

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

CASE NO.

06 - 20

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

JOHN P. UTSICK,  
ROBERT YEAGER,  
DONNA YEAGER,  
WORLDWIDE ENTERTAINMENT, INC.,  
THE ENTERTAINMENT GROUP FUND, INC.,  
AMERICAN ENTERPRISES, INC. and  
ENTERTAINMENT FUNDS, INC.,

Defendants.

MAGISTRATE JUDGE  
O'SULLIVAN

CIV - UNGARO - BENAGES

U.S. DISTRICT COURT  
CLARENCE MADDOX  
SOUTHERN DISTRICT OF FLORIDA - MIAMI  
05 APR 14 2006 10:15 AM

**PLAINTIFF'S NOTICE OF FILING CONSENTS OF JOHN P. UTSICK, ROBERT YEAGER, DONNA YEAGER, WORLDWIDE ENTERTAINMENT, INC., THE ENTERTAINMENT GROUP FUND, INC., AMERICAN ENTERPRISES, INC., AND ENTERTAINMENT FUNDS, INC., TO  
JUDGMENT OF PERMANENT INJUNCTION AND OTHER RELIEF**

Plaintiff Securities and Exchange Commission files the signed Consents of Defendants John P. Utsick, Robert Yeager, Donna Yeager, Worldwide Entertainment, Inc., The Entertainment Group Fund, Inc., American Enterprises, Inc., and Entertainment Funds, Inc. each to entry of a Judgment of Permanent Injunction and Other Relief. The sworn, signed consents and the proposed permanent injunctions are attached, and the Commission asks the Court to enter the injunctions forthwith. The Consents and the Injunctions represent a settlement between the Commission and the Defendants.

The Commission notes that an Eleventh Circuit panel recently questioned the enforceability of a similarly worded permanent injunction in *SEC v. Smyth*, 420 F.3d 1225, 1233

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n.14 (11th Cir. 2005). However, the Commission does not believe the footnote in *Smyth* prevents this Court from entering the attached injunctions.<sup>1</sup> First, the propriety of the injunction was not at issue in *Smyth*, rendering the language in question dicta. Second, the *Smyth* dicta appears to conflict with prior Eleventh Circuit decisions holding it is proper under the securities laws for a district court to enter injunctions directly tracking the language of the securities statutes, as the Commission proposes in this case.

For example, in *SEC v. Ginsburg*, 362 F.3d 1292, 1304-05 (11th Cir. 2004), the Eleventh Circuit held the district court had abused its discretion in refusing to permanently enjoin a defendant from future violations of the Securities Exchange Act of 1934, and ordered the district court to enter such an injunction. In *SEC v. Carriba Air, Inc.*, 681 F.2d 1318, 1321 (11th Cir. 1982), the Eleventh Circuit rejected a challenge to a preliminary injunction that tracked the language of Section 17(a) of the Securities Act of 1933, which is the section of the Securities Act at issue here, on the grounds that, *inter alia*, it merely "enjoined a crime." 681 F.2d at 1321.

These pre-*Smyth* decisions directly contradict *Smyth*'s dicta related to whether statute-based injunctions arising in Commission enforcement actions are enforceable. Given the conflict, the rule in the Eleventh Circuit requires courts to follow the precedent of the earlier decision until the full Circuit Court has resolved the issue *en banc*. *Ginsburg*, 362 F.3d at 1298 (noting "[w]here prior panel decisions conflict, we follow the first one released"). Thus, even if the discussion in footnote 14 of *Smyth* is anything other than dicta, it is currently not good law in the Eleventh Circuit.<sup>2</sup>

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<sup>1</sup> In *SEC v. Focus Financial, Associates, Inc., et al.*, 05-21527-CIV-MOORE, the Honorable K. Michael Moore recently issued a similar injunction holding *Smyth* inapplicable. A copy of Judge Moore's order is attached to this Notice.

<sup>2</sup> *Ginsburg* and *Carriba Air* are consistent with (and *Smyth* is contrary to) a Supreme Court and several other circuit court opinions, holding that injunctions tracking statutory language, such as the attached injunction, are not

Finally, the Defendants have consented to entry of the attached injunctions after the Commission made them aware of the *Smyth* opinion, and defendants may waive the specificity requirement of Rule 65(d). *See, e.g., Combs v. Ryan's Coal Co.*, 785 F.2d 970, 979 (11th Cir. 1986). For those reasons, the Commission believes the Court may enter the attached injunctions.

Respectfully submitted,

April 17, 2006



Alise M. Johnson  
Senior Trial Counsel  
Florida Bar No. 0003270  
Direct Dial No.: (305) 982-6322  
E-mail: johnsona@sec.gov

Attorney for Plaintiff  
**SECURITIES AND EXCHANGE COMMISSION**  
801 Brickell Avenue, Suite 1800  
Miami, Florida 33131  
Telephone: (305) 982-6300  
Facsimile: (305) 536-4154

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overly broad and are not prohibited so-called "obey the law" injunctions. *McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 192 (1949) (decree directing respondents to obey provisions of the Fair Labor Standards Act concerning minimum wages, overtime, and record-keeping was proper as "[d]ecrees of that generality are often necessary to prevent further violations where a proclivity for unlawful conduct has been shown"); *Wirtz v. Ocala Gas Co.*, 336 F.2d 236, 240 (5th Cir. 1964)(injunctions under Fair Labor Standards Act may be "sufficiently broad and general to enjoin any practices which would constitute violations" of the Act's provisions); *United States v. Corn*, 836 F.2d 889, 892 (5th Cir. 1988) (rejecting defendant's argument that injunction prohibiting violations of the securities laws was vague order to obey the law and holding that injunction tracking language of the securities laws was sufficiently specific under Federal Rule of Civil Procedure 65(d) to describe prohibited conduct); *SEC v. Manor Nursing Centers*, 458 F.2d 1082, 1103 (2d Cir. 1972) (injunction prohibiting further violations of the securities laws and tracking the exact statutory language of Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934 was proper); *SEC v. Keller Corp.*, 323 F.2d 397, 402-03 (7th Cir. 1963) (district court had discretion to enter preliminary injunction enjoining securities law violations by tracking the language of sections of the Securities Act of 1933); *Hillsborough Inv. Corp. v. SEC*, 276 F.2d 665, 667-68 (1st Cir. 1960) (federal court has broad power to restrain acts of the same type or class as those violations it has found and may enjoin future violations of the securities laws accordingly); *United States v. Miller*, 588 F.2d 1256, 1261 (9th Cir. 1978) (injunction tracking statutory language was sufficiently specific under Rule 65(d) to give defendant notice of prohibited conduct).