

FILED
 U.S. DISTRICT COURT
 2008 MAR -5 P 4: 24
 DISTRICT OF UTAH
 BY: _____
 DEPUTY CLERK

Jerome Romero (USB #5139)
 JONES WALDO HOLBROOK & McDONOUGH PC
 Attorneys for Oak Valley Investments, L.P. and
 Jonathan H. Horne, M.D., as trustee for the
 Jonathan H. Horne, M.D., P.C. Retirement
 Plan Trust Fund
 170 South Main Street, Suite 1500
 Salt Lake City, Utah 84101
 Telephone: (801) 521-3200

IN THE UNITED STATES DISTRICT COURT
 DISTRICT OF UTAH, CENTRAL DIVISION

SECURITIES AND EXCHANGE	:	
COMMISSION,	:	
	:	MEMORANDUM OF POINTS AND
Plaintiff,	:	AUTHORITIES IN SUPPORT OF
vs.	:	MOTION OF OAK VALLEY
	:	INVESTMENTS, L.P. AND
VESCOR CAPITAL CORP., a Nevada	:	JONATHAN H. HORNE, M.D., AS
corporation, VESCOR CAPITAL, INC., a	:	TRUSTEE OF THE JONATHAN H.
Nevada corporation, VESCORP CAPITAL,	:	HORNE, M.D., P.C. RETIREMENT
LLC, a Nevada limited liability company,	:	PLAN TRUST FUND TO INTERVENE
VESCORP CAPITAL IV-A, LLC, a Nevada	:	
limited liability company, VESCORP	:	
CAPITAL IV-M, LLC, a Nevada limited	:	Civil No. 1:08cv00012
liability company, and VAL E. SOUTHWICK,	:	
Defendants.	:	Honorable Dee Benson

Movants Oak Valley Investments, L.P. ("Oak Valley") and Jonathan H. Horne, M.D., as Trustee of the Jonathan H. Horne, M.D., P.C. Retirement Plan Trust Fund ("Horne"), hereby submit this memorandum of points and authorities in support of their motion to intervene and in opposition to the Securities & Exchange Commission's ("Commission") motion for a stay of litigation.

FACTUAL BACKGROUND

1. In September 2006, Oak Valley and Horne filed complaints against Val Southwick and several Vescor entities, consolidated case no. 2:06cv00737. Oak Valley and Horne have secured a judgment against Southwick and the Vescor entities supporting their claims of fraud.

2. On February 26, 2008, the Commission filed a motion for stay of litigation. By that motion, the Commission is asking the Court to impose a stay of all actions against Southwick and the Vescor entities, including specifically the enforcement of Horne and Oak Valley's judgment against Southwick and Vescor entities.

ARGUMENT

I. OAK VALLEY AND HORNE SHOULD BE ALLOWED TO INTERVENE IN THIS MATTER

Pursuant to Rule 24(a)(2) of the Federal Rules of Civil Procedure, intervention in a proceeding is appropriate where: (1) the intervener has an "interest relating to the property or transaction which is the subject of the action," (2) that the "disposition of the action may as a practical matter repair or impede [the] ability to protect that interest, and (3) that the intervener's "interest is [not] adequately represented by the existing parties." Fed. R. Civ. P. 24(a)(2). In asking to intervene, Horne and Oak Valley meet all three requirements.

Oak Valley and Horne have a vested interest in the subject matter of this proceeding. In fact, their actions against Southwick and Vescor were specifically identified in the fact section submitted by the Commission supporting its motion. Recognizing that interveners would be prejudiced by the motion, the Commission provided notice of the Commission's intended action.

The interveners' interest is not adequately represented by any of the existing parties. Most certainly, the interveners' interests are not protected by the defendants. Defendants have no reason to oppose the pending motion. By filing the motion, the Commission is extending Southwick a tremendous favor. Southwick provided the Commission with an extensive list of all litigation claims pending against him and his companies. With that list in hand, with one simple motion, the Commission will free Southwick from having to respond to any of the complaints, any discovery or deposition requests, and ignore any pending hearings. In short, since Southwick and his companies will not be prejudiced by the motion, unlike Horne and Oak Valley.

For the above reasons, the Court should grant the motion to intervene and allow Oak Valley and Horne to voice their objection to the pending motion, which they have set forth below.

II. THE COMMISSION'S REQUEST FOR THE IMPOSITION OF A STAY IS PREMATURE

By its motion, the Commission seeks the imposition of a broad stay for all pending and contemplated litigation against Southwick and Vescor companies for 90 days. The Commission believes that the stay "is necessary to allow the Commission to prepare an accounting, to evaluate Southwick's assets, and to determine whether the appointment of a receiver or other relief is necessary and appropriate." Commission's memorandum at p. 5.

In support of its motion, the Court cited three cases as having precedential value: SEC v. Wencke, 622 F.2d 1363; SEC v. Acorn Tech. Fund, L.P., 429 F.3d 438; SEC v. Merrill Scott & Assocs. Ltd., 2007 WL 26981. The authority cited by the Commission to support its motion is not relevant. In each of the cases cited by the Commission, the stay was imposed in conjunction with the appointment of a receiver that took control of the defendants' assets.

The court in each of the above cases, for all practical purposes, created a judicial bankruptcy proceeding. In a bankruptcy proceeding, the imposition of a broad automatic stay preventing creditors from proceeding to enforce their legal rights is accompanied by the creation of a bankruptcy estate and the appointment of a bankruptcy trustee or, in the case of a Chapter 11, a debtor-in-possession. The stay provides the trustee breathing space to marshal and administer the estate under the supervision of the court. In either circumstance, the appointment of a receiver/trustee is a necessary prerequisite to the imposition of a stay of creditors.

As the motion is presented, the Commission asked the Court for the imposition of a stay without the creation of a receivership estate and the appointment of a receiver. If granted, the order will simply give Southwick 90 more days to dispose of or conceal his assets from the claims of creditors. While the Commission may have reached an accommodation with Southwick, and may even expect him to cooperate in good faith, Oak Valley and Horne, as victims of Southwick's fraud believe strongly that putting any trust in Southwick to honor his commitment is unwarranted and improvident.


It should be noted that by objection to the imposition of a stay, Oak Valley and Horne do not oppose the imposition of a stay, were it to be accompanied by the appointment of a receiver. In fact, Oak Valley and Horne, pursued and secured the appointment of a bankruptcy trustee for Vescor Capital, Inc., case no. 07-22435, hoping the trustee would seek to consolidate all Vescor corporate entities.

CONCLUSION

For the above reasons, Oak Valley Investments, L.P. and Jonathan H. Horne, M.D., as Trustee of the Jonathan H. Horne, M.D., P.C. Retirement Plan Trust Fund respectfully request that the Court permit them to intervene and voice their objection to the Commission's pending motion for the imposition of a stay.

Dated this 5th day of March, 2008.

JONES WALDO HOLBROOK & McDONOUGH PC

By  _____
Jerome Romero
Attorneys for Oak Valley Investments, L.P. and
Jonathan H. Horne, M.D., as Trustee for the Jonathan H.
Horne, M.D., P.C. Retirement Plan Trust Fund

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 5th day of March, 2008, I caused a true and correct copy of the foregoing MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION OF OAK VALLEY INVESTMENTS, L.P. AND JONATHAN H. HORNE, M.D., AS TRUSTEE OF THE JONATHAN H. HORNE, M.D., P.C. RETIREMENT PLAN TRUST FUND TO INTERVENE to be served, by first class mail, postage prepaid, on the following:

Thomas M. Melton
Karen L. Martinez
William B. McKean
Securities & Exchange Commission
15 West South Temple, Suite 1800
Salt Lake City, UT 84101

Rodney Parker
Snow Christensen & Martineau
10 Exchange Place, #1100
Salt Lake City, UT 84111

Charles H. McCrea
Lionel Sawyer & Collins
1700 Bank of America Plaza
300 South Fourth Street
Las Vegas, NV 89101

Todd L. Bice
Schreck Brignone
300 South Fourth Street, Suite 1200
Las Vegas, NV 89101

Kevin M. Sutehall
Hutchison & Steffen, LLC
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145

Mark A. Hutchison
Hutchison & Steffen, LLC
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145

Donald H. Williams
Williams & Wiese
501 South Rancho Drive, Suite D-22
Las Vegas, NV 89106

Jeffrey A. Silvestri
McDonald Carano Wilson, LLP
2300 West Sahara Avenue, Suite 1000
Las Vegas, NV 89102

Kurt K. Harris
Harris Merritt Chapman Ltd.
866 Seven Hills Drive, Suite 201
Henderson, NV 89052

Elizabeth S. Ashley
Ashley Law Group
1880 East Warm Springs Road, Suite 130
Las Vegas, NV 89119

Thomas Grace
Santoro Driggs Walch Kearney Johnson & Thompson
400 South Fourth Street, Third Floor
Las Vegas, NV 89101

Ryan M. Lower
Morris Pickering & Peterson
300 South Fourth Street, Suite 900
Las Vegas, NV 89101

Charles T. Cook
Jolley Urga Wirth Woodbury & Standish
3800 Howard Hughes Parkway, 16th Floor
Las Vegas, NV 89169

Norman A. Ryan
Brian P. Worthington
Ryan M. Venci
Ryan Mercaldo & Worthington, LLP
6130 Elton Avenue
Las Vegas, NV 89107

Mark A. Solomon
Alan D. Freer
Solomon Dwiggins & Freer
7881 West Charleston Blvd., Suite 240
Las Vegas, NV 89117

Brent Larsen
Deaner Deaner Scann Malan & Larsen
720 South Fourth Street, Suite 300
Las Vegas, NV 89101

Noah Allison
Martin & Allison Ltd.
3191 East Warm Springs Road, Building 13
Las Vegas, NV 89120

Gary Goodheart
Jones Vargas
3773 Howard Hughes Parkway, Third Floor South
Las Vegas, NV 89169

Steven T. Cummings
Law Offices of Stephen T. Cummings
110 West Street, Suite 2204
San Diego, CA 92101

Douglas M. Cohen
Adam Bulled
Jones Vargas
3773 Howard Hughes Parkway, 3rd Floor South
Las Vegas, NV 89169

Christine E. Drags
John T. Wendland
Weil & Drags, APC
2500 West Sahara Avenue, Suite 106
Las Vegas, NV 89102

Melissa Harris
Harris Law Office
750 East Warm Springs Road, Suite 320
Box 19
Las Vegas, NV 89119

Michael D. Haight
Colin S. Bringhurst
Hennes & Haight
8972 Spanish Ridge Avenue
Las Vegas, NV 89148

Gary L. Hayes
Hayes & Welsh
199 North Arroyo Grande Blvd, Suite 200
Henderson, NV 89074

Matthew Q. Callister
Callister & Reynolds
823 Las Vegas Boulevard South
Las Vegas, NV 89101

David Liebrader
Law Offices of David Liebrader
601 Rancho Drive, Suite D-29
Las Vegas, NV 89106

Gerry D'Elia
D'Elia & Lehmer
7620 Royal Street East, Suite 202
Park City, UT 84060

Thomas Karrenberg
Anderson & Karrenberg
700 Chase Tower
50 West Broadway
Salt Lake City, UT 84101

Blake S. Atkins
William O. Kimball
Joseph H. Pugsley
Atkins Law Offices
136 South Main Street, Suite 401A
Salt Lake City, UT 84101

Thomas Beckett
Parsons Behle & Latimer
201 South Main Street, Suite 1800
P.O. Box 45898
Salt Lake City, UT 84145

Thomas M. Monson
Miller Monson Peshel Placek & Hoshaw
501 West Broadway, Suite 700
San Diego, CA 92101

Vincent D. Slavers
Eric J. Benink
Krause Kalfayan Benink & Slavers, LLP
625 Broadway, Suite 635
San Diego, CA 92101

Laurel E. Davis
Fennemore Craig, P.C.
300 South Fourth Street, Suite 1400
Las Vegas, NV 89101

Blake D. Miller
James W. Anderson
Miller Guymon, PC
165 South Regent Street
Salt Lake City, UT 84111

Joel T. Marker
McKay Burton & Thurman
170 South Main, Suite 800
Salt Lake City, UT 84101

Kim R. Wilson
Snow Christensen & Martineau
10 Exchange Place, #1100
Salt Lake City, UT 84111

