

**UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO**

	:	
UNITED STATES SECURITIES	:	
AND EXCHANGE COMMISSION,	:	
	:	
Plaintiff,	:	
	:	09-cv-01114 (MSK-KLM)
v.	:	
	:	ECF Case
Wellco Energy L.L.C.,	:	
Justin William Rifkin,	:	
Patrick V. Looper	:	
Richard G. Pacheco, and	:	
Dustin D. White	:	
	:	
Defendants.	:	
	:	

**MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR APPROVAL OF
DISTRIBUTION FUND DISTRIBUTION FINAL ACCOUNTING REPORT,
TERMINATION OF THE DISTRIBUTION FUND, AND DISCHARGE OF PLAN
ADMINISTRATOR**

Plaintiff Securities and Exchange Commission (the “Commission” or “SEC”), pursuant to the Plan of Distribution approved by this court on September 8, 2016, respectfully submits this Memorandum of Law in Support of its Motion for an Order approving the Distribution Fund Distribution Final Accounting Report, Terminating the Distribution Fund, and Discharging the Plan Administrator. This Memorandum of Law includes the Consolidated Final Accounting Report (“CFAR”), prepared by the Tax Administrator and reviewed and approved by the Plan Administrator in charge of administering the distribution, attached as Exhibit A.

I. BACKGROUND

On May 14, 2009, the Commission filed a Complaint against Wellco Energy L.L.C. (“Wellco”). The complaint alleged that Wellco and its managing member, Justin William Rifkin (“Rifkin”), together with three salesmen, Patrick V. Looper (“Looper”), Richard G. Pacheco (“Pacheco”), and Dustin D. White (“White”), offered and sold securities in the form of fractional interests in oil and gas wells through boiler room cold-calls to investors in which they misrepresented Wellco’s role in operating the wells, Rifkin’s experience in producing oil and gas, and how investors’ funds were to be used. The defendants also failed to disclose that approximately 58% of the investors’ funds were being used to pay the boiler room’s sales commissions and expenses, and Rifkin’s personal expenses such as his mortgage and child support. Although the defendants engaged in the business of selling securities for the accounts of others, they did not register as brokers with the Commission. Furthermore, the defendants sold these securities even though they failed to file a required registration statement with the SEC, which would have disclosed information about the nature of Wellco’s business and its financial statements.

On March 25, 2010, the Court entered Final Judgments as to Looper (Dkt. #67) and Pacheco (Dkt. #68). The Final Judgments permanently enjoined Looper and Pacheco from violating Sections 5, 8, and 17(a) of the Securities Act of 1933 (“Securities Act”) and Sections 10(b) and 15(a) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 10b-5 thereunder. The Final Judgments required Looper to pay disgorgement of \$107,200 and prejudgment interest in the amount of \$4,133.82, and Pacheco to pay disgorgement of \$69,250 and prejudgment interest in the amount of \$1,944.44. Based upon Looper’s and Pacheco’s sworn representations in their Statements of Financial Condition dated June 15, 2009, and other

documents and information submitted to the Commission, the Court did not order Looper or Pacheco to pay a civil penalty, and payment of their disgorgement and prejudgment interest was waived.

On August 31, 2011, the Court entered a Final Judgment as to Wellco, Rifkin, and White (Dkt. # 74). The Final Judgment permanently enjoined Wellco, Rifkin, and White from violating Sections 5 and 17(a) of the Securities Act, and Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 thereunder. Wellco and Rifkin were found jointly and severally liable for disgorgement of \$782,751, together with prejudgment interest in the amount of \$46,875, and a civil penalty of \$782,751. White was liable for disgorgement of \$64,618, together with prejudgment interest of \$3,296, and a civil penalty of \$64,618. A total of \$1,744,909 was ordered from defendants to be paid. Wellco and Rifkin had \$40,123.88 in bank accounts frozen to be paid into the registry of the Court upon a later motion by the Commission. A receipt indicating that \$39,927.51 (comprised of disgorgement \$39,751.67 and \$175.84 post-judgment interest) was transferred into the registry of the Court was filed on October 11, 2011 (Dkt. #84).

On February 5, 2016, the Court appointed Damasco & Associates LLP as the Tax Administrator to fulfill the tax obligations of the Fund (Dkt. #89).

On May 23, 2016, the Court authorized the disbursement of funds to pay tax liabilities and fees and expenses of the Tax Administrator (Dkt. #'s 94 (\$4,600 fees); 96 (\$12 taxes))

On September 8, 2016, the court appointed Michael S. Lim, a Commission employee, as the Plan Administrator to oversee the administration and distribution of the Distribution Fund to injured investors, approved the Distribution Plan, and ordered the transfer of all funds in the Court Registry Investment System ("CRIS") account for this case, less Court Registry fees, to the Commission for distribution to harmed investors, payment of taxes, fees, and expenses of the

Tax Administrator, and the transfer of any remaining funds to the general fund of the U.S. Treasury subject to Section 21F(g)(3) of the Exchange Act of 1934 (Dkt. #101). These funds after deduction of expenses totaled \$35,424.03, which is reflected in the attached CFAR Report.

On September 8, 2016, the Court ordered funds held in the CRIS to be paid to the Commission's Office of Financial Management (Dkt. No. 101) to be distributed in accordance with the Distribution Plan. On January 18, 2017, the Court, having reviewed the Commission's Motion to Disburse Distribution Fund (Dkt. No. 105), ordered the Plan Administrator to distribute the Distribution Fund in accordance with the terms of the Distribution Plan (Dkt. No. 106). On or about April 2017, the Commission disbursed a total of \$30,824.03 to Eligible Recipients. The Commission also paid additional Tax Administrator fees of \$2,853.91 and taxes of \$6.07, leaving a balance of \$1,740.02, which will be transferred to the U.S. Treasury.

The Distribution Plan provided that the Distribution 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. Commission staff has submitted the final accounting to the Court. All taxes and fees and expenses have been paid. All remaining funds or any residual have been paid to the SEC for transfer to the U.S. Treasury. Commission staff now seeks an order from the Court approving the final accounting, terminating the Distribution Fund, and discharging the Plan Administrator.

DISTRIBUTION FUND DISTRIBUTION FINAL ACCOUNTING REPORT

Distribution of all Fair Fund monies to eligible claimants has been completed. The CFAR has been prepared by the Tax Administrator and reviewed by the Plan Administrator. The Plan Administrator and Commission staff have reviewed the CFAR and now submits it to the Court

for approval. The CFAR includes a final accounting of all monies received, earned, spent and distributed in connection with the administration of the Plan of Distribution.

II. CONCLUSION

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.

Respectfully Submitted,

/s/ Michael S. Lim

Michael S. Lim

Securities and Exchange Commission

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Respectfully submitted,

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3. The Plan Administrator is discharged.

SO ORDERED.

Dated: _____

United States District Judge
District Colorado