

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

SECURITIES EXCHANGE COMMISSION)

Plaintiff,)

vs.)

DAVID TANNER, et al.,)

Defendants,)

and)

MARGARET F. SPENCER, et al.,)

Relief Defendants.)

Civil Action No.: 05-4057-RDR

**MOTION OF RECEIVER *PENDENTE LITE*, LARRY E. COOK,
FOR ORDER ALLOWING AND DISALLOWING INVESTOR CLAIMS**

COMES NOW the Receiver *Pendente Lite* Larry E. Cook (the “Receiver”), by and through his undersigned counsel, and for his Motion for Order Allowing and Disallowing Investor Claims (the “Claims Motion”), respectfully states as follows:

Background

1. The Securities and Exchange Commission (the “Commission”) initiated this securities fraud enforcement action on May 4, 2005. At the request of the Commission and, based on a preliminary showing of securities fraud, the Court established an asset freeze and appointed Larry E. Cook as Receiver.

2. On that same date, the Court entered its Order Appointing Receiver (Docket # 10) which, *inter alia*, authorized the Receiver to take and have possession of the Receivership Assets.

3. On March 9, 2006, the Receiver filed his Renewed Motion for Order Approving Claims Solicitation Procedure, Approving Claim Form, and Establishing Claims Bar Date for Investors and Others to File a Claim (the “Claims Bar Date Motion”) (Docket # 190).

4. The Claims Bar Date Motion and Declaration of Larry E. Cook, Receiver¹ in support thereof, stated, *inter alia*,:

- (i) The Defendants and Relief Defendants, with the exception of Marroc Corporation, Rocky Spencer, and Margaret Spencer, have failed to provide the Receiver with an accounting of the investors’ funds received or disbursed. Defendant Tanner asserted his Fifth Amendment privilege and refused to provide the Receiver with any information relating to Capital Enhancement Club (“CEC”), including any information on the identity of, or contact information for, the defrauded investors.
- (ii) Defendant Tanner has instructed the investors not to cooperate with the Receiver and not to file a claim with the Receiver in order to participate in a distribution of the recovered funds.
- (iii) The Receiver, in cooperation with the Commission, was able to identify several bank accounts by which CEC investors invested in CEC. The Receiver subpoenaed tens of thousands of pages of bank records from domestic and foreign banks. Although this process was not complete, the Receiver had determined that CEC investors invested funds in CEC via direct wire-transfers and via several “e-currency” companies. E-currency companies accepted cashier’s checks from investors and converted the funds into various e-currencies for transmittal to CEC. The wire transfers and e-currency transactions did not provide contact information or other identifying information as to who invested the funds.
- (iv) The Receiver’s difficulty in identifying the defrauded investors was compounded by the fact that investors were instructed not to identify themselves on any CEC deposit. Accordingly, those investors who invested by cashier’s check provided no contact information by which the Receiver can identify for whose benefit the investment was made.
- (v) On or about November 10, 2005, the Receiver established a website www.ceclubreceiver.com whereby the defrauded investors could obtain status updates on this case and complete an initial Claim Form to receive a return of their lost investment.

¹ The Declaration of Larry E. Cook, Receiver was attached as Exhibit A to the Claims Bar Date Motion (Docket # 190). The statements contained in this paragraph have been previously sworn to by Mr. Cook in the Declaration.

- (vi) In addition, the Commission posted a link to the Receiver's website on the Commission's website so that defrauded investors searching the Commission's website to review relevant litigation releases would have a link to the Receiver's website.
- (vii) The Commission's Complaint noted that CEC investors were required to establish an e-mail account with safe-mail.net which was to sole medium of communication between CEC and the defrauded investors. Safe-mail.net is an Israeli-based provider of private e-mail accounts. Safe-mail initially resisted the Receiver's efforts to obtain contact information for the investors. Following extended negotiations, and with the assistance of the Commission, the Receiver ultimately obtained a list of approximately ten thousand CEC-related e-mail addresses from safe-mail. On February 24, 2006 the Receiver sent an e-mail to all known CEC investors via their safe-mail.net e-mail address. This e-mail advised the investors of the Receiver's website and invited them to visit the website to file a claim for any lost investment.

5. On March 28, 2006, the Court entered its Memorandum and Order Granting the Claims Bar Date Motion (the "Claims Bar Date Order") (Docket # 193).

6. Pursuant to the Claims Bar Date Order, the Court established April 28, 2006 (the "Claims Bar Date") as the deadline for all investors and other creditors to file a claim via the Receiver's website. The Claims Bar Date Order further approved the Receiver's proposal to send notice of the Claims Bar Date to the defrauded investors by e-mail and by posting notice of the Claims Bar Date on the Receiver's website.

7. On March 30, 2006, the Receiver provided notice of the Claims Bar Date Order to all known defrauded investors via two e-mails and filed a certificate of service of the notice (Docket # 197).

8. As reflected in the certificate of service, the first e-mail, which advised the defrauded investors of the Claims Bar Date, was sent to 9,885 e-mail addresses and was received by 9,236 of the e-mail addresses, representing a 93% success rate. The subsequent e-mail, which clarified that all documents in support of a claim had to be postmarked to the Receiver by the Claims Bar Date, was sent to 9,882 e-mail addresses and was received by 9,272 of those addresses representing a 94% success rate.

9. In addition, the Receiver posted notice of the Claims Bar Date on the Receiver's website.

Claims Filed with the Receiver

10. As of the Claims Bar Date, the Receiver received 1,297 claims totaling \$20,788,269.28.

11. The Receiver and his counsel spent considerable time analyzing and verifying the filed claims. The Receiver and his counsel contacted many of the investors to request additional information to verify the filed claims. Although most investors complied with the Receiver's requests for additional information, several did not.

12. Of the 1,297 claims timely filed, the Receiver believes 1,097 claims filed in the amount of \$19,487,097.72 should be allowed in the reduced amount of \$18,303,167.77 (the "Allowed Claims"). A spreadsheet of the Allowed Claims is attached hereto as **Exhibit A**.² Exhibit A includes the claimants' total investment in CEC, the claim amount as filed, any deductions for payments the claimant received from CEC prior to the commencement of this action, and the authorized amount of the claim. The amount in the "Authorized" column on Exhibit A is the amount the Receiver recommends the Court allow as an Allowed Claim.³ Several investors received payments from CEC in excess of the amount of their claim. In these cases, the amount in the "Authorized" column on Exhibit A is zero. These claims will not receive a distribution of recovered funds.

² In order to protect the defrauded investors' financial privacy, only the Court and the Commission will receive a complete spreadsheet of the Allowed Claims. All other interested parties will be able to review a condensed version of the Allowed Claims Spreadsheet containing the claimant's CEC number, joint venture agreement ("JVA") number, total investment, claim amount, deductions, and authorized amount of claim.

³ The amount listed in the "Authorized" column of the spreadsheet exhibits to this Claims Motion are in US dollars. While CEC reported all investments in US dollars, some investors completed their claim using foreign currency amounts. In cases where the investor included a MFR with his or her claim, the Receiver used the US dollar amount from the MFR for the claim. In cases where the investor did not include a MFR with his or her claim, the Receiver converted foreign currency amounts to US dollar amounts using the exchange rate in effect on May 4, 2005, the date the Commission commenced this action.

13. Of the 1,297 claims timely filed, the Receiver believes 199 claims filed in the amount of \$1,301,172.06 should be disallowed in their entirety (the “Disallowed Claims”). A spreadsheet of the Disallowed Claims is attached hereto as **Exhibit B**.⁴ Claim numbers 1098 through 1193 (96 claims) consist of claims filed via the Receiver’s website for which the claimant failed to provide sufficient documentation to support the claim as filed. The column labeled “Notification Date” on Exhibit B contains the date on which the Receiver notified the claimant to request information or documentation to support the claim, but these claimants have failed to respond to the Receiver’s request. Claim numbers 1194 through 1296 (103 claims) consist of claims never filed by the claimant (i.e., the claimant registered via the Receiver’s website, but never completed a claim form on the Receiver’s website and/or failed to mail a claim form to the Receiver). Because the claims on Exhibit B are deficient, the Receiver recommends the court disallow these claims.

14. The last timely filed claim, filed by Worldplaza, is not an investor claim and will be addressed in a separate claim objection.

15. In addition, the Receiver received fourteen claims (the “Late Filed Claims”). Attached hereto at **Exhibit C** is a spreadsheet of the late filed claims (claim numbers 1298 to 1311).⁵ Because these claims were not timely filed, the Receiver recommends the Court disallow the Late Filed Claims. If the Receiver is ultimately successful in recovering funds in

⁴ In order to protect the defrauded investors’ financial privacy, only the Court and the Commission will receive a complete spreadsheet of the Disallowed Claims. All other interested parties will be able to review a condensed version of the Disallowed Claims Spreadsheet containing the claimant’s CEC number, JVA number, total investment, claim amount, deductions, and authorized amount of claim.

⁵ In order to protect the defrauded investors’ financial privacy, only the Court and the Commission will receive a complete spreadsheet of the Late Filed Claims. All other interested parties will be able to review a condensed version of the Late Filed Claims Spreadsheet containing the claimant’s CEC number, joint venture agreement (“JVA”) number, total investment, claim amount, deductions, and authorized amount of claim.

excess of those needed to pay the Allowed Claims in full, the Receiver will review the Late Filed Claims for possible allowance after the Allowed claims are paid in full.⁶

Notice to Claimants

16. In addition to ECF notice, the Receiver proposes to provide notice of this Claims Motion (the “Notice”), in the form substantially similar to that attached hereto as **Exhibit D**, by: (i) posting a copy of the Notice and this Claims Motion on the Receiver’s website; (ii) e-mailing a copy of the Notice to the safe-mail.net e-mail addresses obtained by the Receiver; and (iii) e-mailing a copy of the Notice to the claimants at any e-mail address provided by the claimants in their claim form. The Receiver submits to the Court that notice of the Claims Motion as set forth in this paragraph is sufficient and adequate notice to all interested parties.

17. The Commission has reviewed this Claims Motion and concurs in the relief sought.

WHEREFORE, the Receiver respectfully requests the Court enter its Order: (i) Allowing the claims on Exhibit A hereto in the amount identified in the “Authorized” column on Exhibit A hereto; (ii) Disallowing the claims on Exhibit B hereto; (iii) Disallowing the Claims on Exhibit C hereto; (iv) Approving the form of notice of this Claims Motion to claimants in the form substantially similar to the Notice attached as Exhibit D hereto; (v) Approving the method of notice of this Claims Motion in the method described herein; and (vi) for such other and further relief as the Court deems just and appropriate.

⁶ D. Kan. Rule 66.1 provides, in part, that the administration of estates by receivers shall follow, as nearly as may be possible, the procedure in bankruptcy cases. Section 726 of the United States Bankruptcy Code (11 U.S.C. § 726(a)(3)) provides that late filed claims are paid only after timely filed allowed claims are paid in full.

Dated: July 14, 2006

Respectfully submitted,

Lathrop & Gage L.C.

By: /s/ Brian M. Holland

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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of July, 2006, I electronically filed the foregoing, 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:

Timothy P. Davis, SEC;

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

Roger N. Walter, Co-Counsel for Relief Defendant Vectra Resources, LLC;

Christopher Bebel, Co-Counsel for Relief Defendant Vectra Resources, LLC;

Randall J. Forbes and Kevin M. Fowler; Counsel for Relief Defendant Dynamic Environmental Solutions;

Robert L. Herskovits, Counsel for Defendant Tanner;

Thomas D. Haney, Counsel for Defendant Tanner; and

Jan Helder, Counsel for Seaforth Meridian, Ltd.

/s/ Brian M. Holland

An attorney for Larry E, Cook, Receiver