

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 UNOPPOSED MOTION TO TERMINATE
RECEIVERSHIP OVER MERCER ASSET MANAGEMENT, LLC**

Daniel S. Newman, in his capacity as court-appointed receiver (the "Receiver") for Defendants 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 (collectively, the "Mercer Entities"), files this unopposed motion to terminate this Court's November 22, 2006 Order [DE 9] expanding the scope of the Order Appointing Receiver ("Receivership Order") to include Mercer Asset Management, LLC. In support of this motion, the Receiver states:

BROAD and CASSEL

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BACKGROUND

1. On November 22, 2006, this Court granted the Receiver's *Ex Parte* Emergency Motion to Expand Scope of Order Appointing Receiver [DE 7] to include Mercer Asset Management, LLC ("MAM") within the scope of the Receivership Order. By virtue of that Order, the Receiver was authorized to take control and possession MAM's operations and assets.

2. As set forth in the Receiver's September 29, 2008 Motion for Approval of Settlement with Joseph Fisher [DE 138], the Receiver completed his investigation of the role of Joseph Fisher in relation to Mercer Capital and MAM. This investigation included the deposition of Mr. Fisher, several debriefings with Mr. Fisher through his counsel, and a review of Mr. Fisher's files and other materials relating to his activities in Mercer Capital and MAM.

3. As a result of this investigation, the Receiver determined that during the period that Mercer Capital was in business from 2004 through 2006, Fisher, as President of MAM, received funds from that entity in excess of \$165,000. The Receiver then determined that of those funds, the return of \$165,000 represented a full and fair settlement of any claims the Receiver could have brought against Fisher arising out of his receipt of Mercer funds. The Receiver and Mr. Fisher subsequently entered into a settlement agreement whereby Mr. Fisher agreed to turn over the sum of \$165,000 to the Receiver. [DE 138]. This Court approved the settlement agreement on October 16, 2008 [DE 140].

MEMORANDUM

4. In accordance with the terms of the settlement agreement, the Receiver seeks to modify this Court's Order [DE 9] to remove MAM from the scope of the Receivership. Paragraph 7 of the settlement agreement provides:

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 the Mercer Asset Management, LLC.

[DE 138, Exhibit A]. To date, Mr. Fisher has complied with the payment terms of the settlement agreement by paying the Receiver \$36,666.70 in settlement monies. The Receiver anticipates that the remaining settlement funds due under the settlement agreement will be paid in accordance with the payment schedule set forth in the agreement.

5. The Receiver is also authorized to state that the SEC does not oppose the relief requested in this Motion.

6. More importantly, at this point, maintaining MAM under the Receivership's control serves no useful purpose other than increasing the cost of administering the Receivership. MAM continues to operate its commodities trading business subject to the regulations of the National Futures Association. Therefore, it is in the best interests of the Receivership and its defrauded investors, to remove MAM from the scope of the Receivership.

WHEREFORE, the Receiver respectfully requests that the Court enter an Order granting his Motion and granting such other relief as this Court deems just and proper.

Respectfully submitted,

BROAD AND CASSEL

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 9, 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

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