final judgment is currently pending with the Court.

PARTIES	STATUS	PENDING COURT APPROVAL
Richard P. Kringen (Defendant)	Default Judgment (Docs. 59, 71, 220).	Pursuant to the Default Judgment, on June 19, 2006, the Commission moved the Court to set an appropriate disgorgement amount, prejudgment interest, and civil penalty. The motion is pending
Omnibus, LLC (Relief Defendant)	Default Judgment (Doc. 59, 71, 220).	Pursuant to the Default Judgment, on June 19, 2006, the Commission moved the Court to set an appropriate disgorgement amount, prejudgment interest, and civil penalty. The motion is pending

Vectra Resources LLC (Relief Defendant)	Final Agreed Judgment (Doc. 176).	Complete
Dynamic Environmental Solutions Inc. (Relief Defendant)	Order Dismissing (Doc. 74).	Complete

II. Requested Relief

In light of these circumstances and the likely prompt completion of this matter as to all parties on all issues, the Commission respectfully requests that it be allowed an additional sixty days to (1) obtain formal authority from the SEC to seek to modify the previously entered judgment relating to David Tanner to reflect Tanner's true identity and (2) present to the Court a final settlement relating to the Spencer parties. This relief, when obtained, will conclude the case. This extension is not for purposes of delay, but will serve the interests of justice and is necessary because of attempts by recidivist Scott Klion to mislead this court as to his true identity.

The Receiver has reviewed this report and motion and agrees with the relief sought.

Dated: August 21, 2006.

Respectfully submitted,

s/ TIMOTHY P. DAVIS

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CERTIFICATE OF CONFERENCE

Counsel for the Commission discussed the substance of this report and the need for additional time to complete settlement with counsel for the Spencer Parties, Christopher Joseph. Mr. Joseph does not oppose an additional 60 day extension.

CERTIFICATE OF SERVICE

I hereby certify that on August 21, 2006, I electronically filed the foregoing **PLAINTIFF'S CONSOLIDATED (1) STATUS REPORT AND (2) UNOPPOSED MOTION FOR ADDITIONAL TIME TO COMPLETE SETTLEMENT WITH THE SPENCER PARTIES** with the Clerk of the Court for the District of Kansas, Topeka Division, by using the CM/ECF system which will send a notice of electronic filing to the following CM/ECF participants:

Michael Bachner, Robert L. Herskovits and Thomas D. Haney, Counsel for Defendant Tanner;

Christopher M. Joseph & Stephen M. Joseph, Counsel for Spencer Defendants;

Roger N. Walter and Christopher Bebel, Counsel for Relief Defendant Vectra Resources, LLC;

Kenneth L. Weltz & Brian M. Holland, Counsel for Receiver.

s/ TIMOTHY P. DAVIS
Timothy P. Davis