

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION

<p>SECURITIES AND EXCHANGE COMMISSION,</p> <p>Plaintiff,</p> <p>vs.</p> <p>ALBERT E. PARISH, Jr., PARISH ECONOMICS, LLC and SUMMERVILLE HARD ASSETS, LLC,</p> <p>Defendants.</p>	<p>CIVIL ACTION NO. 2:07-919-DCN</p>
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**RECEIVER’S RESPONSE TO THE PATELS’ MOTION TO ENFORCE JUDGMENT  
AND IMMEDIATELY DISTRIBUTE PROCEEDS OR IN THE ALTERNATIVE  
REQUIRE APPELLANT FORREST TO POST A BOND IN AN AMOUNT SUFFICIENT  
TO SATISFY THE DISTRIBUTION**

S. Gregory Hays, Receiver for the Defendants Albert E. Parish, Parish Economics, LLC, and Summerville Hard Assets, LLC (collectively, “Parish”), hereby files this response to the Patels’ Motion to Enforce Judgment and Immediately Distribute Proceeds or in the Alternative Require Appellant Forrest to Post a Bond in an Amount Sufficient to Satisfy the Distribution (“Motion to Enforce Judgment”), and states as follows:

**I. Factual Background and Procedural History.**

1. In accordance with his responsibilities under the *Order to Show Cause, Temporary Restraining Order, Order Appointing Receiver, Order Freezing Assets, Order Prohibiting Destruction of Documents and Order Expediting Discovery* entered on April 5, 2007 (Dkt. # 7) and the *Order Granting Preliminary Injunction, Freezing Assets, Appointing Receiver and Ordering Other Ancillary Relief* entered April 12, 2007 (Dkt. # 26), the Receiver developed

a process for the analysis and administration of the claims of Parish's investors and other creditors in this case, along with a proposal for the ultimate distribution of the monies in the Receiver Estate, which is set forth in the Receiver's Plan for Claims Administration and Distribution of Proceeds (the "Plan").

2. In Section 5 of the Plan, the Receiver proposed using a method of distribution commonly referenced as the "Rising Tide" method. Due to his belief that the Rising Tide method of distribution would be the most fair and appropriate method of distribution in this case, the Receiver recommended this method over the alternative method of making pro-rata distribution payments based on each investor's net loss, which is commonly referenced as the "Net Loss" method of distribution.

3. On February 10, 2010, this Court approved Section 5 of the Plan and authorized the Receiver to make distributions in this case in accordance with Rising Tide. (Dkt. # 338 at 18.)

4. On March 8, 2010, one of the investors in this case, Dr. Leonard Forrest ("Forrest"), filed a Notice of Appeal of the Court's order approving Rising Tide. (Dkt. # 343.) Although Forrest has not yet filed his appellate brief, it is the Receiver's understanding that Forrest intends to appeal the Court's decision to approve the Rising Tide method of distribution instead of the alternative Net Loss method.

5. On March 26, 2010, the Patels filed their Motion to Enforce Judgment, in which they request the Court to compel the Receiver to make an immediate distribution, prior to the resolution of Forrest's appeal, of approximately \$9 million (which represents the bulk of the Receiver Estate) under the Rising Tide method of distribution. (*See* Dkt. # 349.)

**II. The Receiver's Proposal to Make an Interim Distribution.**

6. The Receiver agrees with the Patels' general proposition that some distribution should be made to investors pending the outcome of Forrest's appeal. As the Patels have aptly noted, defrauded investors who are entitled to a distribution under the Plan obviously have a direct interest in obtaining funds from the Estate as quickly as possible, and the Receiver does not believe it would be appropriate or desirable to force investors to await the outcome of Forrest's appeal, which could take months, before receiving any funds from the Estate.

7. The Receiver does not, however, agree with the Patels' contention that he can make what would effectively constitute a full distribution of the entire Estate prior to the resolution of Forrest's appeal. Under the Patels' suggested distribution, the Receiver would apparently only reserve in the Estate enough funds to pay Forrest what he would be owed under the Net Loss method of distribution in the event Forrest is successful on appeal – all other funds would be distributed to investors under Rising Tide.

8. The problem with the Patels' suggestion is it assumes that, because Forrest is the only investor to have appealed the Court's February 10 ruling, Forrest's success on appeal would only affect the distribution to Forrest individually, and would not affect the Receiver's distribution to the hundreds of other investors in this case. That is not correct.

9. Although Forrest is the only investor to have appealed the Court's ruling, the very ruling that is being appealed is the Court's approval of the Receiver's use of the Rising Tide method of distribution for all investors in this case. The Fourth Circuit will review the Court's approval of Rising Tide in the context of how it will be applied to all investors, not only Forrest. *See CFTC v. Topworth Int'l, Ltd.*, 205 F.3d 1107, 1116 (9th Cir. 1999) (upholding the district court's approved method of distribution on the basis of how it would be applied to all investors,

even though only one investor appealed);<sup>1</sup> *see also SEC v. Capital Consultants, LLC*, 397 F.3d 733, 738-43 (9th Cir. 2005) (upholding the district court’s approved method of distribution by analyzing how it would be applied to all investors, even though only one group of distinct investors appealed).

10. If the Fourth Circuit overturns this Court’s approval of Rising Tide, which the Receiver believes is improbable, it will most likely do so because it determines that an alternative method of distribution will be more appropriate for all investors, in which case the Receiver will be obligated to use that alternative method to distribute funds to *all investors* – not only Forrest.

11. Moreover, the Patels’ implication that, if Forrest is successful on appeal, the Receiver could distribute funds to Forrest under the Net Loss method and to all other investors under the Rising Tide method is directly contradictory to the fundamental principle guiding a receiver’s distribution to investors in a Ponzi scheme case such as this, *i.e.* “equity [among investors] is equality.” *S.E.C. v. Elliott*, 953 F.2d 1560, 1566 (11<sup>th</sup> Cir. 1992) (quoting *Cunningham v. Brown*, 265 U.S. 1 (1924)). In other words, “the equities demand[] that all victims of the fraud be treated equally.” *United States v. 13328 & 13324 State Highway 75 N.*, 89 F.3d 551, 553-54 (9th Cir. Cal. 1996) (refusing to allow one investor to be treated differently than others with respect to the distribution of funds).

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<sup>1</sup> In *Topworth*, the appellant investor argued that funds should be distributed to him on a different basis than that provided under the approved receiver’s plan. *Topworth*, 205 F.3d at 1115-16. The appellant claimed that he should receive funds under an alternative method of distribution which is typically only appropriate in situations in which the company in receivership kept detailed account records for investors and actually segregated funds by account. *Id.* The appellant contended that the alternative method was most appropriate for him because he had meticulously maintained his account records. *Id.* However, the Ninth Circuit considered how the alternative method of distribution would be applied to all investors in the case, and determined that the method of distribution approved by the district court was appropriate for all investors and within the court’s discretion. *Id.*

12. Accordingly, the Receiver cannot make a full distribution of the Receiver Estate to all investors under Rising Tide and only reserve enough to pay Forrest under Net Loss in the event his appeal is successful. If Rising Tide is used to distribute funds to one investor, it should be used to distribute funds to all investors. *See id.* Similarly, if Forrest is successful and Net Loss is ultimately determined to be the most appropriate method of distribution in this case, all investors should receive funds under Net Loss.

13. In making any interim distribution to investors pending the outcome of Forrest's appeal, the Receiver must account for the possibility (albeit a slim one) that the Court's February 10 ruling will be reversed and the Receiver will ultimately be required to make a distribution to all investors under Net Loss. As the Court noted in the February 10 ruling, there are significant disparities in the amounts investors will receive under Rising Tide or Net Loss. There are approximately 102 investors who would receive no distribution under Rising Tide but who would stand to receive distribution payments under Net Loss, while 350 investors would receive more under Rising Tide than they would under Net Loss. (*See* Dkt. # 338 at ¶ 23.) If the Receiver were to distribute the full Estate under Rising Tide and the Fourth Circuit subsequently reversed the Court's ruling, it would be extremely difficult, if not impossible, for the Receiver to recover the distribution payments from the 350 investors who received more than they were entitled to be paid under Net Loss, meaning that there would be insufficient funds in the Estate to pay the 102 additional investors who would then be entitled to a distribution.

14. The Receiver proposes resolving this issue by making an interim distribution to investors in the lesser amount of whatever they would be entitled to receive under Rising Tide or Net Loss. In other words, if an investor stands to recover 10% of her loss under Rising Tide or 5% of her loss under Net Loss, the Receiver will pay that investor 5% of her loss. If an investor

stands to recover \$0 under Rising Tide, but would recover under Net Loss (like Forrest), the Receiver will distribute \$0 to that investor. Such an interim distribution allows for the possibility that the Court's ruling may be reversed and Net Loss may be applied in this case instead of Rising Tide, because no investor will have received more than they would be entitled to receive under Net Loss and sufficient funds will remain in the Estate to pay any investor who should receive more under Net Loss than Rising Tide.

15. The Receiver's calculation of the amount to be distributed to each investor in this interim distribution will take into account reasonable reserves to satisfy items such as unpaid professional fees and expenses, including the projected fees and expenses that will be incurred by the Receiver in litigating Forrest's appeal, certain payroll taxes which may be owed by one of the entities formerly owned by Parish, and other unresolved tax issues affecting the Receiver Estate. As referenced by the Receiver's counsel during the January 15, 2010 hearing, these unresolved tax issues could bear on the amount of funds ultimately available for distribution from the Receiver Estate, and therefore require the Receiver to reserve funds sufficient to satisfy the tax liabilities and/or penalties that may be owed by the Estate. Such reserves would be necessary even if there were no appeal and the Receiver was in a position to make a full distribution to all investors under Rising Tide.

16. The Receiver and his counsel believe that the proposed interim distribution will be the most efficient and appropriate manner within which to begin distributing funds to investors without forcing them to wait for the resolution of Forrest's appeal, and respectfully request that the Court authorize such a distribution.

**CONCLUSION**

For the foregoing reasons, S. Gregory Hays, Receiver, respectfully requests that the Court deny the Patels' motion to compel a full distribution of the Estate and authorize the Receiver to make an interim distribution to each investor in the lesser amount of whatever each investor would be entitled to receive under Rising Tide or Net Loss, accounting for reasonable reserves as set forth herein. The Receiver is prepared to make such a distribution within 14 days of the Court's approval.

Respectfully submitted this 12th day of April, 2010.

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 12th day of April, 2010, I electronically filed the within and foregoing *RECEIVER'S RESPONSE TO THE PATELS' MOTION TO ENFORCE JUDGMENT AND IMMEDIATELY DISTRIBUTE PROCEEDS OR IN THE ALTERNATIVE REQUIRE APPELLANT FORREST TO POST A BOND IN AN AMOUNT SUFFICIENT TO SATISFY THE DISTRIBUTION* with the Clerk of this Court using the CM/ECF system, which will automatically send email notification of such filing to all case parties via email.

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/s/ Charles R. Burnett

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