

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
SPRINGFIELD DIVISION

FILED

FEB 20 2008

SECURITIES AND EXCHANGE COMMISSION,)
)
Plaintiff,)
)
v.)
)
WAYNE F. GORSEK, et al.,)
)
Defendants.)

CLERK OF THE COURT
U.S. DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS

No. 99 CV 3072 (JES)

DISTRIBUTION PLAN

I. INTRODUCTION

1. On January 7, 1999, the Commission filed its original action in this matter against Defendants Wayne F. Gorsek (“Gorsek”), P. Brenden Gebben (“Gebben”), Lyndell F. Parks (“Parks”), and Troy Justus (“Justus”) [collectively, the “Defendants”]. (d/e 1) The Commission’s Complaint alleged various violations of the federal securities acts and regulations related to the Defendants’ promotion of approximately 20 micro-cap companies through Strategic Investment Advisory, Inc. (“SIA”), a Springfield, Illinois-based company. (Id.) The Complaint alleged that SIA deceived investors into believing that it was an independent securities research firm providing objective investment advice about certain companies when, in fact, SIA was merely a paid promotional firm that uncritically published glowingly optimistic recommendations of the securities of its clients in exchange for cash and securities. (Id.) In addition, the Complaint alleged that during the SIA promotional scheme, Gorsek and Parks were co-owners and registered representatives at Strategic Investments, Inc. (“SII”), a broker-dealer. (Id.) As SII registered representatives, Gorsek and Parks defrauded brokerage customers by

recommending the purchase of securities issued by SIA clients without disclosing that they received cash and securities from the issuers of those securities. (Id.)

2. On August 19, 2002, this Court issued an Order of Final Judgment of Permanent Injunction and Other Relief against Gorsek. (d/e 251) Among other things, the Court ordered Gorsek to pay a total of \$250,000, consisting of \$105,000 in disgorgement of ill-gotten gains, \$70,000 in prejudgment interest, and a civil penalty of \$75,000. (Id.)

3. On September 9, 2002, the Court issued an Order of Final Judgment against Defendants Gebben and Parks. (d/e 256) The Court ordered Gebben to pay a total of \$27,337.33, consisting of \$10,208.50 in disgorgement of ill-gotten gains, prejudgment interest totaling \$7,128.83, and a civil penalty of \$10,000.¹ (Id.) In addition, the Court ordered Parks to pay a total of \$150,000, consisting of \$105,000 in disgorgement of ill-gotten gains, prejudgment interest of \$35,000, and a \$10,000 civil penalty.² (Id.)

4. In this action, the Commission has contemplated the distribution of these funds to investor victims of the Defendants' fraud, in accordance with the Fair Funds for Investors provision of the Sarbanes-Oxley Act of 2002, 15 U.S.C. § 7246(a). Following entry of the Final Judgment against Gorsek, the Commission moved for the addition of Gorsek's civil penalties to the disgorgement fund for the benefit of aggrieved investors, pursuant to this Fair Funds provision. In an Endorsed Order dated August 20, 2002, the Court granted this Motion. (d/e

¹ Gebben attempted to satisfy his judgment by paying \$27,337.33 to the Commission via check dated October 29, 2002. Of this amount, the Commission segregated the \$10,000 civil penalty and transferred it to the U.S. Treasury as required by 15 U.S.C. § 78u(d)(3). The Commission forwarded the remaining \$17,337.33 to the Clerk of Court for the Central District of Illinois. See d/e 260. Consequently, Gebben's \$10,000 civil penalty has never been in the Court Registry and is not included in the Fair Fund in this matter.

² In an Order of Final Judgment of Permanent Injunction and Other Equitable Relief dated March 30, 2001, the Court ordered the fourth Defendant to this action, Troy Justus, to pay disgorgement in the amount of \$5,888, plus prejudgment interest. (d/e 145.) However, the Court waived payment of these amounts, and declined to impose civil penalties, based on Justus's demonstrated inability to pay. (Id.)

249) To accomplish this distribution, the Commission has proposed this plan, which is hereby approved by the Court.

II. DEFINITIONS

As used in this Distribution Plan, the following definitions shall apply:

5. “Affiliate” shall have the meaning described in Section 101(2) of the United States Bankruptcy Code, 11 U.S.C. § 101 et seq.

6. “Approved Claim” shall mean the final amount of a Potentially Eligible Claimant’s asserted claim that is approved pursuant to this Distribution Plan.

7. “Available Distribution” shall mean the Fair Fund, less any amounts expended or to be expended for administering the Fair Fund (e.g., reasonable fees and expenses incurred or to be incurred in administering this Distribution Plan tax payments, if required).

8. “Claims Bar Date” shall mean the date established in accordance with this Distribution Plan by which a Potentially Eligible Claimant’s Proof of Claim Form must be received by the Distribution Agent to avoid the barring of any right of the Potentially Eligible Claimant to participate in any distribution from the Fair Fund. The Claims Bar Date shall be ninety days after the first web publication of the Distribution Plan Notice.

9. “Claims Determination Date” shall mean the date on or before which the Distribution Agent is to reach its determination concerning the validity and amount of each Potentially Eligible Claimant’s claim. Except as otherwise provided herein, the Claims Determination Date shall be on or before the thirtieth day following the Claims Bar Date.

10. “Claims Packet” shall mean all the materials to be provided to Potentially Eligible Claimants known to the Distribution Agent or to those who request such, including (1) a copy of Plaintiff’s Memorandum of Law in Support of its Motion; (2) a copy of this Distribution Plan;

(3) a Proof of Claim Form (together with instructions for completion of the Proof of Claim Form) prepared by the Distribution Agent; (4) a list of counsel involved in the case; and (5) the Claims Bar Date, as set forth herein.

11. “Determination Notice” shall mean the notice sent by the Distribution Agent to a Potentially Eligible Claimant stating the Distribution Agent’s determination of the validity of the claim of the Potentially Eligible Claimant.

12. “Distribution Agent” shall refer to Gordon J. Brumback, attorney for the Commission and the individual responsible for administering the Fair Fund, in accordance with the terms of this Distribution Plan and the Court’s orders, and in conjunction with other members of the Commission’s staff. Pursuant to Rule 1105(d) of the Commission’s Rules of Practice, 17 C.F.R. § 201.1105(d), the Fund Administrator shall receive no compensation, other than his regular salary as an employee of the Commission, for his services in administering the Fair Fund.

13. “Distribution Plan” shall mean this Distribution Plan in the form approved by the Court.

14. “Distribution Plan Notice” shall mean the notice given to Potentially Eligible Claimants of their potential right to participate in the distribution of the Fair Fund and their obligation to file a Proof of Claim Form in order to so participate. The Distribution Agent shall design the Distribution Plan Notice, consistent with the provisions of this Distribution Plan, and such notice shall include, at a minimum, a Claims Packet.

15. “Eligible Claimants” shall mean those Potentially Eligible Claimants filing a Proof of Claim Form with the Distribution Agent on or before the Claims Bar Date who are finally determined by the Distribution Agent to be eligible for a distribution from the Fair Fund

as provided herein because they purchased, from former SII brokers Gorsek, Parks, or Justus, and held Eligible Securities during the Recovery Period and subsequently suffered an aggregate net loss from such purchases, regardless of when the customers sold the Eligible Securities – i.e., regardless of whether or not the sales occurred within the applicable Recovery Periods. “Eligible Claimants” in no event shall include:

- a. Defendants (or any of their Affiliates, assigns, heirs, distributees, spouses, parents, children, relatives, or controlled entities);
- b. any person or any entity affiliated with SII or SIA, as a principal, employee, sales agent, independent contractor, relative, or client (or any of their Affiliates, assigns, heirs, distributees, spouses, parents, children, or controlled entities);
- c. any Potentially Eligible Claimant whose Eligible Loss Amount totals less than \$100.00;
- d. any defendant in any class action lawsuit related to the fraud described in the Commission’s complaint in this action (or any of such defendant’s Affiliates, assigns, heirs, distributees, spouses, parents, children, or controlled entities), unless and until such defendant is found not liable in all such civil suits prior to the Claims Bar Date, and proof of the finding(s) is included in such defendant’s timely filed Proof of Claim Form;
- e. any Person who assigned that Person’s right to obtain a recovery in the Commission’s lawsuit against the Defendants;
- f. any assignee of another Person’s right to obtain a recovery in the Commission’s lawsuit against the Defendants, provided, however, this

provision shall not be construed to exclude those Persons who obtained such a right by inheritance or devise.

Notwithstanding anything to the contrary in this paragraph, a Person determined not to be an Eligible Claimant pursuant to Subparagraph (e) or (f) above with respect to a particular Eligible Security may, subject to the requirements of this paragraph, be an Eligible Claimant with respect to other Eligible Securities that Person may own.

16. “Eligible Loss Amount” shall refer to the amount of loss an Eligible Claimant has incurred from the purchase of an Eligible Security, or the aggregate amount of loss an Eligible Claimant has incurred from the purchases of Eligible Securities, through SII brokers Gorsek, Parks, or Justus, during the applicable Recovery Period(s).

17. “Eligible Security” shall refer to all common stock issued by the following issuers:

ELIGIBLE SECURITIES
Allegiant Physicians Services, Inc.
CryoPac Industries, Inc.
Deprenyl Animal Health, Inc.
Draxis Health, Inc.
Environmental Chemicals Group, Inc.
First Fidelity Acceptance Corp.
Haber, Inc.
Madera International, Inc.
Princeton American Corp.
United Trust, Inc.
Value Holdings, Inc.

18. “Fair Fund” shall refer to all payments by Defendant Gorsek and Gebben to the Court’s registry in satisfaction of the orders of final judgment, excluding Gebben’s \$10,000 civil penalty, and all payments made by Parks to the Court’s registry in satisfaction of the order of final judgment by the date of this Distribution Plan, plus any additions thereto as may be

provided by future Court Order or agreements in related cases or otherwise, minus any tax payments, if required.

19. “Final Determination Notice” shall mean the Distribution Agent’s written response to a request for reconsideration of the Distribution Agent’s Determination Notice.

20. “Person” shall mean natural individuals as well as legal entities, such as, corporations, partnerships, and governmental entities.

21. “Potentially Eligible Claimants” shall mean those Persons identified by the Distribution Agent as having possible claims to the Fair Fund under this Distribution Plan, or Persons asserting that they have possible claims to the Fair Fund under this Distribution Plan.

22. “Proof of Claim Form” shall mean the form designed by the Distribution Agent in accordance with this Distribution Plan for the filing of proof of a Potentially Eligible Claimant’s claim. A form that will require, at a minimum, sufficient documentation reflecting the Potentially Eligible Claimant’s purchases and dispositions of all Eligible Securities during the Recovery Period and, if so required, a Substitute W-9 signed by the Potentially Eligible Claimant. In the event a Potentially Eligible Claimant is a non-resident alien, the Potentially Eligible Claimant shall complete a Form W-8 BEN prior to receiving a payment.

//

//

//

//

//

//

//

23. “Recovery Period,” for the purposes of this Distribution Plan, shall mean the respective periods of time for each Eligible Security, as set forth in the following table:

RECOVERY PERIODS	ELIGIBLE SECURITIES
7/22/94 – 10/18/95	Allegiant Physicians Services, Inc.
10/4/94 – 12/15/95	CryoPac Industries, Inc.
8/11/93 – 5/15/94	Deprenyl Animal Health, Inc.
3/30/94 – 5/31/94	Draxis Health, Inc.
11/23/94 – 2/15/95	Environmental Chemicals Group, Inc.
8/14/95 – 9/18/95	First Fidelity Acceptance Corp.
10/13/94 – 12/1/94	Haber, Inc.
3/30/95 – 7/10/95	Madera International, Inc.
11/11/94 – 7/12/95	Princeton American Corp.
3/1/94 – 9/30/94	United Trust, Inc.
11/1/94 – 12/25/94	Value Holdings, Inc.

III. ALLOCATION AMONG ELIGIBLE CLAIMANTS

24. The Available Distribution shall be distributed to pay Eligible Claimants as provided under the terms of this Distribution Plan. Generally, an Eligible Claimant’s Eligible Loss Amount is the sum total of each aggregate purchase price of an Eligible Security bought during the applicable Recovery Period, less the aggregate sale price of the Eligible Security. Any Eligible Securities which were never sold and are still held by an Eligible Claimant shall be assigned a residual value of zero. As to a series of sale and purchase transactions, the FIFO rule will apply, beginning with the first trade by the claimant in a particular Eligible Security during the applicable Recovery Period.

25. If the Available Distribution is greater than or equal to the total amount of money due Eligible Claimants, the Distribution Agent shall distribute to each Eligible Claimant its Eligible Loss Amount.

26. Should the total amount of the money due Eligible Claimants exceed the Available Distribution, the Distribution Agent shall distribute the funds to the Eligible Claimants

pro rata based upon the ratio of the Approved Claim of each Eligible Claimant to the aggregate Approved Claims of all Eligible Claimants.

27. If, after the Distribution Agent makes the distribution to Eligible Claimants, there are remaining funds and all expenses are reserved and paid for, those funds shall be paid to the Commission for transfer to the general fund of the United States Treasury.

IV. ADMINISTRATION OF THE CLAIMS PROCEDURE

A. General Administrative Provisions

28. By approving this Distribution Plan, the Court authorizes the Clerk of the Court and its Finance Department, upon further order of the Court directing disbursement, to transfer all monies in the Fair Fund, less any lawful fees and tax payment requested by the Tax Administrator or reserved therefor prior to transfer to Eligible Claimants at such time, and in such amounts and manner, as the Distribution Agent shall designate in writing.

29. The Distribution Agent shall oversee the administration of the claims, procedures and distribution as provided in this Distribution Plan. The Distribution Agent shall review the claims of Potentially Eligible Claimants and make determinations under the criteria established herein as to the eligibility of Potentially Eligible Claimants to recover monies and the amount of money to be distributed from the Fair Fund to Eligible Claimants in accordance with the provisions of this Distribution Plan.

30. Any claim asserted by a Potentially Eligible Claimant shall be in writing and shall provide adequate documentary evidence to substantiate the claim, including all documentary evidence which the Distribution Agent deems necessary or appropriate, including but not limited to available account statements and trade confirmations.

31. All claims must be verified on the basis of a sworn affidavit or declaration executed by the Potentially Eligible Claimant under penalty of perjury under the laws of the United States of America. No claim shall be paid without a sworn affidavit or declaration so executed.

32. The class of Eligible Claimants shall not include any Potentially Eligible Claimant whose Eligible Loss Amount totals less than \$100.00. The Distribution Agent may aggregate the accounts held by a Person and his or her IRA for purposes of meeting the \$100.00 threshold. With respect to a Person that is a corporation or partnership, such Person's accounts and Person's Affiliates' accounts may also be aggregated. The Distribution Agent in its exclusive discretion may, for purposes of this paragraph, but shall not have an obligation to, aggregate accounts not designated for aggregation in a Proof of Claim Form.

33. All determinations of the Distribution Agent that are made in accordance with the provisions of this Distribution Plan shall be final, unless otherwise provided in this Distribution Plan.

34. To carry out the purposes of this Distribution Plan, the Distribution Agent is authorized to make adjustments to the Distribution Plan that are consistent with the purposes of the Distribution Plan. The Distribution Agent shall have the discretion to allocate funds to identified Eligible Claimants who do not have any documentary evidence but who return the Proof of Claim Form according to the procedures set forth above.

B. Identification of and Notice to Eligible Claimants

35. Within thirty days following the entry by the Court of an order approving this Distribution Plan, the Distribution Agent shall provide a copy of the Distribution Plan Notice,

which shall include a Claims Packet, to the staff of the Commission for posting on the Commission's website at <http://www.sec.gov/divisions/enforce/claims.htm>.

36. Within thirty days following the entry by the Court of an order approving this Distribution Plan, the Distribution Agent shall cause to be mailed by United States First Class Mail a Distribution Plan Notice, which shall include a Claims Packet, to those Potentially Eligible Claimants known to the Distribution Agent. In order to facilitate distribution of Claims Packets to Potentially Eligible Claimants, within the same time period, the Distribution Agent shall ensure that the Claims Packet in a downloadable format is available to Potentially Eligible Claimants on the Commission's website.

37. With the assistance of the Commission staff and in accordance with the terms of this Distribution Plan, the Distribution Agent shall review a spreadsheet created by the Commission from business records provided to the Commission during its investigation of this matter to identify and notify Potentially Eligible Claimants. In order to identify Potentially Eligible Claimants likely to become Eligible Claimants and thereby limit mailing costs to the Fair Fund, the Distribution Agent, with the assistance of the Commission staff and in accordance with the terms of this distribution plan, shall make a preliminary, confidential, and proprietary calculation of each Potentially Eligible Claimant's Eligible Loss Amount.

38. The Distribution Agent shall promptly provide a Claims Packet to any Potentially Eligible Claimant who so requests electronically, in writing or by telephone, as set forth in the Distribution Plan Notice.

39. To avoid being barred from asserting a claim, on or before the Claims Bar Date, each Potentially Eligible Claimant must submit to the Distribution Agent a properly completed Proof of Claim Form reflecting such Potentially Eligible Claimant's claim, together with all

required supporting documentation. The Claims Bar Date may be extended for one or more Potentially Eligible Claimants by the Distribution Agent in consultation with the staff of the Commission, in which event such extension shall constitute the Claims Bar Date for such Potentially Eligible Claimants. Unless otherwise determined by the Distribution Agent in its sole discretion for good cause shown, any Potentially Eligible Claimant that does not file a properly completed and documented Proof of Claim Form, if so required, including a completed substitute W-9 or W-8 BEN, so that such completed form and documentation are received by the Distribution Agent on or before the Claims Bar Date shall be barred from asserting a claim against the Distribution Agent or the Fair Fund. The burden shall be upon the Potentially Eligible Claimant to ensure that its Proof of Claim Form has been properly and timely received by the Distribution Agent.

C. Claim Review and Determination

40. The Distribution Agent shall review each Proof of Claim Form to determine the validity and amount of such Potentially Eligible Claimant's Eligible Loss Amount, together with any additional conclusions of the Distribution Agent on other issues relevant to the claim. Each Potentially Eligible Claimant shall have the burden of proof to establish the validity and amount of its claim, and that it qualifies as an Eligible Claimant; and the Distribution Agent shall have the right to request, and the Potentially Eligible Claimant shall have the burden of providing to the Distribution Agent, any additional information and/or documentation deemed relevant by the Distribution Agent.

41. All claims must be verified on the basis of a sworn affidavit or declaration executed by the Potentially Eligible Claimant under penalty of perjury under the laws of the United States of America. No claim shall be paid without a sworn affidavit or declaration so

executed. The Distribution Agent shall have the discretion to allocate funds to identified Eligible Claimants who do not have any documentary evidence but who return the Proof of Claim Form according to the procedures set forth above.

42. The Distribution Agent shall calculate the amount to be notified to each Eligible Claimant in the following manner. The Distribution Agent shall identify the respective Eligible Loss Amounts for all Eligible Claimants, according to the procedures and terms set forth herein. Generally, an Eligible Claimant's Eligible Loss Amount is the sum total of each aggregate purchase price of an Eligible Security bought during the applicable Recovery Period, less the aggregate sale price of the Eligible Security. Any Eligible Securities which were never sold and are still held by an Eligible Claimant shall be assigned a residual value of zero. As to a series of sale and purchase transactions, the FIFO rule will apply, beginning with the first trade by the claimant in a particular Eligible Security during the applicable Recovery Period. If the Available Distribution is greater than or equal to the total amount of money due Eligible Claimants, the Distribution Agent shall notify each Eligible Claimant that it is entitled to its entire Eligible Loss Amount. If the total amount of money due Eligible Claimants exceeds the Available Distribution, the Distribution Agent shall notify each Eligible Claimant that it is entitled to a pro rata amount of its Eligible Loss Amount based upon the ratio of the Approved Claim of each Eligible Claimant to the aggregate Approved Claims of all Eligible Claimants.

D. Notification of Claim Determinations

43. On or before the Claims Determination Date, the Distribution Agent shall mail by United States First Class Mail a Determination Notice to each Potentially Eligible Claimant who has filed a Proof of Claim Form with the Distribution Agent, setting forth the Distribution Agent's conclusions concerning such claim. In the event a claim is denied, in whole or in part,

the Distribution Agent will explain the reason for such denial. The Claims Determination Date shall be within thirty days of the Claims Bar Date.

E. Requests for Reconsideration of Denied Claims

44. Any Potentially Eligible Claimant that is dissatisfied, in whole or in part, with the Distribution Agent's Determination Notice concerning its claim may request reconsideration of the Determination Notice by filing a written request for reconsideration with the Distribution Agent. Such written request must be mailed by the Potentially Eligible Claimant in sufficient time that it is received by the Distribution Agent no later than fifteen days after the date on which the Determination Notice was mailed to the Potentially Eligible Claimant by the Distribution Agent; the burden of ensuring such timely receipt shall be upon the Potentially Eligible Claimant. Such written request must contain a statement as to why the Potentially Eligible Claimant believes their claim should be reconsidered and must include documentation to support the reconsideration request. A failure to properly and timely request reconsideration of the Determination Notice shall permanently bar the Potentially Eligible Claimant's right to object or contest the Determination Notice.

F. Resolution of Reconsidered Claims

45. The Distribution Agent shall review each reconsideration request to determine whether the submitted information is sufficient to validate the claim. If the claim is determined to be valid, the Distribution Agent shall mail a Final Determination Notice to the Eligible Claimant. The Distribution Agent's determination on all claims or reconsidered claims will be considered final for purposes of the Distribution Plan.

46. No Potentially Eligible Claimant who has failed timely to file an appropriate Proof of Claim Form, or to request reconsideration of the Determination Notice, shall be

permitted to object to the bar or treatment of its claim on the basis that the Distribution Agent failed to mail, or properly to mail, or that such Potentially Eligible Claimant failed to receive, a copy of the Distribution Plan Notice, Claims Packet or the relevant Determination Notice or Final Determination Notice, or that a Proof of Claim Form or request for reconsideration of the Determination Notice, was improperly reflected as not having been received by, or properly recorded as received by, the Distribution Agent or Court, or that a Potentially Eligible Claimant's name and/or proper contact information was not properly reflected on the Distribution Agent's records. The burden of notifying the Distribution Agent of a Potentially Eligible Claimant's current address and other contact information, and of ensuring that such information is properly reflected on the Distribution Agent's records, shall be on the Potentially Eligible Claimant.

G. Payment of Approved Claims

47. The Distribution Agent shall distribute the Available Distribution to all Eligible Claimants only after:

- a. all Proof of Claim Forms have been processed and all Potentially Eligible Claimants whose claims have been rejected or disallowed, in whole or in part, have been notified and provided the opportunity to be heard concerning such rejection or disallowance; and
- b. all requests for reconsideration of the Determination Notice, with respect to rejected or disallowed claims, have been resolved by the Distribution Agent, or the time for such requests for reconsideration has expired.

48. Following the completion of processing of all Potentially Eligible Claimant claims, the Distribution Agent shall prepare a list of all Eligible Claimants and the Approved

Claim for each Eligible Claimant. The Distribution Agent shall petition the Court for the authority to distribute a specified distributable amount from the Available Distribution to the Eligible Claimants as provided for in this Distribution Plan. With the assistance of the Clerk of Court's Finance Department, the Distribution Agent shall distribute the Distribution Fund in the allocations approved by the Court. The Clerk of Court's Finance Department shall issue checks to claimants using information provided in writing from the Distribution Agent. In recommending such distributable amount to the Court, if necessary, the Distribution Agent shall hold back a prudent reserve to take into account final fees and expenses incurred in the administration of the performance of its duties under this Distribution Plan, as well as reserves for taxes as requested by the Tax Administrator, if required.

49. All Fair Fund checks issued by the Clerk of Court's Finance Department to Eligible Claimants that remain uncashed after twelve months of the date of issuance shall be forwarded by the Distribution Agent to the United States Treasury. In addition, all amounts remaining in the Fair Fund after twelve months of the date all Fair Fund checks are issued shall be forwarded by the Clerk of Court, upon motion by the Distribution Agent, to the United States Treasury. The Distribution Agent may reserve funds to pay costs and expenses that may be incurred.

50. The Distribution Agent shall use all reasonable commercially available resources to locate all Eligible Claimants whose checks are returned to the Distribution Agent undelivered.

51. All Fair Fund distribution payments shall be preceded or accompanied by a communication that includes, as appropriate:

- a. a statement describing the distribution;
- b. a statement that checks will be void after twelve months; and

- c. the name of a person or entity to contact, if the Eligible Claimant has any questions regarding the distribution.

52. Upon receipt and acceptance by an Eligible Claimant of a distribution from the Fair Fund, such Eligible Claimant shall be deemed to have released all claims that such Eligible Claimant may have against the Distribution Agent in connection with the Distribution Plan and the administration of the Fair Fund, and shall be deemed enjoined from prosecuting or asserting any such claims.

53. The submission of the Proof of Claim Form and the receipt and acceptance of a distribution by an Eligible Claimant shall not affect an Eligible Claimant's rights and claims against any party (other than the Distribution Agent).

54. After distribution of the Fair Fund is completed, the Distribution Agent shall file with the Court a final accounting of all monies paid into and disbursed from the Fair Fund, including but not limited to distributions to Eligible Claimants or to the U.S. Treasury, and all expenses incurred. Upon approval of the Final Accounting by the Court, the Distribution Agent may be discharged.

V. RESPONSIBILITIES OF THE DISTRIBUTION AGENT

55. It is the Distribution Agent's responsibility to distribute the Fair Fund in accordance with this Distribution Plan.

56. The Commission has moved the Court to appoint its attorney, Gordon J. Brumback, who is also the Distribution Agent, as the tax administrator ("Tax Administrator") for this case.

57. The Fair Fund is a "qualified settlement fund" within the meaning of the regulations issued under Section 468B(g) of the Internal Revenue Code of 1986, as amended.

The Tax Administrator is the administrator of such qualified settlement fund, for purposes of Treas. Reg. § 1.468B-2(k)(3)(I), and shall satisfy the tax related administrative requirements imposed by Treas. Reg. § 1.468B-2, including, but not limited to:

- a. obtaining a taxpayer identification number;
- b. timely requests for funds necessary for the timely paying of all applicable taxes, the timely payment of taxes for which the Tax Administrator has received funds, and the filing of applicable returns; and
- c. fulfilling any information reporting or withholding requirements required for distributions from the Fair Fund.

58. For all costs, fees, and expenses, the Distribution Agent is required to seek Court approval before making payments from the Fair Fund.

59. The Distribution Agent is excused from all legal requirements to post a bond or give an undertaking of any type in connection with its fiduciary duties and obligations under the Distribution Plan.

60. The Distribution Agent is entitled to rely on all outstanding rules of law and court orders, and shall not be liable to any Potentially Eligible Claimant for any action taken or omitted by them in connection with this Distribution Plan, except upon a finding by this Court that they, in bad faith or in reckless disregard of its duties under this Distribution Plan, acted or failed to act.

61. All proceedings with respect to the administration, processing and determination of claims and the determination of all related controversies, shall be subject to the exclusive jurisdiction of this Court.

62. The Court reserves the right to amend this Distribution Plan from time to time.

Dated this 20th day of February, 2008.

s/Jeanne E. Scott

—
JEANNE E. SCOTT
UNITED STATES DISTRICT JUDGE