

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

**SECURITIES AND EXCHANGE COMMISSION,**

**Plaintiff,**

**v.**

**A.C.L.N., LTD., *et al.*,**

**Defendants.**

**Civil Action No.  
1:02-CV-7988 (LAP)**

**PLAINTIFF'S NOTICE OF MOTION, MOTION AND MEMORANDUM IN SUPPORT,  
FOR AN ORDER TO TRANSFER FUNDS  
TO THE DISTRIBUTION AGENT FOR DISBURSEMENT TO ELIGIBLE  
CLAIMANTS AND AUTHORIZE THE PAYMENT OF TAXES, FEES AND EXPENSES**

**NOTICE**

**PLEASE TAKE NOTICE**, that based upon the accompanying Declaration Regarding Distribution Payment File executed on March 20, 2015 by Lorri Staal, Senior Director of Operations at Garden City Group, LLC, the Proposed Order submitted herewith, all prior proceedings held herein, and pursuant to the Distribution Plan approved by this Court on April 3, 2013, Plaintiff Securities and Exchange Commission ("SEC" or "Commission") will move this Court, at a date and time to be determined by the Court, before the Honorable Loretta A. Preska, at the United States Courthouse for the Southern District of New York, 500 Pearl Street, New York, New York 10007, for an order:

1. Directing the Clerk of the Court to issue a check to the Distribution Agent, Garden City Group, LLC (hereafter "Distribution Agent" or "GCG") from the Court Registry Investment System ("CRIS") account number 1:02-cv-07988-2, under the case name designation "A.C.L.N., Ltd., *et al.*" to pay the outstanding fees and expenses of the Distribution Agent;

2. Directing the Clerk of the Court to issue a check to the Distribution Agent from CRIS account numbers 1:02-cv-07988-1 and 1:02-cv-07988-2, under the case name designation “A.C.L.N., Ltd., *et al.*” for the remaining amount on deposit in these CRIS accounts, minus Court registry fees, for distribution to Eligible Claimants;
3. Directing the Distribution Agent to:
  - a. Deposit the funds described in paragraph 2, *supra*, pursuant to Paragraph 3.30 of the Distribution Plan; and
  - b. Distribute the remaining funds, less the \$58,100 held in reserve, to Eligible Claimants pursuant to the Final Payee List in accordance with the terms of the Distribution Plan; and
4. Authorize the Distribution Agent to pay all remaining taxes, and fees and expenses of the Tax Administrator and/or the Distribution Agent from the reserve, upon written request to and written approval by Commission staff, without further order from the Court.

### **MOTION**

The Commission respectfully requests that the Court enter an Order: 1) Directing the Clerk of the Court to issue a check in the amount of \$140,716.01 to GCG to pay outstanding fees and expenses of the Distribution Agent; 2) Directing the Clerk of the Court to issue a check to GCG for the remaining amount on deposit with the CRIS, minus Court registry fees, to the Distribution Agent for distribution to Eligible Claimants; 3) Directing the Distribution Agent to deposit these funds in the Bank<sup>1</sup> pursuant to Paragraph 3.30 of the Distribution Plan; 4) Directing the Distribution Agent to distribute these funds, less a reserve of \$58,100, to Eligible Claimants

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<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Distribution Plan approved by the Court.

pursuant to the Distribution Plan; and 5) Authorizing the Distribution Agent to pay remaining taxes, and fees and expenses of the Tax Administrator and/or Distribution Agent upon written request to and written approval by Commission staff from the reserve without further order from the Court.

## **MEMORANDUM**

### **Procedural Background**

On October 18, 2002, this Court entered Final Judgment against Defendants BDO International (Cyprus), Minas Ioannou and Christakis Ioannou. On September 16, 2004 Final Judgments were entered against Defendants Abderrazak “Aldo” Labiad and A.C.L.N, Ltd., and Relief Defendant Scandinavian Car Carriers A/S. On November 17, 2005, Final Judgment was entered against Defendants Joseph J.H. Bisschops, Emerald Sea Marine, Inc., Pearlrose Holdings International, S.A. and Scott Investments, and Relief Defendants Sergui, Ltd., Pandoa Shipping, S.A., DCC Limited, Maverick Commercial, Inc., and Westbound Development Corp. In total, the Defendants and Relief Defendants were ordered to pay in excess of \$122 million in disgorgement. To date, a total of \$28,265,287.11 (the “Distribution Fund”) has been paid to the Clerk of this Court and deposited into two CRIS accounts numbered 1:02-cv-07988-1 and 1:02-cv-07988-2, under the case name designation “SEC v. A.C.L.N. Ltd., et al.”

By Order dated March 28, 2012, this Court appointed GCG as the Distribution Agent of the Distribution Fund. GCG was ordered to, among other things, develop a proposed Distribution Plan acceptable to the Commission and approved by the Court, implement the Court-approved Distribution Plan, oversee the administration of the Distribution Fund, prepare accountings, cooperate with the Court-appointed Tax Administrator in providing the information

necessary for tax compliance purposes, and maintain accurate records concerning the Distribution Fund.

On February 12, 2013, the Commission filed a motion requesting the Court approve a distribution plan for the Distribution Fund. The Court granted the motion and approved the A.C.L.N. Distribution Plan on April 3, 2013.

### **Disbursement of Distribution Fund**

Pursuant to Paragraph 3.29 of the Distribution Plan, the Distribution Agent is to prepare and submit to Commission staff a list of Eligible Claimants, the amount of the asserted claim of each Eligible Claimant, and the Approved Claim for each Eligible Claimant (the “Final Payee List”).<sup>2</sup> The paragraph further states, that after reviewing the Final Payee List, Commission staff is to petition the Court to transfer funds held by the Court to the Distribution Agent in accordance with the provisions of the Distribution Plan for distribution to Eligible Claimants.

The Distribution Agent has submitted the Final Payee List to Commission staff. The Distribution Agent also has submitted a Declaration Regarding Distribution Payment File (“Declaration”) executed by Lorri Staal, Senior Director of Operations for the Distribution Agent, in support of the Commission’s Motion, which is filed separately. The Declaration provides a summary of the actions performed by GCG to develop the Final Payee List. There are 2,830 Eligible Claimants with losses totaling over \$145,253,000.

The current balance of the Fair Fund is over \$29.9 million and is held by the Court in two interest-bearing CRIS accounts. The Distribution Agent has determined that a reserve of \$58,100 is needed for anticipated future tax obligations of the Distribution Fund, and the future fees and expenses of the Tax Administrator and the Distribution Agent. After taking into

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<sup>2</sup> The Final Payee List will be provided to the Court upon request under seal.

consideration the amounts held in reserve, and the payment of the Distribution Agent's current fees and expenses discussed below, over \$29.7 million is available for distribution to Eligible Claimants. Each Eligible Claimant will receive a *pro rata* share of the over \$29.7 million available for distribution, based upon their Eligible Loss Amount. The distribution payments to Eligible Claimants will be approximately 20% of their losses.

The Commission therefore respectfully requests that the Court issue an order to transfer the funds it currently holds, less court registry fees, to the Distribution Agent for distribution to Eligible Claimants in accordance with the Distribution Plan.<sup>3</sup>

**Payment of Taxes, Fees and Expenses**

The Distribution Agent has submitted invoices totaling \$140,716.01 for outstanding fees and expenses. (*See* Exhibit A). This amount represents the costs incurred by the Distribution Agent from February 20, 2014 through March 12, 2015. Commission staff has reviewed the invoice and believes it is reasonable for the work performed. Therefore, the Commission respectfully requests that the Clerk of the Court be instructed to issue a check to the Distribution Agent for the amount of \$140,716.01.

In addition, as described in more detail above, the Distribution Agent anticipates that there will be approximately \$58,100 in administrative fees and expenses, and taxes that will need to be paid to complete the distribution to Eligible Claimants. To expedite the termination of the Distribution Fund, the Commission requests that the Distribution Agent be authorized to pay any remaining taxes, fees and expenses from the reserve upon submission of a written request to and written approval by Commission staff, without further order from the Court. All such payments

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<sup>3</sup> The Distribution Agent has executed an escrow agreement with Signature Bank for the deposit of the Fair Fund for distribution.

will be reflected in the final accounting, which will be submitted to the Court for approval prior to the termination of the Distribution Fund.

**WHEREFORE**, for all the foregoing reasons, the Commission respectfully requests that this Court enter the proposed Order and grant such other relief as it deems just and proper.

Dated: March 23, 2015

Respectfully submitted,

/s/ Nancy Chase Burton

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#### **CERTIFICATE OF SERVICE**

This is to certify that I have served a copy of the forgoing Motion, Declaration and proposed Order to the ECF registrants herein by electronically transmitting them using the ECF System for filing and transmittal of a Notice of Electronic Filing on this 23<sup>rd</sup> day of March 2015.

/s/ Nancy Chase Burton

Nancy Chase Burton