

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No.: 07-cv-1640 REB-MEH

SECURITIES AND EXCHANGE COMMISSION,

PLAINTIFF,

v.

STEVEN B. MISNER,

DEFENDANT.

FIRST AMENDED COMPLAINT

Plaintiff, Securities and Exchange Commission (the “Commission”) alleges:

NATURE OF THE ACTION

1. From at least November 2001 through December 2002, Defendant Steven B. Misner, the former CEO of Southwestern Water Exploration Co. (“Southwestern”), made materially false and misleading statements in press releases which were also posted on Southwestern’s website, and to an investor in the company, as part of a scheme to attract investors and to inflate the stock price. Beginning no later than November 2001, Misner made false and misleading statements to an individual about Southwestern’s alleged rights in and the value of water in a northern Colorado aquifer, known as the Hygiene Aquifer, in a successful attempt to induce the individual into investing more than \$1 million in Southwestern. As part of the same scheme to defraud investors, Southwestern issued a press release on February 28, 2002 which falsely implied that Southwestern had water from the aquifer for sale, subject only to “drilling and proving up

the first well." On May 22, 2002, Southwestern again issued a false and misleading press release, claiming that the company had, through leases, "significantly add[ed] to the available acre-feet of water for sale." Additional Southwestern press releases issued on July 16, 2002 and November 4, 2002 falsely implied that Southwestern owned rights to the aquifer worth as much as \$93 million per year over a 100-year period.

2. In fact, Misner knew, or was reckless in not knowing, that Southwestern did not own any rights to the water. Misner also knew, or was reckless in not knowing, that the press releases and his statements to the individual investor were grossly misleading about the value and amount of water in the aquifer. Furthermore, Misner knew, or was reckless in not knowing, that Southwestern had made no effort to develop the infrastructure needed to extract the water and transport it to potential end users. By creating the false impression that Southwestern owned water of great value, Misner engaged in a scheme to inflate Southwestern's stock price and to attract investor funds which could in turn be paid to him as the chairman and CEO of the company, and paid to him through another company he controlled which provided alleged services to Southwestern.

3. By engaging in this conduct, Misner committed securities fraud in violation of Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5].

4. Alternatively, in those instances, if any, where Misner was not sufficiently aware of the nature of the materially false and misleading statements until after the statements had been made, Misner had a duty to correct the statements as soon as he learned of their falsity or was aware of red flags sufficient to notify him about the danger

of their false and misleading nature. He failed to correct the false and misleading statements. These failures to correct were also fraudulent and material. Thus, Misner violated Exchange Act Section 10(b) and Rule 10b-5 thereunder in failing to correct the false and misleading statements.

5. Unless permanently enjoined, Misner is likely to engage in similar conduct and commit similar violations of the federal securities laws in the future.

JURISDICTION AND VENUE

6. This Court possesses jurisdiction over this action pursuant to Sections 21(d) and 27 of the Exchange Act [15 U.S.C. §§ 78u(d) and 78aa].

7. Certain of the acts, practices, and courses of conduct constituting the violations of law alleged in the Amended Complaint occurred within this judicial district. Venue is thus proper under Section 27 of the Exchange Act [15 U.S.C. § 78aa].

8. Misner, directly or indirectly, has made use of the means or instrumentalities of interstate commerce, or of the mails, in connection with the acts, practices, and courses of business alleged herein.

DEFENDANT

9. Steven B. Misner, age 47, is a Canadian citizen residing in Nevada. Misner founded Southwestern in 1993. Misner was Southwestern's president from October 1993 through October 2001, and CEO from October 2001 until December 16, 2002. Misner also served as a director and as the Chairman of the Board of Southwestern from 1993 until December 16, 2002. As of December 2002, Misner owned about 2,961,757 shares of Southwestern stock.

10. Misner also controlled a Canadian company known as AIFE, Ltd., which allegedly provided services to Southwestern.

11. In December 2002, Misner resigned as an officer and director of Southwestern.

RELEVANT ENTITY

12. Southwestern, d/b/a Aqua4, Inc., a Colorado corporation, purported to engage in exploring and producing drinkable water from deep aquifers in the American Southwest. Southwestern filed for protection under Chapter 7 of the Bankruptcy Code on November 20, 2003. On May 4, 2006, the bankruptcy court authorized the bankruptcy trustee to sell all of Southwestern's assets to Paragon Water Development Corp.

13. In August 2000, the appropriate regulatory authorities delisted Southwestern's stock from the OTC Bulletin Board for failing to meet the listing requirements. Southwestern's periodic report filed with the Commission on November 14, 2002 stated that Southwestern had 23,600,012 shares of common stock outstanding. During all relevant times, Southwestern's stock was a "penny stock" as defined by Section 3(a)(51)(A) of the Exchange Act [15 U.S.C. § 78c(a)(51)(A)].

RELEVANT FACTS

Background

14. Misner founded Southwestern in 1993. He used a public shell company named Star Acquisitions Corporation to acquire American Institute of Formation Evaluation Co. ("AIFE Co.") as a wholly-owned subsidiary, and then changed the name of the public company to Southwestern. Until about 2001, Southwestern was located in

Calgary, Alberta Canada and shared office space with AIFE, Ltd., another entity Misner controlled.

15. From its inception, Southwestern was unprofitable, had limited operations, and funded its activities primarily by issuing stock through private placements. In March 2002, Southwestern drilled its first and only test well, a monitoring hole, at an aquifer in northern Colorado. The purpose of the monitoring hole was to test the depth, quality, and other aspects of the water. According to rules of the Office of the State Engineer for Colorado, Southwestern could not convert its monitoring hole into a production well for water. Southwestern never developed any means to pump the water out of the ground for commercial purposes or transport the water to potential end users.

16. From about 2001 until his resignation in December 2002, Misner ran Southwestern out of his home in Las Vegas, Nevada. Misner's responsibilities included raising capital for Southwestern, attending meetings with potential water brokers, meeting with consulting engineers and the Colorado water regulatory agency, and spending time at Southwestern's one well site in Colorado. Misner also was primarily responsible for communications between the company and its investors.

17. On February 28, 2002, Southwestern issued a press release titled "Southwestern Water Announces Drilling Date for First Well and Establishment of Web Site" ("February Press Release"). Misner was primarily responsible for the content of, participated in drafting, and reviewed the February Press Release, and his name appeared on the release as a contact for Southwestern.

18. On May 22, 2002, Southwestern issued another press release titled "Acreage Update and Preliminary Water Analysis" ("May Press Release"). Misner was

primarily responsible for the content of, participated in drafting, and reviewed Southwestern's May Press Release, and his name appeared on the release as a contact for Southwestern.

19. On July 16, 2002, Southwestern issued a press release entitled, "Southwestern Water Announces Reserves of Drinking Water for Colorado Project" ("July Press Release"). Misner was primarily responsible for the content of, participated in drafting, and reviewed Southwestern's July Press Release, and his name appeared on the release as a contact for Southwestern.

20. On November 4, 2002, Southwestern issued a press release entitled, "Southwestern Water Makes Further Progress in Development of Significant Fresh Water Discovery in Colorado" ("November Press Release"). Misner was primarily responsible for the content of, participated in drafting, and reviewed Southwestern's November Press Release, and his name appeared on the release as a contact for Southwestern. Misner personally e-mailed the November Press Release to several investors.

21. Each of the above Press Releases was posted on Southwestern's website until at least December 2002. Misner authorized and/or caused the press releases to be posted on Southwestern's website.

22. In addition, Misner made false and misleading statements to at least one individual investor in an effort to induce the individual to invest and to maintain his investment in Southwestern. Misner led the investor to believe that Southwestern stood to generate billions in revenues and profits, when in fact, Southwestern stood to make no profit and could only have generated a few million in revenues at best.

Materially False and Misleading Statements in Press Releases

February 2002 Press Release

23. The February 28, 2002 press release stated that, subject to "drilling and proving up" the first well, Southwestern estimated it had between 50,000 and 100,000 acre-feet of water for sale. An acre-foot of water is the unit used to measure water for sale, and consists of an acre of water one foot deep.

24. The press release also announced the establishment of Southwestern's web site, at www.southwesternwater.com.

25. The suggestion that Southwestern had water for sale in any amount was materially false and misleading. Southwestern had no water rights and no water for sale.

26. The February Press Release also omitted material facts necessary to prevent the release from being misleading. To obtain a water right, Southwestern first had to determine whether the water was deemed tributary or non-tributary, as this would greatly affect how and to what extent Southwestern could seek to obtain rights in the water. If the water were tributary, which means that it was connected to a natural stream system either by surface or underground flows, Southwestern would be subject to Colorado's prior appropriation laws which would make any right Southwestern might acquire junior to other users. At a minimum, if the water were tributary, Southwestern would need to go to Colorado Water Court to have its water claims adjudicated. Water Court had the potential of being a multi-year process with no guarantees that Southwestern would obtain a favorable result. The February Press Release failed to disclose that as of that time, Southwestern's only test to that date had indicated that the

water was tributary. The Press Release also failed to disclose the substantial risks involved with seeking rights in tributary water.

27. Misner knew, or was reckless in not knowing, that the statements in the February Press Release about purported water "for sale" were materially false and misleading, and knew, or was reckless in not knowing, that the Press Release omitted material facts necessary to keep the release from being misleading.

May 2002 Press Release

28. On May 22, 2002, Southwestern issued another Press Release. That release stated, in part, that Southwestern had obtained leaseholds of over 30,000 acres of land which "significantly adds to the available acre-feet of water for sale." It further stated that "the Company estimates that reserves exceed 100,000 acre-feet for sale."

29. The statement that Southwestern had water for sale in any amount was materially false and misleading. Southwestern had no water rights and no water for sale.

30. The Press Release also failed to state additional material facts necessary to keep the press release from being misleading. Specifically, acquiring acreage above the aquifer would only help Southwestern obtain water rights if the water was non-tributary, that is, if the aquifer did not connect with any natural stream. If the water was tributary, leases of the overlying land would be irrelevant to obtaining water rights. At the time of the May Press Release, Misner and Southwestern knew that the only test Southwestern had conducted at that time on the aquifer indicated that the water was tributary. The Southwestern Press Release failed to disclose that the water was tributary, or, at a minimum, that Southwestern did not know for sure at that time whether the water was

tributary or non-tributary, nor did it explain that the leaseholds would be irrelevant (and in fact, a waste of money) if the water was found to be tributary.

31. Misner knew, or was reckless in not knowing, that the statements in the May Press Release about purported water "for sale" were materially false and misleading, and knew, or was reckless in not knowing, that the Press Release omitted material facts necessary to keep the release from being misleading.

July 2002 Press Release

32. On July 16, 2002, Southwestern issued another press release. This release stated, in bold lettering, that "[f]inal engineering reports state that the available water for sale is a minimum of 129,000 acre-feet and could exceed 300,000 acre-feet ..." It further stated that "[r]ecent pricing for water in the area has ranged from \$10,700 per acre-foot in January 2002 to the most recent pricing of \$14,200 per acre-foot."

33. This release was materially false and misleading. First, Southwestern had no water rights and no water for sale.

34. The July Press Release also grossly overstated the value of the water in at least two respects:

- a. The alleged "recent pricing" for water in the area was the most expensive water in the region, known as Colorado Big Thompson (CBT) water because it came from northern Colorado's Big Thompson River. However, the July Press Release failed to disclose that these prices were for sales of CBT water, not primarily non-renewable groundwater like the water in Southwestern's purported aquifer, which would sell for much less than CBT water. At that time, Southwestern, even if it had obtained rights

in the water, could not have reasonably expected to receive the quoted amounts, and the likelihood was that it would receive several thousand dollars less per acre-foot. Indeed, by the time of the July Press Release, Southwestern's consulting engineer had advised Misner that the water in the aquifer would likely sell for much less than the prices stated in the July Press Release.

b. The total potential revenues based on the information in the July Press Release were also false and misleading. Even if Southwestern had been able to obtain \$10,700 to \$14,200 per acre foot for its water, it could only reasonably have charged that price for 1% of the total amount allegedly available for sale. Thus, the Press Release made it appear that Southwestern could obtain, at the high end, \$14,200 for 300,000 acre-feet of water, or \$4.26 *billion*. In fact, even if Southwestern could have charged those prices – and it could not have – it could only have obtained those prices for 3,000 acre-feet of water, for a total of \$4.26 *million*. The remaining acre-feet would have to be sold at far lower prices of around a few hundred dollars per acre-foot per year.

35. Next, although the Press Release stated that Southwestern had received "final engineering reports," it failed to disclose the material fact that the engineering report which had studied the aquifer, sent to Southwestern on June 27, 2002, determined that the water in the aquifer was tributary. The release similarly failed to disclose the substantial risks involved with seeking rights in tributary water.

36. The engineering report Southwestern received in late June 2002 also set forth tables which, combined with the additional information Southwestern and Misner had received about potential revenues and available acre-feet for sale, demonstrated that there was no real economic value to the water because estimated development costs were too high. The July Press Release failed to disclose this fact.

37. At the time Southwestern issued the July Press Release, Misner knew, or was reckless in not knowing, that Southwestern did not own any rights to the water or the reservoir. Thus, the reservoir was not Southwestern's and Southwestern had no water for sale.

38. Misner also knew, or was reckless in not knowing, that the water prices quoted in the July Press Release were grossly inflated, and that Southwestern could not charge those prices for more than 1% of the water in any event. Misner thus knew or was reckless in not knowing that the July Press Release grossly inflated any revenues which Southwestern might be able to obtain from the water, even if it were able to acquire rights in the water.

39. Misner also knew, or was reckless in not knowing, that the water was "tributary," and knew, or was reckless in not knowing, that Southwestern had not taken effective steps to acquire rights to the water. Misner knew, for example, that Southwestern had not put the water to beneficial use and had not obtained potential end-users for the water or a decree in state water court, which were necessary prerequisites to obtaining rights in tributary water.

40. Misner also knew, or was reckless in not knowing that based on the final engineering report, it was doubtful whether Southwestern could produce the water at a profit, even if it could obtain water rights.

The November 2002 Press Release

41. The November Press Release stated that “Southwestern Water Makes Further Progress in Development of Significant Fresh Water Discovery in Colorado” and that Southwestern “has reached the next advanced level in bringing into service the large fresh water reservoir it discovered deep underground in Colorado.” The press release further stated that “Southwestern Water, to bring this reservoir more rapidly into production, has now retained the services of independent water appraisers and water brokers”

42. The November Press Release also stated that “the Southwestern Water reservoir contains at least 300,000 acre-feet of water . . .”, and that “[t]he price of water in this region of Colorado is currently averaging \$15,500 per acre-foot for Colorado Big Thompson (CBT) delivery.”

43. The release further stated that “The reservoir can produce . . . 3,000 to 6,000 acre feet of water per year At this rate of production, the Southwestern Water reservoir will last for a minimum of 100 years.”

44. These statements were materially false and misleading in several respects. First, Southwestern did not own any water or water rights, and had not reached an “advanced level” in bringing the aquifer into production. Second, the quote for CBT water was far more than the price at which Southwestern could hope to sell the water – there was, in fact, no reason to quote CBT prices other than to mislead readers. Third,

the implication that Southwestern could sell all 300,000 acre feet or more of water for \$15,500 per acre-foot was false and misleading; even if the company could obtain that price – and it could not – it could only hope to sell 1% of the available acre-feet at that price. The rest would be sold, if at all, at far lower prices. Fourth, Misner himself had privately admitted before issuance of the November Press Release that the reservoir could only sustain production of about 2,900 acre-feet per year; the statement that it could sustain 3,000 to 6,000 acre-feet per year was false and misleading. Fifth, Southwestern had not retained water brokers to sell the alleged production of water. Sixth, at a rate of production of 3,000 to 6,000 acre-feet per year, the available water in the aquifer would have been exhausted well before 100 years.

45. As with the July Press Release, Misner knew, or was reckless in not knowing, that statements in the November Press Release regarding Southwestern's ownership of rights to water in the aquifer were materially false and misleading, and that Southwestern was not at an advanced stage; he knew Southwestern had never developed any means to pump the water out of the ground on a commercial basis or to transport it to potential end users. For example, Misner knew that the only well Southwestern ever drilled was a monitoring hole in March 2002, which Southwestern could not convert into a production well.

46. Misner also knew, or was reckless in not knowing, that statements in the November Press Release (a) grossly inflated the per-acre-foot prices Southwestern could reasonably expect to receive for the water even if the company obtained rights in the water, given that the water in the aquifer was worth far less than CBT water; and (b)

grossly inflated the potential revenues from the water, given that Southwestern could never hope to sell all 300,000 acre-feet for \$15,500 per acre-foot.

47. Misner knew, or was reckless in not knowing, that the amount of water the reservoir could produce per year was a fraction of what was stated. For instance, by the time of the November Press Release, Misner himself had stated privately that the reservoir could only be expected to produce about 2,900 acre-feet per year.

48. Misner knew, or was reckless in not knowing, that Southwestern had not retained any brokers to sell the water at the time the November 2002 Press Release was issued.

49. Finally, Misner knew or was reckless in not knowing that if the water was produced at a rate of 3,000 to 6,000 acre-feet per year, the available water in the reservoir would have been exhausted before 100 years' time.

50. The November Press Release also failed to disclose several material facts needed to keep the release from being misleading. First, the release, like the July Press Release, failed to disclose that the water in the aquifer was tributary according to the final engineering study the company had received in late June of 2002 and an earlier test completed in January 2002 by a separate contractor, and failed to disclose the substantial risks associated with claims to tributary water.

51. Second, the engineering report Southwestern received in late June 2002 set forth tables which, combined with the additional information Southwestern and Misner had received about potential revenues and available acre-feet for sale, demonstrated that there was no real economic value to the water because estimated

development costs were too high. The November Press Release, however, failed to disclose this material fact.

52. Misner knew, or was reckless in not knowing, that the November 2002 Press Release omitted the above-stated material facts necessary to prevent it from being misleading.

Materially False and Misleading Statements Posted to the Website

53. The February, May, July and November 2002 Press Releases each referenced the Southwestern Internet address of www.southwesternwater.com.

54. The Press Releases for February, May, July and November 2002 all appeared on the Southwestern Internet website through at least late November of 2002.

55. The materially false and misleading statements in each of the Press Releases as set forth in the paragraphs above were continuing in nature during the time they were displayed on the Southwestern website.

56. Misner authorized and/or caused the false and misleading Press Releases to be posted on Southwestern's Internet website.

57. Misner knew or was reckless in not knowing that the Press Releases, containing materially false and misleading statements, were being displayed on the Southwestern website on a continuing basis.

Materially False and Misleading Statements to an Individual Investor

58. In or about the year 2000, Misner met a wealthy individual investor from New York who was interested in investing in a water exploration company in the West but who – as Misner knew – had no experience in that industry.

59. Misner repeatedly made materially false and misleading statements to the individual about Southwestern's interest in the water, the value of the water in the aquifer and the method by which water value is calculated, to induce the individual to invest and to maintain his investment in Southwestern. For example, on November 3, 2001, Misner sent the investor an email containing the following materially false and misleading statements:

a. Misner falsely stated that because Southwestern had leased land overlying the aquifer, Southwestern had secured 66,040 acre-feet of water. This statement was false. The water in the aquifer was tributary in nature, and the leases did not help Southwestern to obtain rights in the aquifer. At a minimum, at that time, Misner did not know for sure whether the water was tributary or not and therefore could not honestly state that the leases would help Southwestern obtain water rights. Misner failed to disclose this material fact, however.

b. Misner also falsely represented the means by which the value of water is calculated. Misner told the investor that all 66,040 acre-feet could be sold for between \$3,000 and \$15,000 per acre-foot, and could bring in as much as \$662,040,000. This statement was false. The water was worth nowhere near 15,000 per acre-foot. Nor could Southwestern have sold all 66,040 acre-feet at the quoted prices, even if Southwestern had obtained rights to sell it – which Southwestern had not. At most, Southwestern could only have reasonably expected to generate a few million in revenues from the aquifer – not \$662,040,000. Misner knew or was reckless in not knowing that he had falsely represented how to calculate the value of water in the aquifer.

60. The investor also received the Southwestern Press Releases for February, May, and July. As the allegedly available acre-feet of water increased, the investor believed, based on Misner's false and misleading statements, that Southwestern could expect revenues in the billions.

61. Between November 2001 and September 2002, Misner received numerous communications from the individual investor indicating that the investor had been misled by Misner's statements about the value of the water and Southwestern's purported interest in the water. Misner knew, or was reckless in not knowing, that his statements to the individual investor were materially false and misleading. Misner did nothing to correct the investor's views until, at the earliest, September 2002.

Failure to Correct the Materially False and Misleading Statements

62. As Southwestern's CEO and the Chairman of Southwestern's Board of Directors, Misner had a duty to the company and its shareholders, at all relevant times, to correct Southwestern's materially false statements where he became aware of the false and misleading nature of the statements or when red flags made him aware of the danger that the statements were false and misleading. This duty existed whether or not Misner knew the statements were false and misleading when they were made.

63. Several red flags came to Misner's attention, but he nonetheless failed in his duty to correct his and Southwestern's materially false and misleading statements. The red flags included, but were not limited to, the following:

a. In January 2002, a Southwestern contractor reported that a test performed on the aquifer indicated that the water in the aquifer was tributary;

b. In early June 2002, Misner attended a teleconference with Southwestern's water attorneys where the attorneys discussed with Misner the substantial risks in seeking tributary water rights;

c. In late June 2002, a final engineering report on the aquifer determined the water to be tributary; the report also provided cost estimates indicating that the cost to produce the water would equal or exceed expected revenues;

d. No later than July 2002, Misner learned that the aquifer, even if Southwestern obtained water rights, could only produce about 2,900 acre-feet per year;

e. In early September 2002, Misner participated in another telephone conference with Southwestern's water attorneys where the attorneys explained that Southwestern could only obtain superior prices (between \$4,000 and \$10,000 per acre-foot) for 1% of the total available water in the aquifer even assuming Southwestern could obtain rights in the aquifer, and that the rest of the water would be sold, at most, at a few hundred dollars per acre foot. This information meant that Southwestern would have revenues in the low millions at best, not in the billion-dollar range;

d. In mid-September 2002, Misner received an email from one of the water attorneys expressing concern that Southwestern's July Press Release had been misleading with respect to Southwestern's potential revenues.

e. Also in mid-September 2002, Misner participated in a telephone conference with a Colorado water broker, who explained, among other things, that Colorado Big Thompson (CBT) water was the "gold standard" for water in Colorado, and that Southwestern could not expect to obtain the same prices for the water in the Hygiene aquifer, assuming Southwestern could obtain rights in the water.

64. Despite his knowledge and awareness of the materially false and misleading statements in the above-referenced Press Releases and on the Southwestern website, or, in the alternative, his knowledge and awareness of red flags which made him aware of the significant danger that investors would be misled, Misner failed in his duty to correct the false and misleading statements.

65. In addition, despite his knowledge and awareness that his statements to the individual investor had been false and misleading, Misner failed to correct those statements until, at the earliest, September 2002, instead permitting the investor to operate under a cloud of deceit.

66. In failing to correct the false and misleading statements in the press releases, on the website, and to the individual investor, Misner knew, or was reckless in not knowing, that the statements were materially false and misleading and needed to be corrected.

Misner Engaged in a Scheme to Mislead Investors

67. Misner engaged in a scheme to mislead investors in order to inflate and/or maintain Southwestern's stock price, and to provide himself with income through Southwestern and through a Canadian company which he controlled known as AIFE, Ltd., which allegedly provided services to Southwestern.

68. Misner's false and misleading statements about Southwestern's ownership of rights to the water in the reservoir, the amount and value of the water, and Southwestern's development of the reservoir, created the illusion that Southwestern owned, and was developing, water of great value. In fact, as Misner knew or was reckless in not knowing, Southwestern had no ownership interest in the water, the water

was virtually worthless, and Southwestern had not taken, and did not intend to take, any steps to develop the reservoir.

69. Misner intentionally kept the truth from investors to maximize the stock price and to encourage investment in the company. On November 1, 2002, just three days before the November Press Release, Misner sent an e-mail to two Southwestern employees. Misner wrote:

If this project blows up in our face which it may for many political and legal reasons including the tributary/non-tributary status, opposition from the public and the inability of [the water broker] to finalize a sales contract we, the company, need to ensure that we have taken every step possible to both maximize the return to the company and limit our liability. . . . [R]emember that everyone, including [our large investor] and the majority of our shareholders, think that we have at least 100 million of water for sale which is not the case

70. Southwestern's stock price increased \$0.10 in the day following both the July and November Press Releases, an increase of 7% and 11%, respectively.

71. Misner stood to benefit from Southwestern's inflated stock price. For example, Misner owned a substantial amount of Southwestern stock.

72. In addition, Misner received money from Southwestern, whose funding depended on Misner's effort to make private placements of its stock.

73. Finally, Misner's company, AIFE, Ltd., also received monies for alleged services provided to Southwestern. During the fiscal years ended March 31, 2001 and March 31, 2002, Southwestern paid AIFE, Ltd. \$321,816.

Misner Profited from the Fraud

74. Misner profited from his fraudulent conduct by receiving money from Southwestern from at least November 2001 through December 2002.

FIRST CLAIM FOR RELIEF

**Violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)]
and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5]**

75. The Commission realleges and incorporates by reference all preceding paragraphs.

76. From November 2001 through December 2002, Defendant Misner, with scienter, directly or indirectly, by use of the means or instrumentalities of interstate commerce or of the mails, in connection with the purchase or sale of securities, as described in this Amended Complaint, has: (a) employed devices, schemes, or artifices to defraud; (b) made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon any person.

77. By reason of the activities described above, Defendant Misner violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court enter a judgment that:

(i) Permanently enjoins Defendant Misner from violating, directly or indirectly, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5];

(ii) Orders Defendant Misner to prepare a sworn accounting of the purpose, disposition, and present location of all the money he obtained from Southwestern during the period November 1, 2001 through December 31, 2002;

(iii) Orders Defendant Misner to disgorge all profits or proceeds that he has received as a result of his conduct as described in this Amended Complaint, plus prejudgment interest;

(iv) Orders Defendant Misner to pay an appropriate civil money penalty pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)] with respect to all claims, with the exception of those claims concerning the individual investor set forth in ¶¶ 58-61;

(v) Permanently bars Defendant Misner from any future participation in the offering of any penny stock as defined by Section 3(a)(51)(A) of the Exchange Act [15 U.S.C. § 78c(a)(51)(A)], pursuant to Section 21(d)(6) of the Exchange Act [15 U.S.C. § 78u(d)(6)] and the Court's equitable powers;

(vi) Permanently bars Defendant Misner from acting as an officer or director of any public company pursuant to Section 21(d)(2) of the Exchange Act;

(vii) Grants such other relief as this Court may deem just and appropriate; and

(viii) Retains jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

Respectfully submitted,

By: /s/ Donald N. Dowie
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Dated: March 11, 2008

CERTIFICATE OF SERVICE

I, Donald Dowie, hereby certify that on this 11th day of March, 2008, I caused a copy of the attached **FIRST AMENDED COMPLAINT** to be served on the following, via FedEx and First Class Mail:

Mr. Steven B. Misner
7210 Buttons Ridge Dr.
Las Vegas, Nevada 89131

/s/ Donald N. Dowie
Donald N. Dowie
Counsel for the Plaintiff, U.S. Securities and
Exchange Commission