

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

TRI ENERGY, INC., et al.

Defendants.

Case No. ED CV 05-351 AG (MANx)

**ORDER GRANTING MOTION
FOR DISGORGEMENT AND
PENALTIES AGAINST
DEFENDANTS TRI ENERGY INC.,
H&J ENERGY COMPANY, INC.,
ROBERT JENNINGS, ARTHUR
SIMBURG AND LA VIE
D'ARGENT**

This matter is before the Court on the Plaintiff Securities and Exchange Commission's Motion for Disgorgement and Penalties Against Defendants Tri Energy, Inc., H&J Energy Company, Inc., Robert Jennings, Arthur Simburg and La Vie D'Argent ("Defendants"). The Court has reviewed the filings by the parties and the evidence submitted therewith. The Court finds good cause to GRANT the Motion and, consistent therewith, ORDERS as follows:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendants are jointly and severally liable for disgorgement of \$35,000,000,

1 representing monies unlawfully gained as a result of the conduct alleged in the
2 Amended Complaint. \$28,058,310 of the above-ordered disgorgement has been
3 deemed satisfied by the criminal restitution ordered in United States of America v.
4 Jones, et al (Case No 2:07-cr-01076-PA) entered on November 17, 2008, leaving a
5 joint and several disgorgement balance of \$6,941,690, together with prejudgment
6 interest in the amount of \$2,048,466, for a total joint and several liability of
7 \$8,990,156. The Commission may enforce the Court's judgment for disgorgement
8 and prejudgment interest by moving for civil contempt (and/or through other
9 collection procedures authorized by law) at any time after ten days following entry
10 of this Final Judgment. In response to any such civil contempt motion by the
11 Commission, the defendants may assert any legally permissible defense. Payments
12 under this paragraph shall be made to the Clerk of this Court, together with a cover
13 letter identifying Defendants' names; setting forth the title and civil action number
14 of this action and the name of this Court; and specifying that payment is made
15 pursuant to this Final Judgment. Defendants shall simultaneously transmit
16 photocopies of such payment and letter to the Commission's counsel in this action.
17 By making this payment, Defendants relinquish all legal and equitable right, title,
18 and interest in such funds, and no part of the funds shall be returned to Defendants.
19
20
21
22
23
24

25 The Clerk shall deposit the funds into the Registry Account of this Court or
26 any other type of interest bearing account that is utilized by the Court. These
27
28

1 funds, together with any interest and income earned thereon (collectively, the
2 “Fund”), shall be held in the interest bearing account until further order of the
3 Court. In accordance with 28 U.S.C. § 1914, LR 67-2, and the guidelines set by
4 the Director of the Administrative Office of the United States Courts, the Clerk is
5 directed, without further order of this Court, to deduct from the income earned on
6 the investment in the Fund a fee not to exceed the amount prescribed by the
7 Judicial Conference of the United States.
8
9

10 The Commission may by motion propose a plan to distribute the Fund
11 subject to the Court’s approval. Such a plan may provide that Fund shall be
12 distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-
13 Oxley Act of 2002. Regardless of whether any such Fair Fund distribution is
14 made, amounts ordered to be paid as civil penalties pursuant to this Judgment shall
15 be treated as penalties paid to the government for all purposes, including all tax
16 purposes. To preserve the deterrent effect of the civil penalty, Defendants shall
17 not, after offset or reduction of any award of compensatory damages in any
18 Related Investor Action based on Defendants’ payment of disgorgement in this
19 action, argue that they are entitled to, nor shall they further benefit by, offset or
20 reduction of such compensatory damages award by the amount of any part of
21 Defendants’ payment of a civil penalty in this action (“Penalty Offset”). If the
22 court in any Related Investor Action grants such a Penalty Offset, Defendants
23
24
25
26
27
28

1 shall, within 30 days after entry of a final order granting the Penalty Offset, notify
2 the Commission's counsel in this action and pay the amount of the Penalty Offset
3 to the United States Treasury or to a Fair Fund, as the Commission directs. Such a
4 payment shall not be deemed an additional civil penalty and shall not be deemed to
5 change the amount of the civil penalty imposed in this Judgment. For purposes of
6 this paragraph, a "Related Investor Action" means a private damages action
7 brought against Defendants by or on behalf of one or more investors based on
8 substantially the same facts as alleged in the Complaint in this action.
9
10

11
12 **II.**

13 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that
14 Defendants Simburg and Jennings shall each pay a civil penalty in the amount of
15 \$7,000,000¹ pursuant to Section 21(d)(3)(B)(iii) of the Exchange Act [15 U.S.C. §
16 78u(d)(3)(B)(iii)]. Defendant shall make this payment within ten (10) business
17 days after entry of this Final Judgment by certified check, bank cashier's check, or
18 United States postal money order payable to the Securities and Exchange
19 Commission. The payment shall be delivered or mailed to the Office of Financial
20 Management, Securities and Exchange Commission, Operations Center, 6432
21 General Green Way, Mail Stop 0-3, Alexandria, Virginia 22312, and shall be
22 accompanied by a letter identifying Defendants' name as a defendant in this action;
23
24
25
26


27
28 ¹ While greater civil penalties are possible here, the Court imposes a more reasonable penalty recognizing
the other penalties involved in this matter.

1 setting forth the title and civil action number of this action and the name of this
2 Court; and specifying that payment is made pursuant to this Final Judgment.
3 Defendant shall pay post-judgment interest on any delinquent amounts pursuant to
4 28 USC § 1961. The Commission shall remit the funds paid pursuant to this
5 paragraph to the United States Treasury.
6

7 **III.**
8

9 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this
10 Court shall retain jurisdiction over this action for all purposes, including
11 implementing and enforcing the terms of this Judgment and all other orders and
12 decrees which have been or may be entered in this case, and granting such other
13 relief as the Court may deem necessary and just.
14
15
16

17 Dated: APRIL 8, 2009

18 
19 HONORABLE ANDREW GUILFORD
20 UNITED STATES DISTRICT JUDGE
21
22
23
24
25
26
27
28