

pursuant to the Distribution Plan; (3) directing KCC to deposit the funds pursuant to Paragraph 28 of the Distribution Plan and to distribute the funds to Eligible Recipients in accordance with the terms of the Distribution Plan; and (4) authorizing KCC to pay any outstanding and all future tax obligations, fees, and expenses of the Tax Administrator and/or the Distribution Agent from the Distribution Fund, upon written request to and written approval by the Commission staff without further order of the Court.

MEMORANDUM

I. BACKGROUND

On January 18, 1982, the Securities and Exchange Commission (the “Commission”) filed a complaint against the Defendant, alleging that he had raised more than \$7.5 million by offering and selling unregistered securities. The securities took the form of interests in multiple oil and gas partnerships. The Defendant made multiple misrepresentations and omitted material information relating to the costs of drilling and refurbishing wells, his financial contributions to the partnerships, the involvement of related parties in transactions, and sharing of revenues with persons who solicited investments.

Simultaneously with the filing of the complaint, the Court entered a Final Judgment of Permanent Injunction with the Defendant’s consent, leaving open the issue of monetary relief. On August 26, 1983, the Court entered another judgment by consent, directing the Defendant to disgorge \$200,000 under a three-year payment plan. The deadline for the final payment was August 26, 1986.

From 1984 to 1986, the Defendant missed two out of the three installment deadlines and paid only \$121,975.29 of the \$200,000, leaving an unpaid balance of \$78,024.71. On August 8, 1988, this Court found the Defendant in contempt of the three-year payment plan. The amount

the Defendant paid, plus \$20,000 frozen in the related lawsuit, *SEC v. James R. Crawford*, No. C 79-353 (N.D. Ohio), and accrued interest, was placed into a disgorgement fund in a Court registry account. Total investor losses were estimated at \$7.5 million. Two distributions, totaling \$155,327.82, were made pursuant to Court Orders dated October 18, 1985 and September 26, 1988 (collectively, the “First Distribution”).³

The Commission filed a motion for civil contempt on January 23, 2012. After an evidentiary hearing and briefing, the Court found the Defendant in contempt and, on August 20, 2012, ordered the payment of the entire outstanding judgment of \$78,024.71, plus post-judgment interest of approximately \$1.78 million at the statutory rate of 10.74% from the date of the entry of the judgment in 1983. Defendant appealed the judgment to the Court of Appeals for the Sixth Circuit to remand for further proceedings to clarify whether the order finding Defendant in contempt was final, which was granted on January 24, 2013. In December 2013, Defendant transferred \$1.9 million to the registry of the Court, in full satisfaction of the outstanding judgment and post-judgment interest (the “Distribution Fund”).

On December 24, 2014, the Court appointed Damasco & Associates LLP as tax administrator (“Tax Administrator”)⁴ to execute all income tax reporting requirements, including the preparation and filing of tax returns, with respect to funds under this Court’s jurisdiction in this case.

On June 15, 2015, the Court appointed KCC as Distribution Agent⁵ to assist in overseeing the administration and distribution of the Distribution Fund in coordination with

³ \$121,535.36 was distributed by Court order on October 18, 1985, and \$33,792.46 was order to be distributed on September 26, 1988.

⁴ Dkt. No. 54. As of October 1, 2016, Damasco & Associates LLP became a part of Miller Kaplan Arase LLP. The firm’s engagement with the Commission and its ability to carry out its duties as appointed Tax Administrator for this matter has not changed.

⁵ Dkt. No. 58.

Commission staff, pursuant to the terms of a Distribution Plan, to be approved by this Court. On March 21, 2017, the Court approved the Distribution Plan.

As of March 28, 2019, the balance of the Distribution Fund was \$1,887,556.63.

II. PAYMENT OF THE FEES AND EXPENSES OF THE FUND ADMINISTRATOR

The Distribution Agent has incurred fees and expenses totaling \$83,711.85 thus far in connection with the distribution. *See* Invoice No. 1425168, dated November 20, 2018, attached as Exhibit A. These expenses include, among other things, developing the Distribution Plan, Distribution Fund Management, Harmed Investor Search, Preparation for Distribution Payments, Investor Support Services, and Reporting and Record Keeping. The invoice has been reviewed by the undersigned Commission counsel who has no objections.⁶

III. DISBURSEMENT OF THE DISTRIBUTION FUND

Pursuant to the Distribution Plan, the Distribution Agent has prepared and submitted to the Commission staff a list of Eligible Recipients, and the Approved Claim for each Eligible Recipient (the “Final Payee List”).⁷ The Distribution Agent has also submitted the Declaration of Daniel J. Marotto (“Declaration”) in support of this Motion, filed herewith as Exhibit B, which provides a detailed explanation of the procedures the Distribution Agent used to develop the Final Payee List. Each Eligible Recipient will receive a *pro rata* share of the current net Distribution Fund, which will be calculated by dividing each Eligible Recipient’s total distribution payment in the First Distribution compared to the Distribution Payments made to all Eligible Recipients in the First Distribution. The Final Payee List and the Declaration have been reviewed by the undersigned Commission counsel who has no objections.

⁶ KCC has submitted a revised cost proposal, which the Commission staff has approved, because Investor Search fees and expenses turned out to be higher than originally anticipated.

⁷ The Final Payee List shall, upon request, be made available to the Court under seal.

156 Certification Forms for Eligible Recipients have been submitted and approved for payment. 162 Distribution Payments will be made, because six (6) payments are being split between two beneficiaries. After establishing a reserve of \$18,111.50 for the future estimated costs of administration of the Distribution Agent and \$11,601.65⁸ for the payment of estimated taxes, tax compliance fees and expenses, \$1,770,483.88 will be distributed to investors.

IV. FUTURE FEES AND EXPENSES OF THE DISTRIBUTION AGENT AND THE TAX ADMINISTRATOR

Finally, after the distribution to harmed investors, there will be additional fees and expenses of both the Distribution Agent and the Tax Administrator in connection with the wind-up and reconciliation phase of the distribution and the preparation of the final accounting. Therefore, we request that the Court authorize KCC to pay any outstanding and all future tax obligations, fees, and expenses of the Tax Administrator and/or the Distribution Agent from the Distribution Fund reserve, upon written request to and written approval by the Commission staff without further order of the Court.

⁸ \$2,000 of the reserve is already in the possession of the Tax Administrator and is not included in the court registry balance.

WHEREFORE, for all of the foregoing reasons, the Plaintiff Securities and Exchange Commission respectfully requests that this Court grant its Motion for an Order to Transfer Funds for Distribution and grant such other relief as it deems necessary and proper.

Dated: April 4, 2019

Respectfully submitted,

/s/ Susan S. Pecaro .

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