

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No.: 17-cv-22914-UU

U.S. SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

7S OIL & GAS, LLC
and
WILLIAM ALEXANDER SEWELL,

Defendants.

**PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S MOTION TO
ESTABLISH A FAIR FUND, APPOINT FUND ADMINISTRATOR, APPOINT TAX
ADMINISTRATOR AND AUTHORIZE PAYMENT OF FUTURE TAXES, FEES, AND
EXPENSES OF THE TAX ADMINISTRATOR, APPROVE DISTRIBUTION PLAN, AND
DISBURSE FUNDS**

There are approximately 73 harmed investors to be compensated in this matter. The approximately 73 harmed investors will each, individually, receive a *pro rata* distribution of approximately \$786,708.74, less any fees, taxes, and expenses of the tax administrator and minor expenses of administering the Fair Fund.

Plaintiff Securities and Exchange Commission (the "Commission" or "SEC") moves this Court to: 1) establish a Fair Fund; 2) appoint Michael S. Lim as fund administrator (the "Fund Administrator"); 3) appoint Miller Kaplan Arase LLP as tax administrator (the "Tax Administrator") and authorize payment of future taxes, fees, and expenses of the Tax Administrator; 4) approve the Commission's proposed distribution plan to distribute funds paid by Defendants to approximately 73 harmed investors and to transfer any remaining funds to the general fund of the

U.S. Treasury subject to Section 21F(g)(3) of the Exchange Act of 1934; 5) authorize the disbursement of approximately \$786,708.74, less any fees, taxes, and expenses of the tax administrator and current and future minor expenses of administering the Fair Fund, to the approximately 73 harmed investors.

PROCEDURAL BACKGROUND

On August 1, 2017, the SEC filed a complaint against 7S Oil and Gas, LLC (“7S”) and its CEO, William Alexander Sewell (“Sewell”) (collectively “Defendants”) for misleading investors about amounts spent on commission payments to sales agents and administrative expenses, and misappropriated investor funds for personal expenses. From approximately November 2014 until July 2016, Defendants raised almost \$7 million from at least 70 investors nationwide through a series of unregistered fraudulent offerings of securities in oil and gas development projects. Defendants’ solicited investors primarily through a network of independent sales agents.

The complaint further alleged that 7S's offering documents told investors that no more than 10% would be spent on marketing costs, commissions to sales agents, and salaries and that 85% of investor funds would be spent on oil and gas operations. In reality, as alleged in the complaint, 7S paid commissions as high as 35% to its sales agents out of investor proceeds and applied only at most, 57% of investor funds toward operating the wells. In addition, the complaint alleged that 7S paid out sham "royalty payments" to some investors, which led investors to believe 7S was making a return on their investment based on oil sold to an independent third party.

The Commission's complaint charged Defendants with violating section 5(a) and 5(c), and 17(a) of the Securities Act of 1933, and Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934 ("Exchange Act").

Defendants, without admitting or denying the Commission's allegations, each consented to the entry of a final judgment permanently enjoining each of them from violating the charged provisions of the federal securities laws.

On August 3, 2017, the Court entered Final Judgments against each of the Defendants, which ordered the Defendants to pay a total of \$750,000 in disgorgement, prejudgment interest, and penalties. Dkt. #'s 4 and 5. Defendants have paid the entire amount of their judgments, \$750,000, to the SEC, which the SEC then invested in U.S. Treasury securities. To date, the SEC has approximately \$786,708.74, less any future taxes, fees, and expenses of the tax administrator and minor expenses of administering the Fair Fund, available for distribution. As the amount of money lost by the harmed investors is significantly more than the amount of funds collected for disbursement, the payments to harmed investors will be calculated on a *pro rata* basis as described below in the proposed Distribution Plan.

THE COURT SHOULD ESTABLISH A FAIR FUND

The Commission now moves the Court to designate the \$786,708.74 in funds from money collected from Defendants and interest earned on those funds as a Fair Fund pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, which provides in relevant part:

If in any judicial or administrative action brought by the Commission under the securities laws...the Commission obtains an order requiring disgorgement against any person for a violation of such laws..., or such person agrees in settlement of any such action to such disgorgement, and the Commission also obtains pursuant to such laws a civil penalty against such person, the amount of such civil penalty shall, on the motion or at the direction of the Commission, be added to and become part of the disgorgement fund for the benefit of the victims of such violation.

See 15 U.S.C. § 7246(a). The Commission brought this action under the securities laws and Defendants paid disgorgement, prejudgment interest, and a civil penalty.

Accordingly, the requirements of Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, have been satisfied, and the Court should establish a Fair Fund to facilitate ultimate distribution of the funds in the Fair Fund to investors harmed by Defendants' conduct.

THE COURT SHOULD APPOINT MICHAEL S. LIM AS FUND ADMINISTRATOR

The Court should appoint Michael S. Lim, a Commission employee in the Office of Distributions, as Fund Administrator to administer and implement the proposed Distribution Plan, as described below. As a Commission employee, the Fund Administrator shall receive no compensation, other than his regular salary as a Commission employee, for his services in administering the Distribution Fund. As the harmed investors are known, the appointment of a Commission employee will expedite the distribution process and avoid the costs and expenses that would ordinarily be incurred by appointing a third party administrator, thus maximizing investor return.

THE COURT SHOULD APPOINT MILLER KAPLAN ARASE LLP AS TAX ADMINISTRATOR AND APPROVE PAYMENT OF FUTURE TAXES, FEES, AND EXPENSES

The Commission respectfully requests that the Court enter an Order appointing Miller Kaplan Arase LLP, a certified public accounting firm located in San Francisco, California, as Tax Administrator to execute all income tax reporting requirements, including the preparation and filing of tax returns, with respect to funds under this Court's jurisdiction in this case.

The funds available for distribution in this matter constitutes a Qualified Settlement Fund (QSF) under section 468B(g) of the Internal Revenue Code (IRC), 26 U.S.C. § 468B(g), and related regulations, 26 C.F.R. §§ 1.468B-1 through 1.468B-5. A Tax Administrator, on behalf of the Fair Fund, should be appointed and authorized to take all necessary steps to enable the Fair Fund to

obtain and maintain the status of a taxable QSF, including the filing of all required elections and statements contemplated by those provisions. The Tax Administrator would cause the Fair Fund to pay taxes in a manner consistent with treatment of the Fair Fund as a QSF. The reasonable costs, fees, and other expense incurred in the performance of the Tax Administrator's duties would be paid by the Fair Fund in accordance with the agreement between the Commission and the Tax Administrator.

In summary, this agreement provides for compensation for services and expenses as follows:

SERVICE	FIXED FEE
Income tax returns, including items 1-6 (below).	\$1,600
Loss Carryback (claim for refund) returns	\$550

Fixed fee tax compliance services include:

1. Obtain a federal tax identification number for the QSF.
2. Prepare and file federal and state income tax returns, as required.
3. Where required, calculate quarterly estimated tax payments and provide information to the Court so that payments may be made timely.
4. Make arrangements with the SEC or its agents to pay tax liability.
5. Calculate and recommend retention of a reserve, if necessary, for penalties and interest to be assessed as a result of any late filing of tax returns and late payment of taxes.
6. Determine and comply with tax reporting obligations of the QSF relating to distributions or payments to vendors, if applicable.

In an effort to meet future tax payment deadlines, avoid the assessment of late payment

penalties, and make timely payment to the Tax Administrator for services provided, the Commission further requests that Commission staff be authorized to approve and arrange payment of all future tax obligations and Tax Administrator fees and expenses from the Distribution Fund without prior Court approval. Authorizing Commission staff to approve and pay future tax obligation and tax administrator fees and expenses from the Distribution Fund without prior Court Approval will expedite the payment process, reducing the risk of late tax payments and penalties. All tax payments and tax administrator fees will be reported to this Court in the final accounting of the Distribution Fund once the distribution is complete.

THE COURT SHOULD APPROVE THE DISTRIBUTION PLAN

The Commission seeks approval of its proposed Distribution Plan to distribute approximately \$786,708.74, less any taxes, fees, and expenses of the tax administrator and minor expenses of administering the Fair Fund to the approximately 73 Harmed Investors that have not been compensated for their economic harm. Any remaining funds will be transferred to the general fund of the United States Treasury, subject to Section 21F(g)(3) of the Exchange Act of 1934.

Generally, courts have broad discretion to approve plans to distribute funds collected in SEC enforcement actions. *SEC v. Wang*, 944 F.2d 80, 84 (2d Cir. 1991). In evaluating a proposed distribution plan, the court should “decide whether, in the aggregate, the plan is equitable and reasonable.” *Id.* “Unless the consent decree specifically provides otherwise, once the District Court satisfies itself that the distribution of proceeds in a proposed Commission disgorgement plan is fair and reasonable, its review is at an end.” *Id.* at 85. The Commission believes that the proposed Distribution Plan for the Distribution Fund should be approved as fair and reasonable.

THE PROPOSED DISTRIBUTION PLAN

The Commission proposes the following methodology to determine the allocation of the Fair Fund:

(Step 1) Determine each Harmed Investor's Total Loss ("Harmed Investor's Total Loss") and calculate total losses suffered by all harmed investors ("Total Losses") by adding up each Harmed Investor's Total Loss;

(Step 2) Divide each Harmed Investor's Total Loss by the Total Losses. This fractional result, expressed as a percentage, represents the Harmed Investor's proportion of losses to the pool of total losses ("Harmed Investor's Proportional Loss"); and

(Step 3) Multiply each Harmed Investor's Proportional Loss times the Fair Fund, less any reserve for tax obligations and fees and expenses of the Tax Administrator and minor fees and expenses of administering the Fair Fund ("Net Fair Fund"). The resulting figure represents the amount of Net Fair Fund to be distributed to that Harmed Investor ("Harmed Investor's Pro Rata Share").

The Plan provisions are as follows:

- a. There will be a *pro rata* distribution of the Net Fair Fund.
- b. Following approval of the Distribution Plan by the Court, the Fund Administrator will send a notice ("Notice") to each Harmed Investor by email, First Class U.S. Mail, or United Parcel Service. The Fund Administrator will send such notice within 10 days of the date of the order approving the Distribution Plan. The Notice will provide each Harmed Investor with the Harmed Investor's Pro Rata Share and request that the Harmed Investor complete a signed IRS Tax Form W-9 and return that Form W-9 to the Fund Administrator via email, U.S. Mail, or United Parcel Service in order to be eligible to receive a distribution. Any Harmed Investor who does not provide a valid signed

- Form W-9 to the Fund Administrator will not be eligible to participate in the distribution.
- c. Harmed Investors will have 25 days from the date of the order approving the Distribution Plan to submit any objections to the proposed distribution. Harmed Investors must submit their objections, along with any supporting documentation, to the Fund Administrator via email, U.S. Mail, or United Parcel Service.
 - d. The Fund Administrator will have 45 days from the date of the order approving the Distribution Plan to resolve any objections by Harmed Investors.
 - e. Pursuant to this order approved by this Court, the Fund Administrator will provide the SEC's Office of Financial Management with a payment file containing the names, addresses, and amounts to be disbursed to Harmed Investors. The SEC's Office of Financial Management shall promptly thereafter cause checks to be issued to the Harmed Investors in the amounts of the *pro rata* distribution. Each check issued to the Harmed Investors will state on the face of the check that it is valid for one year.
 - f. Forty-five days after the remittance of the checks, the Fund Administrator shall obtain information from the SEC's Office of Financial Management concerning checks that have not been negotiated. The Fund Administrator shall then undertake good faith efforts to locate and contact the intended recipients of uncashed checks to ensure that the intended recipients have a reasonable opportunity to participate in the distribution.
 - g. After one year from the date on the distribution check, the SEC's Office of Financial Management will notify the Fund Administrator of the amount of all uncashed checks. The amount of all uncashed checks shall be placed in the Fair Fund as a residual.

- h. The Fund Administrator will submit a final accounting to the Court prior to the termination of the Fair Fund. The report shall include a final accounting of all monies received, earned, spent, and distributed in connection with the administration of the Distribution Plan. The SEC's Office of Financial Management shall provide the Fund Administrator with any account information relating to the funds held in the Fair Fund that may be required for the final accounting, including providing copies of any account statements that the Fund Administrator or Tax Administrator may request.
- i. The Fair Fund shall be eligible for termination after all of the following have occurred: (1) the final accounting has been submitted and approved by the Court; (2) all taxes and fees and expenses have been paid; and (3) all remaining funds or any residual have been paid to the SEC for transfer to the U.S. Treasury. When the Court has approved the final accounting, the staff shall seek an order from the Court to terminate the Distribution Fund and to discharge the Plan Administrator.

THE COURT SHOULD APPROVE THE DISBURSEMENT OF FUNDS

The staff respectfully requests that this Court authorize the disbursement of approximately \$786,708.74, less any taxes, fees, and expenses of the Tax Administrator and minor expenses of administering the Fair Fund, to the approximately 73 Harmed Investors based on the above Distribution Plan. In addition, the Court authorizes the SEC staff to make payment of any current and future administrative expenses of administering the distribution fund, such as minimal expenses to maintain the investment of the distribution fund with the Bureau of Fiscal Services.

CONCLUSION

For the reasons stated above, the Commission hereby moves the Court to: 1) establish a Fair Fund; 2) appoint Michael S. Lim as fund administrator (the "Fund Administrator"); 3) appoint

Miller Kaplan Arase LLP as tax administrator (the “Tax Administrator”) and authorize payment of future taxes, fees, and expenses of the Tax Administrator; 4) approve the Commission’s proposed distribution plan to distribute funds paid by Defendants to the approximately 73 harmed investors and to transfer any remaining funds to the general fund of the U.S. Treasury subject to Section 21F(g)(3) of the Exchange Act of 1934; and 5) authorize the disbursement of approximately \$786,708.74, less any taxes, fees, and expenses of the tax administrator and minor expenses of administering the Fair Fund, to the approximately 73 harmed investors of funds and to pay current and future administrative expenses of administering the distribution fund.

Dated: April 17, 2020

Respectfully submitted,

/s/ Michael Shueyee Lim
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 17, 2020, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I further certify that a true and correct copy of the foregoing was served on April 17, 2020 on all counsel or parties of record on the Service List below.

s/Michael Shueyee Lim

Michael Shueyee Lim

SERVICE LIST

SEC v. 7S Oil & Gas, LLC and William Alexander Sewell Case No. 17-cv-22914-UU

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