

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 06-81080-CIV-MIDDLEBROOKS/JOHNSON

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

vs.

MERCER CAPITAL, INC., et al.,

Defendants.

---

**RECEIVER'S MOTION FOR ORDER APPROVING  
SETTLEMENT WITH JOSEPH FISHER**

Court-Appointed Receiver, Daniel S. Newman, hereby moves this Court to enter an order approving a settlement between the Receiver and Joseph Fisher. The undersigned is authorized to state that the Securities and Exchange Commission agrees to the entry of an order approving this request. In support of this motion, the Receiver states:

The Receiver has completed his investigation of the role of Joseph Fisher in relation to Mercer Capital and Mercer Asset Management (the "Mercer Entities"). This investigation has included several debriefings with Mr. Fisher and his counsel, and a review of Mr. Fisher's files and other materials relating to his activities in the Mercer Entities, as well as a review of other materials available to the Receiver.

As a result of his investigation, the Receiver has determined that during the period that Mercer Capital was in business from 2004 through 2006, Fisher received funds from that entity in excess of \$165,000. The Receiver has determined that of those funds, the return of \$165,000 represents a full and fair settlement of any claims the Receiver may have brought against Fisher arising out of his receipt of Mercer funds. Mr. Fisher has agreed to turn over the sum of

**BROAD and CASSEL**

One Biscayne Tower, 21st Floor 2 South Biscayne Blvd. Miami, Florida 33131-1811 305.373.9400

\$165,000 to the Receiver, upon Court approval of the written Stipulation of Settlement and Mutual Release entered into between the Receiver and Mr. Fisher, a copy of which is attached to this Motion as Exhibit A.

The Receiver believes this settlement is fair and reasonable under the facts and circumstances and therefore recommends that this settlement be approved by the Court.

WHEREFORE, the Receiver respectfully requests that the Court enter an order authorizing and approving the Stipulation of Settlement between the Receiver and Joseph Fisher.

Respectfully submitted,

**BROAD AND CASSEL**

*Attorneys for Receiver*

One Biscayne Tower, 21<sup>st</sup> Floor

2 South Biscayne Boulevard

Miami, Florida 33131

Tel: (305) 373-9400

Fax: (305) 373-9443

By: /s/ David B. Rosemberg

RHETT TRABAND, P.A.

Fla. Bar No.: 0028894

rtraband@broadandcassel.com

DAVID B. ROSEMBERG

Fla. Bar No.: 0582239

drosemberg@broadandcassel.com

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on September 29, 2008, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing is being served this day on all counsel or parties of record identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/ David B. Rosemberg

DAVID B. ROSEMBERG

**SERVICE LIST**

<p><b>Scott Andrew Masel, Esq.</b> <b>Andre Zamorano, Esq.</b> Attorneys for Plaintiff SECURITIES AND EXCHANGE COMMISSION 801 Brickell Avenue Suite 1800 Miami, FL 33131 305-982-6398 536-4154 (fax) masels@sec.gov <i>Service via CM/ECF</i></p> <p><b>Jon Polenberg, Esq.</b> Polenberg Cooper, P.A. JOSEPH FISHER 4300 North University Drive Suite D-204 Fort Lauderdale, FL 33351 954- 742-9995 954-742-9971 (fax) jon@pcpalaw.com <i>Service via CM/ECF</i></p>	<p><b>James Sallah, Esq.</b> Klein &amp; Sallah, LLC Attorneys for Defendant ROBERT FLICKINGER 2101 North West Corporate Boulevard Suite 216 Boca Raton, FL 33431 561-989-9080 561-989-9020 (fax) jds@kleinsallah.com <i>Service via CM/ECF</i></p>
---	---

MIA1\COMMLIT\394487.1  
38796/0001

**STIPULATION OF SETTLEMENT AND MUTUAL RELEASE**

Daniel S. Newman, Esq., as court-appointed Receiver ("Receiver") for Mercer Capital, Inc., Mercer Capital Management, Inc., Tri-State Energy Group, LLC, Tri-State Energy Group I, LTD, Tri-State Group II, LTD, and Mercer Asset Management, LLC ("Mercer Entities"), and Joseph Fisher ("Fisher") enter into this Stipulation of Settlement and Mutual Release (the "Stipulation") as follows:

1. The Parties acknowledge that this Stipulation is a compromise, and that neither Party admits, and each expressly denies, any liability on its part.

2. This Stipulation constitutes the entire Stipulation and understanding between the Parties with respect to the subject matter hereof, and there are no other stipulations, representations, or warranties other than those set forth herein. All prior agreements and understandings between the Parties concerning the subject matter of this Stipulation are superseded by the terms of this Stipulation.

3. In full and final settlement of any controversy between the Parties, Fisher shall pay the Receiver a sum of One Hundred Sixty Five Thousand dollars (\$165,000) ("Settlement Amount"). Within five (5) business days of the Effective Date hereof (as defined below) Fisher shall cause to be wire transferred to the Receiver at the following bank account: BankAtlantic Account No. 0063281545, Daniel Newman Court Appointed Receiver for Mercer Capital Management, Inc., the sum of Twenty Five Thousand dollars and 00/100 (\$25,000). The remainder of the Settlement Amount shall be paid by Fisher in monthly installments of Eleven Thousand Six Hundred Sixty Six dollars and 70/100 (\$11,666.70) for a period of 12 months. Payment shall be made to the order of Daniel S. Newman, Receiver and must be delivered no later than the tenth (10) day of each month to the following address: Broad and Cassel, 21<sup>st</sup>

Floor, One Biscayne Tower, 2 South Biscayne Boulevard, Miami, Florida 33131. Time is of the essence.

If payment is not received by the tenth (10) day of each month during this period, then upon written notice of default and a three calendar day opportunity to cure, the Receiver will be entitled to a judgment against Fisher in the amount of One Hundred Sixty Five Thousand dollars (\$165,000) less any payments received from Fisher. A notice of hearing will not be required, only an affidavit of default.

3. Assistance and Cooperation of Fisher: From and after the Effective Date hereof, Fisher shall cooperate with the Receiver in connection with the Receiver's continuing inquiry into the Mercer Entities matter. To that end, Fisher shall promptly respond to requests for telephonic and/or personal interviews made by the Receiver and/or his counsel, shall present himself as a trial or deposition witness upon request and shall, in all other ways reasonably available to him, assist the Receiver and his counsel in the performance of their duties; provided, however, that the Receiver will reimburse Fisher for reasonable costs and/or expenses incurred as a result of appearing at trial or deposition upon request.

4. Warranties and Representation: Fisher warrants and represents that the information, including, but not limited to, documents he has provided to the Receiver during the course of the Receiver's investigation relating to Mercer Asset Management has been true, accurate, and complete. Fisher further warrants and represents that Mercer Asset Management has never received any monies or other assets from or on behalf of any of the Receivership Entities identified in the Court's November 21, 2006 Order Appointing Receiver.

5. Mutual Releases:

(a) As of the Effective Date, the Receiver hereby releases, remises and acquits Fisher of and from all claims, causes of action, and complaints of every nature which the Receiver has, had, or could have, whether known or unknown, against Joseph Fisher, his heirs and assigns concerning any matter related to the Mercer Entities from the beginning of the world to the date of this Agreement, except for the obligations imposed upon Joseph Fisher by this Agreement. In implementation of this provision, the Receiver covenants and agrees to file no claim or complaint against Joseph Fisher or any property owned by Fisher in any forum or Mercer Asset Management or any property owned by Mercer Asset Management, nor shall Fisher or Mercer Asset Management be joined at the request of the Receiver as a party to the Action.

(b) As of the Effective Date, Joseph Fisher on behalf of himself and his representatives, heirs, successors and assigns hereby releases, remises and acquits the Receiver, both individually and in his capacity as Receiver, and the Mercer Entities, of and from all claims, causes of action and complaints of every nature which Joseph Fisher has, had, or could have, whether known or unknown, against the Receiver or the Mercer Entities from the beginning of the world to the date of this Agreement. Fisher, individually and on behalf of Mercer Asset Management covenants and agrees to file no claim or complaint against the Receiver or the Mercer Entities in any forum.

6. Condition Precedent to Effectiveness: This Stipulation shall not become effective until it has been submitted to and approved by the Court in the Action. The Receiver agrees that, within five (5) business days following complete execution of the Stipulation, he shall submit a motion for approval of this agreement to the Court. The motion shall reflect the Receiver's

judgment that the Settlement Amount represents a fair and reasonable settlement of any claim the Receiver may have been able to bring against Fisher. The Effective Date shall be the date upon which the Court has provided its approval of the Stipulation. If, however, the Court rejects this Stipulation, then this Stipulation shall be null and void and no party shall thereafter have any obligation to the other party as a result of having executed this Stipulation.

7. Modification of the Order Appointing Receiver:

Subject to the approval of the Securities and Exchange Commission, the Receiver shall submit a motion to the Court seeking to modify the November 21, 2006 Order Appointing Receiver [DE 3], as amended by the November 22, 2006 Order Granting Expanding Scope of Order Appointing Receiver [DE 9] to remove Mercer Asset Management, LLC from the scope of the Receivership, so that the Receiver is no longer authorized to act on behalf of Mercer Asset Management, LLC.

8. Miscellaneous:

(a) This Stipulation constitutes the full and final settlement between the parties concerning the subject matter hereof and supersedes all negotiations and communications, whether written or oral. No modification of this Stipulation shall be deemed effective unless in writing and approved by both parties, and by the Court with the same formality as has been applied to the approval of this Stipulation.

(b) This Stipulation shall be binding upon and shall inure to the benefit of the parties hereto, including their respective agents, heirs, successors, and assigns.

(c) This Stipulation shall be construed according to the laws of the State of Oregon, without regard to conflicts of law principles. The Parties mutually consent to the jurisdiction of

the courts of the State of Florida and further agree that the venue of any action arising out of this Agreement shall be fixed in the State of Florida and within Miami-Dade County

(d) The Parties do not implicitly or expressly confer any benefits on third parties of this Stipulation.

(e) Nothing contained in this Stipulation shall be considered an admission by any party as to any legal position or fact; instead, this Stipulation shall be considered to be a settlement document and as such its admissibility shall be governed by Rule 408 of the Federal Rules of Evidence.

(f) In the negotiation and execution of this Stipulation, each of the parties has had the services of counsel of his choice. In the case of the Receiver, counsel is David B. Rosemberg, Esq. In the case of Fisher, counsel is Jon Polenberg, Esq. Each of the parties acknowledges that he has entered into this Stipulation intending to be bound by it and after full and complete consultation with his attorney.

(g) This Stipulation may be executed in counterparts and each executed counterpart, when read together with all required signatures, shall be considered as an original instrument. A facsimile or scanned copy shall be deemed to have equal stature with an original

9. Notices:

All notices given pursuant to this Stipulation shall be in writing and shall be furnished by email or commercial overnight delivery, and shall be deemed effective on the date notice was given, if by email, and on the day of delivery in the case of commercial overnight delivery.

Notice shall be provided to the following addresses:

If to the Receiver: Broad and Cassel  
21st Floor  
One Biscayne Tower  
2 South Biscayne Boulevard  
Miami, Florida 33131  
Attn: David B. Rosenberg

If to Fisher: Polenberg Cooper PA  
4300 N. University Dr.  
Suite D-204  
Ft. Lauderdale, FL 33351  
Attn: Jon Polenberg

or to such other addresses as shall be furnished in writing by either party to the other.

IN WITNESS WHEREOF, intending to be bound, the parties have signed this

Stipulation on the dates shown below.

Date:

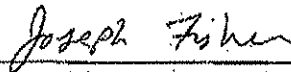
9/24/08



Daniel S. Newman as Receiver for the  
Mercer Entities

Date:

9-24-08



Joseph Fisher, individually and as an authorized  
representative of Mercer Asset Management