

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

SECURITIES AND EXCHANGE COMMISSION,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Case No. 1:04 CV 01294
	:	(Judge Rosemary M. Collyer)
MICHAEL J. MCCLOSKEY, RANCE C. MILES,	:	
LUIS E. VALLEJO, DANIEL HARRIS,	:	
	:	
Defendants.	:	

~~**[PROPOSED] ORDER APPOINTING A DISTRIBUTION AGENT AND  
ESTABLISHING PLAN TO DISTRIBUTE FUNDS**~~

WHEREAS, on August 2, 2004, plaintiff Securities and Exchange Commission (“SEC” or “Commission”) filed a complaint against the defendants Michael J. McCloskey, Rance C. Miles, Luis E. Vallejo and Daniel Harris in this action; and

WHEREAS, the defendants each consented to the entry of a final judgment requiring them to, among other things, disgorge certain funds, pay pre-judgment interest, and pay civil penalties totaling \$306,062.71, and such funds have been paid by the defendants and held in an interest bearing account;

WHEREAS, the Commission has filed a Motion with this Court to enter an Order: (1) Appointing the Michael Grassmueck of the Grassmueck Group as the Distribution Agent for funds collected in this case; (2) ordering the Clerk of this Court to transfer funds to Distribution Agent; and (3) authorizing the Distribution Agent to take the steps outlined in this Distribution Plan to distribute the funds; and

WHEREAS the Court finds the Plan to be fair and reasonable;

It is hereby ORDERED as follows:

**I. Appointment of the Distribution Agent**

The Commission has applied to have Michael Grassmueck (“Grassmueck”) of the Grassmueck Group appointed as Distribution Agent for purposes of administering this Plan. After considering the request, the Court hereby appoints Michael Grassmueck as the Distribution Agent to perform the tasks referenced in this Plan.

**II. Order to Clerk of this Court To Transfer Funds**

Within ten days of the entry of this Order, the Clerk shall transfer the Distribution Fund, as defined herein, namely, all funds in the interest-bearing account under the case name designation “SEC vs. M McCloskey et al.,” to the Distribution Agent. The Clerk shall provide the funds to the Distribution Agent by wire or check or other means as determined by the Clerk to effect the transfer.

**III. Order Establishing Distribution Plan**

The Court hereby approves the Commission’s plan for distributing the Distribution Fund to the Net Sellers (“Distribution Plan” or “Plan”) and, should there be funds left over following that distribution, to the United States Treasury (“Treasury”).

**IV. DISTRIBUTION PLAN**

**A. Definitions**

1. “Distribution Fund” means all funds remaining in the interest-bearing account under the case name designation “SEC vs. M McCloskey et al.” on the date the funds are transferred pursuant to this Order to an account established by the Distribution Agent appointed by the Court.

2. “Disgorgement Fund” means the monies held in escrow by the Distribution Agent after the Distribution Fund has been transferred from the interest-bearing account under the case name designation “SEC vs. M McCloskey et al.” pursuant to this Order of the Court and deposited in an account established by the Distribution Agent in accordance with the provisions of this Plan.
3. “Available Distribution” means the monies remaining in the Disgorgement Fund (plus accumulated interest thereon) after payment, or anticipated payment, of the Tax Obligations, the Tax Administrator Compensation, the Distribution Agent Compensation, and any other costs of administering the fund and implementing the Plan.
4. “Net Sellers” means those individuals or entities that, after reviewing all transactions by sellers of Dean Foods common stock on April 4, 2001, had positive net sales in Dean Foods common stock on that date (*i.e.*, a net seller is a person whose total number of shares sold on April 4, 2001, exceeds the total number of shares purchased on April 4, 2001).
5. “Eligible Claimants” means those Net Sellers identified and located by the Distribution Agent that have a calculated claim amount of \$100.00 or more under the provisions of the Plan.

**B. Rights and duties of the Distribution Agent**

The Distribution Agent shall have the following rights and duties:

**Distribution of the funds, after consultation with the Commission, in accordance with this Plan.** As referenced above, within ten days of the entry of the Court’s Order approving this Plan of Distribution, the Distribution Agent shall receive the Distribution Fund

from the Clerk of the Court and shall deposit such funds into an interest-bearing bank account. The Distribution Agent shall invest and reinvest the funds with a view first toward conserving and preserving the principal, and second toward maximizing investment return.

**Consultation and coordination with Damasco & Associates, the Court appointed Tax Administrator of the Distribution Fund.** Damasco & Associates, as the Tax Administrator, shall be responsible to propose and file any necessary federal tax returns and state and local tax returns, if any, for the Disgorgement Fund. In connection with such filings, Damasco & Associates shall also calculate the amount of taxes and any interest or penalties owing thereon (the "Tax Obligation") and, upon providing notice to the Court and the Commission of such obligations, the Distribution Agent shall release funds from the Disgorgement Fund to pay the Tax Obligation to the Treasury. The Distribution Agent is also authorized, under this Plan, to release funds from the Disgorgement Fund to provide for the payment for the services rendered by Damasco & Associates related to the preparation and filing of any federal, state, or local tax returns on behalf of the Disgorgement Fund. Damasco & Associates shall provide notice to the staff of the Commission of any such request for payment of funds for services rendered.

**The Distribution Agent is entitled to receive compensation from the Disgorgement Fund for his services.** The Distribution Agent shall be entitled to compensation consistent with the rates and costs set forth in his letter dated July 5, 2007, in which he set forth his bid to serve as distribution agent in this case. [See Exhibit A to Plaintiff's Motion for Appointment of Distribution Agent, Transfer of Funds, And Approval of Distribution Plan.] The Distribution Agent is required to utilize the resources of his firm in the most cost efficient manner possible consistent with achieving the steps contemplated in the Distribution Plan. The Distribution Agent acknowledges the limited funds available in this case and will seek to maximize the

Disgorgement Fund available for distribution. The Distribution <sup>Agent</sup> has provided a list of services it will provide in connection with the contemplated distribution which may cost less than but shall not exceed the amount of \$15,013. The Distribution Agent shall submit his payment requests on a monthly basis to the undersigned lawyers for Plaintiff for consideration as to the reasonableness of the request and for approval of the request. The payment requests shall include an explanation for the charges and the services rendered to assist the staff in assessing the reasonableness of the charges. Upon approval by the staff, the Distribution Agent shall be entitled to release funds from the Disgorgement Fund for payment of services. The Distribution Agent shall submit copies of the approved payment requests to the Court on a monthly basis.

**Indemnity and related matters.** The Distribution Agent is excused from all legal requirements to post a bond or give an undertaking of any type in connection with his fiduciary duties and obligations as Distribution Agent under the Plan. The Distribution Agent shall not be liable to anyone in connection with carrying out his duties under this Plan except upon a finding by this Court that he acted or failed to act as a result of misfeasance, bad faith, gross negligence, or reckless disregard of his duties.

The Distribution Agent may be removed at any time by the Court, and replaced with a successor. In the event the Distribution Agent decides to resign, he shall first give written notice to the parties and the Court of his intention, and his resignation shall not be effective until the Court has appointed a successor. The Distribution Agent shall then follow such instructions as his successor or the Court may give him in turning over custody and control of the Disgorgement Fund.

**C. Distribution Process**

The Distribution Agent shall carry out the following process to calculate the Available Distribution, determine Eligible Claimants, and distribute the Disgorgement Fund.

**1. Identification of Net Sellers and Notice of Claim**

The Distribution Agent shall obtain and review trading and other records for the purchase and sale of common stock of Dean Foods Company to identify Net Sellers of Dean Foods common stock on April 4, 2001. The Distribution Agent shall review, among other records, “Blue Sheet” data that the Commission staff will provide to the Distribution Agent. The Distribution Agent shall undertake reasonable efforts to identify and locate the Net Sellers and to obtain current contact information and mailing address for all Net Sellers. Such efforts shall include publishing notice on the Commission website, checking appropriate databases and public records, and contacting transfer agents, and clearing or other brokers as appropriate, to obtain relevant records and information. The Distribution Agent shall have 120 days from the entry of the Order appointing the Distribution Agent to complete these efforts to identify all Net Sellers. The Distribution Agent shall report to the Commission staff concerning its efforts and the extent to which it succeeded in identifying the Net Sellers.

After identifying the Net Sellers, the Distribution Agent shall mail to each (i) a Notice of Claim (“Notice”) describing this action and the date and amounts of their respective sales as reflected in the trading records; and (ii) as part of the Notice, a simple form for the Net Sellers to use to verify the date and amounts of their sales and to make a claim against the Disgorgement Fund. The Notice shall advise the Net Sellers that, although they may submit a claim, the amount of any distribution to them may be limited by certain factors including the total number of claimants, the funds available for distribution, and the minimum distribution amount established by this Plan. The Notice shall also advise the claimants that, if they dispute any information provided about their trade(s), they may so indicate on the claim form and provide documentation to support their position. The SEC may publish a copy of the Notice on its website and/or in the SEC News Digest.

**2. Claim Review and Processing**

The Distribution Agent shall require that each claim form be signed by the claimant and verified under penalty of perjury. The Distribution Agent shall determine the deadline for filing claims, which shall be between 60 and 90 days following the date of mailing of the notice required above, and this deadline shall be stated in the notice.

The Distribution Agent or his designee shall review each claim form and determine whether the claimant is an Eligible Claimant and the amount of each Eligible Claimant's claim as follows: If a claimant sold the subject common stock on April 4, 2001, the relevant trading date, the amount of the claim will equal the number of shares sold, multiplied by the difference between the price at which the claimant sold the shares and, the closing price (\$38.05) of Dean Foods common stock on April 6, 2001. If a claimant both bought and sold the subject common stock on the relevant trading date, such claimant's potential claim shall be limited to the extent that such claimant is a Net Seller on the relevant trading date. The Distribution Agent or his designee shall deny any claim that would result in a distribution under \$100.00.

In the event that the Distribution Agent denies a claim in whole or in part, the Distribution Agent or his designee shall so notify the claimant and shall advise the claimant that he or she has 15 days to request reconsideration and provide any additional documentation for the claim. The Distribution Agent's determination of Eligible Claimant status and denying or fixing the amount of any claim shall be final.

**3. Distribution of Funds**

After determining the Eligible Claimants and the amount of each claim, the Distribution Agent shall set aside a reserve from the Disgorgement Fund to pay unpaid taxes assessed or likely to be assessed against the Disgorgement Fund, and to pay fees and expenses incurred or likely to be incurred in implementing this Plan (the "Reserves").

The Distribution Agent shall calculate the amount of the Available Distribution as follows: the Available Distribution shall equal the Disgorgement Fund minus the Reserves.

After calculating the Available Distribution, the Distribution Agent shall allocate the Available Distribution as follows:

- a.** Before paying the claims of Eligible Claimants, the Distribution Agent shall, in consultation with the Tax Administrator and the Commission staff, estimate all outstanding taxes accrued or assessed against the Disgorgement Fund and estimate all remaining fees and expenses incurred in carrying out this Plan, and then distribute the Disgorgement Fund and Available Distribution according to the allocations referenced herein.
- b.** In the event that the total dollar value of Eligible Claims exceeds the Available Distribution, the Available Distribution shall be apportioned among the Eligible Claimants on a pro rata basis based upon the ratio of the dollar value of each Eligible Claimant's claim to the total dollar value of all Eligible Claimants' claims. In calculating the pro rata shares, the Distribution Agent must abide by the restriction that no distribution amount may be made for less than \$100.
- c.** In the event that the total dollar value of Eligible Claims is less than the Available Distribution, the Distribution Agent shall pay, by check, each Eligible Claimant the value of their claim. In making these payments, however, the Distribution Agent must

abide by the restriction that no distribution amount may be made for less than \$100.

- d. In no instance shall a payment be made to any Eligible Claimant exceeding the amount of their approved claim.
- e. Eligible Claimants shall have ninety days from the date of issuance of any disbursement made by the Distribution Agent for payment of a claim to negotiate the check issued by the Disbursement Agent. After the expiration of the ninety day period the payment to an Eligible Claimant shall be void.
- f. After paying all Eligible Claimants and allowing the time period for negotiating all such checks to have passed, the Distribution Agent shall pay all final obligations of the Disgorgement Fund.

#### **4. Distribution to Treasury**

If the Distribution Agent has surplus funds in the Disgorgement Fund after making all distributions to Eligible Claimants and paying taxes, fees and expenses, the Distribution Agent, after consultation with, or instruction from, the Commission, shall pay the balance remaining in the Disgorgement Fund (including any distribution checks that were not negotiated after the lapse of the ninety day period) to the United States Treasury.

#### **D. Periodic Reports to the Commission**

The Distribution Agent shall be responsible for the preparation, in consultation with the Commission, of a work plan setting forth the expected dates of accomplishing the tasks provided in the Plan, and thereafter provide the Commission or the Court, with the following reports:

- 1. A report identifying Eligible Claimants and the amounts of their claims.

2. A report detailing each check disbursed to an Eligible Claimant from the Disgorgement Fund.
3. Within thirty days after the expiration of the ninety-day period given to Eligible Claimants to negotiate a disbursement check from the Disgorgement Fund, a report of all non-negotiated checks identifying the Eligible Claimant and the amount of the non-negotiated check.
4. In consultation with the Commission, file a final report with the Court that sets forth in detail the dates of the completion of the tasks required under this Plan, as well as accounting for the payments for the Tax Administrator's compensation, the Distribution Agent's compensation, costs of implementing the plan, or administering the Disgorgement Fund, a list of the Eligible Claimants, the calculations of the Available Distribution, claim amount of each Eligible Claimant, identification and date of the disbursement to each Eligible Claimant, identification by Eligible Claimant of any non-negotiated disbursement, and amount to be distributed to the U.S. Treasury pursuant to the Plan.
5. Such other reports as deemed necessary by the Court or the Commission including, but not limited to reports required for financial reporting obligations of the Court or the Commission.

SO ORDERED

DATED: 11 Feb 2008 2008

  
UNITED STATES DISTRICT COURT JUDGE