

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES SECURITIES AND
EXCHANGE COMMISSION,

Plaintiff,

v.

STEFAN H. BENGER, SHB CAPITAL, INC.,
JASON B. MEYERS, INTERNATIONAL
CAPITAL FINANCIAL RESOURCES, LLC,
PHILIP T. POWERS, FRANK I.
REINSCHREIBER, GLOBAL FINANCIAL
MANAGEMENT, LLC, STEPHAN VON HASE
and CTA WORLDWIDE SERVICES, SA.

Defendants.

CASE NO. 09-CV-676

MAGISTRATE JUDGE COLE

**THE SEC'S MOTION TO ESTABLISH A FAIR FUND AND APPOINT A
DISTRIBUTION AGENT**

Plaintiff Securities and Exchange Commission ("SEC" or "Commission") moves the Court to (i) establish a Fair Fund distribution fund ("Fair Fund") under Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended by the Dodd-Frank Act of 2010 [15 U.S.C. §7246], and (ii) appoint Kurtzman Carson Consultants ("KCC") as distribution agent of the Fair Fund in this matter. The creation of a Fair Fund and the appointment of a distribution agent are necessary precursors to creating a distribution plan for the Fair Fund, proposing a distribution plan for the Fair Fund, and ultimately distributing any funds from the Fair Fund to investors harmed by Defendants' misconduct.

BACKGROUND

By order dated April 1, 2010, the Court entered Final Judgment as to Defendant Handler Thayer & Duggan, LLC ("HTD") pursuant to Rule 54(b) of the Federal Rules of Civil Procedure

(Dkt. No. 237). Pursuant to the Final Judgment, on April 8, 2010, defendant HTD paid a total of \$238,359.63 of prejudgment interest, disgorgement and penalty to the Clerk of this Court (the “Distribution Fund”). The Distribution Fund was thereafter deposited in an interest-bearing account with the Court, maintained under the case name designation “SEC v. Bengier, et al.” The Distribution Fund constitutes a Qualified Settlement Fund (QSF) under section 468B(g) of the Internal Revenue Code (IRC), 26 U.S.C. § 468B(g), and related regulations, 26 C.F.R. §§ 1.468B-1 through 1.468B-5.

On January 15, 2013, the Court entered a corrected Final Judgment as to Defendant’s Stefan H. Bengier (“Bengier”) and SHB Capital, Inc. pursuant to Rule 54(b) of the Federal Rules of Civil Procedure. (Dkt. 403). The order held that \$698,901.89 of prejudgment interest, disgorgement and penalties were paid to the Distribution Fund from assets being held in previously frozen bank accounts. The order also held that the remainder of the Frozen Assets (“Surplus Assets”) shall be used to pay the United States Treasury in partial satisfaction of tax liabilities, liens or other debts and if the Surplus Assets exceed Defendant’s Tax Liabilities any and all such excess funds shall be retained by and/or repaid to the Clerk of the Court for the benefit of the Commission and treated as additional disgorgement. After the \$698,901.89 was collected there was Surplus Assets of \$289,675.71 that were ordered sent to the U.S. Treasury on March 12, 2013. (Dkt 409). These funds are currently in the Commission’s possession.

On April 9, 2014, the Court entered an Amended Final Judgment as to Defendant’s Frank I. Reinschreiber (“Reinschreiber”) and Global Financial Management, LLC pursuant to Rule 54(b) of the Federal Rules of Civil Procedure. (Dkt. 488). Defendant’s Reinschreiber and Global Financial Management, LLC, were ordered to pay \$104,971.00 in prejudgment interest, disgorgement and penalties to the Commission. At or around this time, the money was paid to

the Commission.

On April 9, 2014, the Court entered an Amended Final Judgment as to Defendant Philip T. Powers (“Powers”) pursuant to Rule 54(b) of the Federal Rules of Civil Procedure. (Dkt. 487). Powers was ordered to pay \$107,258.65 in prejudgment interest, disgorgement and penalties to the Commission. At or around this time, the money was paid to the Commission.

Currently, there is approximately \$1,381,000 dollars available for distribution to injured parties between monies currently being held by the SEC and the Court.¹

THE COURT SHOULD ESTABLISH A FAIR FUND

The Commission now moves the Court to designate the approximately \$1,381,000 in funds available for distribution and any future funds collected from Defendants as a Fair Fund (“Benger Fair Fund”) pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, which provides in relevant part:

If in any judicial or administrative action brought by the Commission under the securities laws...the Commission obtains an order requiring disgorgement against any person for a violation of such laws..., or such person agrees in settlement of any such action to such disgorgement, and the Commission also obtains pursuant to such laws a civil penalty against such person, the amount of such civil penalty shall, on the motion or at the direction of the Commission, be added to and become part of the disgorgement fund for the benefit of the victims of such violation.

See 15 U.S.C. § 7246(a). The Commission brought this action under the securities laws and Defendants paid disgorgement via court order turning over frozen assets pursuant to the January 9, 2015 Final Judgment.

Accordingly, the requirements of Section 308(a) of the Sarbanes-Oxley Act of 2002, as

¹ There are two defendants remaining for which final judgments have not yet been entered—Stephan von Hase and CTA Worldwide Services, S.A. (“CTA”). The SEC’s motion for entry of final default judgment against von Hase and CTA (*see* dkt. 451, 483) is fully briefed and currently pending before the Court.

amended, have been satisfied, and the Court should establish a Fair Fund to facilitate ultimate distribution of the funds in the Bengier Fair Fund to investors harmed by Defendants' conduct.

THE COURT SHOULD APPOINT A DISTRIBUTION AGENT

The Commission also respectfully moves the Court to appoint KCC as distribution agent of the Bengier Fair Fund in this matter. If appointed, KCC will work with Commission staff to develop a fair and reasonable distribution plan for the Fair Fund, including a methodology for allocating the available funds to harmed investors, and will obtain the Court's approval of the distribution plan. In addition, KCC will implement the distribution of payments pursuant to the Court approved distribution plan and generally administer all other aspects of the distribution plan.

KCC is very qualified for the tasks required of a distribution plan and will be fair, efficient, and cost-effective and timely in its efforts. KCC is part of a pool of administrators the Commission has approved for appointment in administrative proceedings and for recommendation to the Court in civil proceedings. The Commission's recommendation of KCC is based on a process in which Commission staff solicited, reviewed and analyzed proposals from prospective distribution agents in the approved pool, including a pricing schedule that will allow Commission staff to monitor invoices and the costs of administering this distribution. KCC understands and has experience with administering numerous distributions. KCC's management team also has extensive experience in developing plans of allocation related to other Commission cases. This process led the staff to conclude that KCC is well qualified for this distribution and that its pricing is competitive and reasonable. KCC does not have any conflicts of interest that would keep it from fully and fairly exercising its duties as the distribution agent for the proposed Fair Fund.

As part of its duties, KCC will coordinate with the Court-appointed Tax Administrator,

Damasco & Associates LLP, to ensure that the proposed Bengier Fair Fund, Qualified Settlement Fund (“QSF”) under Section 468B(g) of the Internal Revenue Code, and related regulations, 26 C.F.R. §§1.468B-1 through 5, complies with all related legal and regulatory requirements, including but not limited to, satisfying any reporting or withholding requirements imposed on distributions from the QSF.

In addition, KCC will invoice its fees and expenses incurred in the administration and distribution of the proposed Bengier Fair Fund to the Commission for review and approval by Commission staff. Any unresolved objections to an invoiced amount will be referred to the Court.

Once the distribution plan is approved, KCC will submit quarterly progress reports to the Commission staff and a final accounting report for the Bengier Fair Fund, in a format to be provided by the Commission staff, when KCC’s duties are completed. Commission staff shall file the final accounting report for the Bengier Fair Fund with the Court once it has been reviewed by Commission staff, and Commission staff has determined it has no objections.

KCC may be removed *sua sponte* at any time by the Court or upon motion of the Commission and replaced with a successor. In the event KCC decides to resign, it will first give written notice to the Court and to Commission staff of such intention, and the resignation, if permitted, will not be effective until the Court appoints a successor.

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

Dated: August 31, 2015

Respectfully submitted,

/S/ Michael S. Lim

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CERTIFICATE OF SERVICE

I hereby certify that on **August 31, 2015**, I caused the foregoing document to be electronically filed with the clerk of court for the U.S. District Court, Northern District of Illinois, using the electronic case filing system of the court. The electronic case filing system sent a "Notice of Electronic Filing" to all attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

S/ Michael S. Lim
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CASE NO. 09-CV-676

MAGISTRATE JUDGE COLE

**[PROPOSED] ORDER TO ESTABLISH FAIR FUND AND APPOINT A
DISTRIBUTION AGENT**

The Court having reviewed the Securities and Exchange Commission's ("SEC" or "Commission") Motion to Establish a Fair Fund and Appoint a Distribution Agent and for good cause shown,

IT IS HEREBY ORDERED:

1. The Motion is **GRANTED**.
2. A Fair Fund is created pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002 [15U.S.C. §7246(a)], as amended by the Dodd-Frank Act of 2010 [15 U.S.C. §7246].
3. Kurtzman Carson Consultants ("KCC") is appointed to serve as the distribution agent of the Benger Fair Fund in this matter, pursuant to the terms of a distribution plan

to be approved by this Court. KCC shall coordinate with the Court-appointed Tax Administrator, Damasco & Associates LLP, to ensure that the proposed Benger Fair Fund, Qualified Settlement Fund (“QSF”) under Section 468B(g) of the Internal Revenue Code, and related regulations, 26 C.F.R. §§1.468B-1 through 5, complies with all related legal and regulatory requirements, including but not limited to, satisfying any reporting or withholding requirements imposed on distributions from the QSF.

4. KCC shall invoice all administrative fees and expenses incurred in the administration and distribution of the proposed Benger Fair Fund to the Commission for review and approval by Commission staff. Any unresolved objections to an invoiced amount will be referred to the Court.

5. Once the distribution plan is approved, KCC will submit quarterly progress reports to the Commission staff and a final accounting report for the Benger Fair Fund, in a format to be provided by the Commission staff, when KCC’s duties are completed. Commission staff shall file the final accounting report for the Benger Fair Fund with the Court once it has been reviewed by Commission staff, and Commission staff has determined it has no objections.

6. KCC may be removed *sua sponte* at any time by the Court or upon motion of the Commission and replaced with a successor. In the event KCC decides to resign, it will first give written notice to the Court and to Commission staff of such intention, and the resignation, if permitted, will not be effective until the Court appoints a successor.

IT IS SO ORDERED.

Dated: _____

United States District Judge