

**S.E.C. v. Sunco Resource and Energy, Ltd., Inc.**  
**1990 WL 128232**  
**S.D.Fla.,1990.**  
**July 18, 1990.**

1990 WL 128232 (S.D.Fla.), Fed. Sec. L. Rep. P 95,398  
United States District Court, S.D. Florida.  
SECURITIES AND EXCHANGE COMMISSION  
v.  
SUNCO RESOURCE AND ENERGY, LTD., INC., et al.  
No. 84-0618-CIV-HASTINGS.  
July 18, 1990.

Opinion

ARONOVITZ, District Judge.

**\*1** THIS MATTER having come on to be heard upon the Receiver's Motion To Adopt a Proposal For The Distribution Of Assets dated March 16, 1990, and this Court having issued an Order dated April 18, 1990, scheduling an evidentiary hearing on the Receiver's Motion, and the Court having reviewed the Motion, Memorandum and Interim Report of the Receiver, Robert W. Pearce, and heard and received evidence from the Receiver, including the testimony of the Receiver; Charles Harper, Esq., the Associate Regional Administrator of the Miami Branch Office of the Securities and Exchange Commission and Bradley Himmel, the Manager of the accounting firm KPMG Peat Marwick's Fort Lauderdale office and the Court having been otherwise fully advised in the premises, makes the following FINDINGS OF FACT:

1. The Motion To Distribute Assets as well as this Court's Order Scheduling a Hearing were furnished to the parties on the service list filed with the Court, including, the District Director of the United States Internal Revenue Service, the United States Attorney's office for the Southern District of Florida and the United States Attorney General's office;
2. Beginning in 1982 Sunco Resource and Energy, Ltd., Inc. engaged in the business of purchasing oil and gas leases and selling fractionalized interests in the leases to the general public;
3. Mr. Harper testified that the Securities and Exchange Commission investigation revealed that in selling the fractional interests to investors, Sunco engaged in a fraudulent course of business commonly known as a "Boiler Room";
4. As a result of its investigation, the U.S. Securities & Exchange Commission filed its complaint against Sunco and its principals, Marc G. Zilbert, Thomas J. Thurman and Herschel Saville and this Court entered Final Judgments of Permanent Injunction by Consent against the Defendants enjoining them from further violation of the federal securities laws and ordering disgorgement and the appointment of a Receiver;
5. Robert Wayne Pearce, was appointed as the Receiver for Sunco pursuant to the Final Judgment of Permanent Injunction and other relief dated April 16, 1984;
6. In accordance with his responsibilities pursuant to the Final Judgment of Permanent Injunction, the Receiver took custody and control of all Sunco's assets, which comprised oil leases, equipment, and oil and gas production revenues. At that time Sunco's maximum fractionalized interest in these assets was equivalent to 8/32 of the total value of such leases, equipment, and revenues, the balance being owned by Sunco's investors;
7. The maximum value of Sunco's fractionalized interest in the property delivered to the Receiver in April 1984 was approximately Fifteen Thousand Six Hundred and Twenty Five (\$15,625.00) Dollars;

8. The Receiver has accumulated after payment of administrative expenses, approximately Eighty Seven Thousand (\$87,000.00) Dollars in assets which included those portions of the leases, equipment and revenues allocable to the investors as well as funds recovered from the Disgorgement Orders issued against Sunco's principals;

**\*2** 9. The accounting firm of KPMG Peat Marwick was retained by the Receiver to reconstruct Sunco's books and records for the purpose of preparing and filing with the Internal Revenue Service, Federal Tax Returns that Sunco was obligated but failed to file. For said services the total accounting fees paid by the Receiver, with the Court's approval, on Sunco's behalf amounted to Twenty Eight Thousand Eight Hundred Seventy Five (\$28,875.00) Dollars. This amount exceeded the value of Sunco's present interest, if any, in the funds held by the Receiver;

10. Pursuant to this Court's Order dated April 9, 1986, as amended, August 7, 1986, the Receiver caused the publication, once per month, for a period of three months a notice to all creditors and investors with Sunco, that all claims or demands against said corporation must be made by certified mail, return receipt requested, to the Receiver in writing within three (3) months after the first day of publication. The notice was duly published and forty eight (48) claims were filed by Sunco investors. No other alleged creditor, including, the Internal Revenue Service filed within the prescribed period.

11. According to the last amended tax returns duly filed with the Internal Revenue Service, the outstanding federal tax liability of Sunco was in the approximate amount of Sixty Five Hundred (\$6,500.00) Dollars. The Receiver's accountant, however, testified that this tax liability may be subsequently offset by tax credits and losses which have been sustained by the corporation since the filing of the returns;

12. On the 12th day of May, 1989, the United States Internal Revenue Service filed its Proof of Claim indicating that tax liens were filed against Sunco as of February 12, 1988, almost four years after the Receiver took possession, custody and control of Sunco's property;

13. The Receiver's plan proposes distribution with the following priority:

(1) Expenses of Administration of the Receivership;

(2) Forty Eight (48) investors who have filed Claims of the amount of their investment on a pro rata basis;

(3) Claims of the United States, including the Internal Revenue Service; and

(4) Claims of trade and/or third party creditors.

14. Due to the limited amount of assets held by the Receiver for distribution there will be no distribution whatsoever to the United States, including the Internal Revenue Service, or any trade or third party creditor.

15. Neither the Internal Revenue Service nor any other person noticed on the Service list has responded, answered or objected to the Receiver's proposed plan or provided any response as to why plan should not be approved;

16. The Securities and Exchange Commission does not object to the proposed plan of distribution.

Based upon the foregoing Findings of Fact, it is therefore, ORDERED AND ADJUDGED, that the proposed plan as filed is fair, reasonable, equitable, and submitted in accordance with law.

In entering this Order, the Court has reserved ruling on whether the assets held by the receiver are held in constructive trust for the investors.

**\*3** However, before ordering a distribution of funds in accordance with the Receiver's recommendations,

IT IS FURTHER ORDERED, that the confirmation of the disbursement of funds in accordance with the Receiver's proposal shall be held in abeyance pending the Receiver's written notification by Certified Mail to the United States Attorney's Office

for the Southern District of Florida, The District Director of the Internal Revenue Service and the Attorney General of the United States of the contents of this Order, and that those agencies and Departments of the United States Government be and hereby are Ordered to show cause, in writing, why distribution of the funds held by the Receiver should not be made in an accordance with the Receiver's proposal, which response shall be due within Thirty (30) days of this Order.

In the event no response or an unsatisfactory response be forthcoming, the Court will enter an order confirming the Receiver's proposal forthwith and without further hearing.

DONE AND ORDERED, this 18 day of July, 1990, in chambers at Miami, Florida.

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