

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, :

-v.- :

98 Civ. 7347 (DLC)

EURO SECURITY FUND, *et al.* :

Defendants. :

ORDER APPROVING A PLAN FOR THE DISTRIBUTION OF FUNDS AND
APPOINTING A RECEIVER

On the application of Plaintiff Securities and Exchange Commission (the "SEC"),
dated February 21, 2003, and in light of the record in this case,

FINDINGS

THE COURT HEREBY FINDS, that

1. In September and October 1998, Eltag Bailey Process Automation, N.V. ("Elsag") was a European based, worldwide provider of automation systems, process instrumentation, analytical measurement products, and professional technological services. Eltag's common stock was registered pursuant to Section 12(b) of the Securities Exchange Act of 1934 [15 U.S.C. §12(b)] and was listed for trading on the New York Stock Exchange ("NYSE"). Option contracts to purchase or sell Eltag common stock at a specific price before a certain date ("Elsag Calls" and "Elsag Puts" respectively) traded on the Pacific Exchange.

2. Between September 10 and October 13, 1998, certain defendants in this action purchased Elsag common stock or Elsag Calls as follows:

Defendant	Trade Date for Purchases	Quantity of Securities	Type of Security
Ron Sleggers	09/10/1998	150 contracts	Nov. \$30 calls
Christine Heller	09/27/1998	20 contracts	Nov. \$25 calls
Ron Sleggers	10/02/1998	50 contracts	Nov. \$20 calls
Ron Sleggers	10/02/1998	50 contracts	Nov. \$25 calls
Ron Sleggers	10/05/1998	25 contracts	Nov. \$20 calls
Ron Sleggers	10/06/1998	5 contracts	Nov. \$25 calls
Ron Sleggers	10/07/1998	50 contracts	Nov. \$20 calls
Ron Sleggers	10/07/1998	75 contracts	Nov. \$22.50 calls
Ron Sleggers	10/07/1998	45 contracts	Nov. \$25 calls
Angelus Trading	10/08/1998	10,000 shares	Elsag Common Stock
COIM SA	10/08/1998	1,000 shares	Elsag Common Stock
Euro Security Fund	10/08/1998	32,300 shares	Elsag Common Stock
Angelus Trading	10/09/1998	40,000 shares	Elsag Common Stock
Euro Security Fund	10/09/1998	90,000 shares	Elsag Common Stock
Euro Security Fund	10/12/1998	75,000 shares	Elsag Common Stock
Angelus Trading	10/13/1998	50,000 shares	Elsag Common Stock
Banque Pictet	10/13/1998	5,000 shares	Elsag Common Stock
C.J. Broekema	10/13/1998	2,500 shares	Elsag Common Stock
Euro Security Fund	10/13/1998	55,000 shares	Elsag Common Stock
Giovanni Piacitelli	10/13/1998	10,000 shares	Elsag Common Stock

3. The NYSE closing price for Elsag common stock on October 13, 1998 was \$19.25/share,
4. NYSE trading in Elsag common stock did not open on October 14, 1998, pending a news announcement. At approximately 3:04 p.m. (EST) on October 14th, United States business newswire services carried the first public disclosure of an agreement for Asea Brown Boveri Ltd. to make a tender offer at \$39.30 per share for all Elsag common stock,

5. NYSE trading in Elsas common stock resumed on October 15, 1998. The closing prices for Elsas common stock and the above series of Elsas Calls on October 15th were:

Type of Security	Closing Price on October 15, 1998
Elsag Common Stock	\$35.973
Nov. \$20 call	\$15.75
Nov. \$22.50 call	\$13.375
Nov. \$25 call	\$10.875
Nov. \$30 call	\$6.50

6. On October 19, 1998, the SEC filed a complaint, initiating this action, alleging the defendants purchased certain shares of Elsas common stock and certain Elsas Calls in the weeks before October 14, 1998, with material confidential information about the then soon to be publicly disclosed bid for Elsas,
7. On November 17, 1998, the SEC filed an amended complaint, *inter alia*, adding defendants and certain purchases of Elsas common stock and Elsas Calls to the case,
8. By consent or on default, funds have been deposited with the Court, in an interest bearing account, for certain defendants (the "Disgorging Defendants") in this action as follows:

Defendant	Disgorgement	Prejudgment Interest	Total for Defendant
Angelus Trading	\$1,509,594.88	\$14,000.00	\$1,523,594.88
Banque Pictet	\$80,375.00	0	\$80,375.00
Broekema, C.J.	\$40,156.25	\$2,075.58	\$42,231.83
COIM SA	\$15,526.15	0	\$15,526.15
Euro Security Fund	\$3,892,254.62	\$35,000.00	\$3,927,254.62
Heller, Christine	\$17,849.25	\$1,940.52	\$19,789.77
Piacitelli, Giovanni	\$166,115.00	\$37,490.52	\$203,605.52
Slegers, Ron	\$408,938.00	\$26,871.53	\$435,809.53

Defendant	Disgorgement	Prejudgment Interest	Total for Defendant
Total	\$6,130,809.15	\$117,378.15	\$6,248,187.30

The disgorgement amount for each of the Disgorging Defendants represents their profits from the purchase of the Elsag securities set forth in Findings ¶2 (above) and the prejudgment interest is calculated for the period from the purchase of the Elsag security to the date of the payment into the court.¹ The total profits and prejudgment interest, \$6,248,187.30, was paid into an account in this Court's Court Registry Investment System (the "Elsag CRIS Account") which has been accruing interest and administrative fees. The total of deposited funds plus accrued Elsag CRIS Account interest was \$7,050,341.84 as of February 19, 2003,

9. While additional funds may be paid into the court in this case, the disgorgement value of these funds presently known to the SEC does not exceed \$500,000.00. Moreover, proceedings to obtain this additional disgorgement may not be completed for some time. In these circumstances, it is timely, just and appropriate to direct distribution of the funds held in the Elsag CRIS Account,
10. The plan for distribution and application for the appointment of a receiver submitted by the SEC, as reflected herein (the "Plan"), appears fair and appropriate for the distribution of the funds held in the Elsag CRIS Account, and there being no just reason for further delay,

NOW THEREFORE IT IS ORDERED that, Celia Gallaway Barenholtz is appointed the receiver in this matter (the "Receiver"), with the powers and duties set forth herein to implement the Plan.

PLAN FOR DISTRIBUTION

- I. The Receiver is responsible for distributing funds in the Elsag CRIS Account in accordance with the Plan and in consultation with the staff of the SEC.
- II. The Receiver shall have the following powers and duties:
 - A. Establish and administer a custodial account,
 1. The Receiver shall open an interest bearing account exclusively to fulfill the Receiver's duties herein, to receive, hold and disburse the funds transferred from the Elsag CRIS Account, and to accrue interest on such funds (the "Elsag Custodial Account"). The Elsag Custodial Account must be at a national bank.
 2. Upon receipt of the Receiver's written request to the Clerk of Court for transfer of funds, and without further order, the Clerk of Court is directed to deduct from the income earned on funds held in the Elsag CRIS Account a fee, not exceeding that authorized by the Judicial Conference of the United States and set by the Director of the Administrative Office at or equal to 10% of the income earned on the funds so held, and, then the Clerk of Court shall transfer all remaining funds held in the Elsag CRIS Account to the Elsag Custodial Account.
 3. The Receiver shall invest and reinvest the funds in the Elsag Custodial Account
 - a. Only in the following investments:
 - i. Direct obligations of the United States,

¹ In addition to his trading profits, Defendant Piacitelli disgorged \$1,740.00 in commissions received for

- ii. Obligations whose principal and interest are unconditionally guaranteed by the United States, and
 - iii. Money market funds authorized to invest solely in direct obligations of the United States,
 - b. With a primary investment objective of conserving and preserving the principal, and with a secondary investment objective of maximizing investment return.
- 4. The Receiver shall take all necessary steps to qualify the Elsag Custodial Account to be a taxable "settlement fund," within the meaning of Internal Revenue Code §468B, as amended, and regulations thereunder, including the filing of the elections and statements contemplated by those provisions. The Receiver shall be designated the "administrator" of the Elsag Custodial Account pursuant to Treas. Reg. §1.468B-2(k)(3)(i), and shall satisfy the administrative requirements of Treas. Reg. §1.468B-2, including, but not limited to, (a) obtaining a taxpayer identification number, (b) timely filing applicable federal, state, and local tax returns and paying taxes reported thereon, and (c) satisfying any relevant tax authority information reporting or withholding requirements imposed on distributions and payments from the Elsag Custodial Account.

B. Retainers, Fees and Expenses

- 1. The Receiver may retain such non-familial attorneys (including, but not limited to the Receiver's own partners and associates), accountants, and

client Elsag trades, which sum is included in his total disgorgement amount.

other persons, as the Receiver deems appropriate to assist in economically and efficiently carrying out this Plan.

2. The Receiver shall be compensated for direct services at an hourly rate not to exceed \$ 440 per hour.
3. The Receiver is authorized to pay from the Elsag Custodial Account the Receiver's compensation and all reasonable costs, fees, taxes and other expenses incurred in carrying out the Plan; provided, however that (a) any proposed payment to the Receiver or for any attorney/legal fees or expenses must be approved, as to reasonableness, in advance by the Court on written request, with 10 days notice to the SEC, (b) any proposed payment to a person, which, together with all prior payments to the same person during any 4-week period, would exceed \$5,000.00, must be on ten days prior written notice to the SEC, and (c) the SEC may submit to the Court for consideration its position as to the reasonableness of such request or notice,

C. Reports

1. At least quarterly, the Receiver shall submit to the Court and the SEC a written report of all Elsag Custodial Account receipts, disbursements, accrued income, liabilities, taxes, services, fees, and expenses, together with a copy of Elsag Custodial Account bank statements for the months covered by the report,

2. Upon completion of the duties specified herein, the Receiver shall serve upon the SEC and file with the Court a report describing his/her activities and the distributions made under the Plan.
- D. The Receiver shall give the SEC at least 10 days' written notice of any requests, notices or applications to the Court under the Plan.

III. Claims Procedure

A. General Guidelines

- I. The purpose of the Plan is to distribute funds in the Elsas Custodial Account equitably to "Contemporaneous Sellers", *i.e.*, those persons who made any "Contemporaneous Sales" – *viz.* sales of
- a. Elsas common stock on October 8th, 9th, 12th, or 13th, 1998, and/or
 - b. Elsas Calls of the specific series on the specific dates listed below:

Elsas Calls Series	Trade Date of Sale
Nov. \$20 calls	October 2, 1998
	October 5, 1998
	October 7, 1998
Nov. \$22.50 calls	October 7, 1998
Nov. \$25 calls	September 27, 1998
	October 2, 1998
	October 6, 1998
	October 7, 1998
Nov. \$30 calls	September 10, 1998

2. The Receiver shall review stock and options trading records provided by the SEC to identify potential Elsag Contemporaneous Sellers and shall mail to each person so identified (a) a notice (the "Elsag Claim Notice") and (b) a form (the "Elsag Claim Form") to register a claim in this proceeding and to state and verify the dates and amounts of certain of the claimant's Elsag securities transactions. The Elsag Claim Notice shall describe this action, summarize the Plan, state the dates and amounts of the prospective claimant's Contemporaneous Sales as reflected in the trading records, and caution each prospective claimant to note and document on the Elsag Claim Form any dispute with such dates or amounts. Each claimant must set forth in the Elsag Claim Form each Elsag common stock, Elsag call option contract and Elsag put option contract transaction in which the claimant had a direct or indirect beneficial interest and which had a trade date on or after the claimant's first Contemporaneous Sale and before October 16, 1998. Each Elsag Claim Form shall set forth for each transaction at least, the date, price, amount of securities and the account identification and must be signed by the claimant and verified under penalty of perjury. The Receiver shall determine the deadline for filing the Elsag Claim Form, which shall be stated in the Elsag Claim Notice and shall be no less than 60 days or more than 90 days after mailing the Elsag Claim Notice and Elsag Claim Form.
3. Terms

- a. The "Preliminary Claim" for a claimant equals the sum of the Maximum Potential Profit for each Contemporaneous Sale minus Net Other Elsag Interim Profits (the net profits, if any, from all interim transactions in any other Elsag securities),
- b. "Maximum Potential Profit" equals the October 15th Closing Price (set forth in Paragraph 5 of the above Findings) minus the actual price for each of claimant's Contemporaneous Sales,
- c. "Net Other Elsag Interim Profits" equals the excess of profits over losses (if not realized, then imputed) from the claimant's transactions in all other Elsag securities (excluding any Contemporaneous Sales) during the period from the claimant's first Contemporaneous Sale through October 15, 1998. The Receiver shall not include in the calculation of a Preliminary Claim, a claimant's Net Other Elsag Interim Profits that are negative.

B. Calculation of Proposed Disbursements to Claimants

1. Only Contemporaneous Sellers shall be considered for a distribution under this Plan.
2. Preliminary Claim Calculation
 - a. For each claimant, the Preliminary Claim is equal to the sum of the claimants' Maximum Potential Profits less that claimant's Net Other Elsag Interim Profits.

- b. For the purposes of calculating the amount of a claim, profit or loss, the claimant's purchase or sale price for any security shall not include any commissions, taxes, other fees, expenses or damages of any kind that the claimant may have incurred in making the sale or purchase.
- c. **Maximum Potential Profit**
- i. The Maximum Potential Profit for the Contemporaneous Sale of **Elsag common stock** will equal the number of **Elsag shares** the claimant contemporaneously sold, multiplied by the difference between the closing price of **Elsag common stock** on October 15, 1998 and the price at which the claimant sold the **Elsag common stock** in each **Contemporaneous Sale**.
- ii. The Maximum Potential Profit for the Contemporaneous Sale of **Elsag Calls** will equal the number of **Elsag Calls** the claimant contemporaneously sold, multiplied by the difference between the price at which the claimant sold each **Elsag Call** and the price of the contract at the close of trading on October 15, 1998.
- d. **Net Other Elsag Interim Profits** equals the combined net profits, if any, from any other (*i.e.* **non-Contemporaneous Sales**) transactions in **Elsag securities** by the claimant during or after the

trade date of the claimant's first Contemporaneous Sale and through October 15, 1998, as follows:

- i. If a claimant acquired any Elsag common stock or Elsag Calls on or after the first of the claimant's Contemporaneous Sales and held this stock or the Elsag Calls at the close of the market on October 14, 1998, determine the realized profits on October 15, 1998, if any, or imputed profits using the actual cost and the closing price of this stock and the Elsag Calls on October 15, 1998.
- ii. If a claimant sold any Elsag Puts on or after the first of the claimant's Contemporaneous Sales and held any part of this put option contract position at the close of the market on October 14, 1998, determine the realized profits on October 15, 1998, if any, or imputed profits using the actual sale price of these Elsag Puts and the price of the Elsag Puts at the close of the market on October 15, 1998.
- iii. If a claimant sold any Elsag common stock or Elsag Calls (that were not Contemporaneous Sales) on or after the first of the claimant's Contemporaneous Sales and held any part of this Elsag Calls position at the close of the market on October 14, 1998, determine the realized losses on October 15, 1998, if any, or imputed losses using the actual sale price of the Elsag common stock and Elsag Calls and the

closing price of Elsag common stock and these Elsag Calls on October 15, 1998.

- iv. If a claimant bought any Elsag Puts on or after the first of the claimant's Contemporaneous Sales and held any of these Elsag Puts at the close of the market on October 14, 1998, determine the realized losses on October 15, 1998, if any, or imputed losses using the actual purchase price of the Elsag Puts and the closing price of these Elsag Puts on October 15, 1998.

3. Denial of Claims

- a. The Receiver shall deny any claim that would result in a distribution under \$25.
- b. If the Receiver denies a claim, in whole or in part, the Receiver or his/her 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 Receiver's determination denying or fixing the amount of any claim shall be final.

4. After determining the amount of each of the Preliminary Claims, the Receiver shall set aside a portion of the funds in the Elsag Custodial Account to pay unpaid taxes assessed or likely to be assessed against the Elsag Custodial Account, and to pay fees and expenses incurred or likely

to be incurred in completing the distributions and other duties under this plan. Before paying the claims, the Receiver shall pay all outstanding taxes accrued or assessed against the Elsig Custodial Account.

5. The Receiver shall calculate the Funds Available for Distribution by subtracting from all funds in the Elsig Custodial Account the funds reserved to pay all remaining fees and expenses incurred in carrying out this plan. The Receiver shall then calculate the Proposed Distribution to each claimant by multiplying the claimant's ratio of his/her Preliminary Claim to all Preliminary Claims times the amount of the Funds Available for Distribution.
6. The Receiver shall make application to the Court, on notice to the SEC, for approval to (i) pay all remaining fees and expenses incurred in carrying out this plan and provide for appropriate reserves; and (ii) distribute the funds in the Elsig Custodial Account to claimants according to the Receiver's proposed allocations in said application.

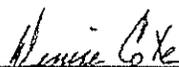
- IV. If the Receiver has a surplus after making all distributions to claimants and paying taxes, fees and expenses, and after receiving any tax refunds, the Receiver shall pay the balance remaining in the Elsig Custodial Account (including any distribution checks that remain uncleared for more than six months) to the United States Treasury.

V. Modifications to the Plan

- A. When the Receiver deems necessary, after consultation with the SEC and notice to the Court, the Receiver may modify these procedures to effectuate the general purposes of this Order.
- B. The SEC may seek to modify this Order on application to the Court with 10 days' notice to the Receiver.

VI. The Receiver and his/her designees, agents and assistants shall be excused from any requirement to post a bond or other undertaking, and shall not be liable to any person for his/her or their actions hereunder, except on a finding of misfeasance, gross negligence or reckless disregard of duty.

Dated: February 26, 2003
New York, New York



HON. DENISE COTE
UNITED STATES DISTRICT JUDGE