

RECEIVED

FEB 10 2011

RICHARD A. VAN WAGONER #4690
SNOW CHRISTENSEN & MARTINEAU
10 Exchange Place, 11th Floor
P.O. Box 45000
Salt Lake City, UT 84145
Tel: (801) 521-9000
Fax: (801) 363-0400

Utah Department of Commerce
Division of Securities

Attorneys for Respondent

**BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

<p>In the Matter of:</p> <p>JOHN D. TAYLOR,</p> <p>Respondent.</p>	<p>RESPONDENT'S RESPONSE TO ORDER TO SHOW CAUSE</p> <p>Docket No. SO-11-0001</p>
--	--

Respondent, by and through his counsel, submits his response to the Show Cause Order issued by the Division of Securities ("Division"). In addition, pursuant to the Division's Notice of Agency Action, Respondent submits his response to the Division's request that Respondent address: (A) Respondent's version of the facts; (B) Respondent's statement of the relief seeks; and, (C) Respondent's statement summarizing why the relief he seeks should be granted.

A. Respondent's Version of the Facts

I, John Taylor ("Respondent"), first met Mike Kesler ("Kesler") in approximately 1988/89 while I was working at Pennzoil in Salt Lake City, Utah. Throughout the next several years, I had occasional contact with Kesler. In 2004 I learned that Kesler's business partner in Indian Oil, Scott McLaughlan ("McLaughlan"), wanted to sell his interest in Indian Oil for approximately \$650,000. Indian Oil was located in Lindon, Utah, was set on 1.3 acres and had several holding tanks and a 10,000 square foot building. Kesler represented to me that he had developed a propriety process to convert used oil into diesel fuel, and he intended to use the Lindon facility for that purpose. According to Kesler the processing equipment was in place but he needed to make some minor repairs, e.g., replace a few pumps and seals, in order to finalize the project. Over the next few months, I met with Kesler several times to learn more about the equipment and his conversion process. Kesler asked me to work with him to help finish reconditioning some of the equipment. I agreed to his request.

Due to my mechanical background, I began working for Indian Oil. In addition, I helped submit SBA loan applications to buy out McLaughlan's interest. The SBA loans did not materialize, but Kesler and others identified people who were willing to loan sufficient funds for Kesler to buy out McLachlan's interest, including his real property and fixtures, and to help finalize the processing equipment. Dan Lowe, a close personal friend of Kesler's who also worked with Indian Oil, introduced Dale Wolfe ("DW") and Steve Peterson ("SP") as potential lenders to the company. DW and SP applied for SBA loans but could not qualify.

As part of their firm, Wasatch Funding, DW and SP obtained funds from several people. They agreed to loan some funds to Indian Oil. On March 16, 2006, Wasatch

Funding wired \$195,638.40 to First American Title to acquire McLachlan's interest in Indian Oil's real property. (**Exhibit 1. See also Exhibit 2, Warranty Deed.**) Also on March 16, 2006, Wasatch Funding remitted a check for \$49,361.60 to Indian Oil for the purchase of equipment to complete and start up the oil conversion facility. (**Exhibit 3.**) Wasatch Funding's initial investment was \$250,000. Indian Oil also agreed to reimburse Wasatch Funding for attorney's fees of \$5,000 to Mark White.

On March 16, 2006, I signed a Promissory Note on behalf of Indian Oil for \$250,000 reflecting Wasatch Funding's initial loan. (**Exhibit 4.**) On August 14, 2006, I signed a second Promissory Note on behalf of Indian Oil for \$20,000 for money received from Wasatch Funding. The \$20,000 was used to purchase a tanker of oil to be used for processing. (**Exhibit 5.**)

Dan Lowe's introduction of SP and DW to Indian Oil was in approximately November 2005. Before they caused Wasatch Funding to loan funds to Indian Oil, Kesler and I met with them on several occasions to explain certain items we needed to complete in order to begin processing oil. One important issue we discussed with DW, SP and several other people who were interested in loaning money to Indian Oil, was the need to obtain the proper permits from the Utah Department of Environmental Quality (DEQ). At that time, Kesler told me and the others that the permits could be obtained in a relatively short time frame.

After I began working with Indian Oil, I learned the DEQ had issued Notices of Violation to Indian Oil during its ownership by Kesler and McLachlan. (**Exhibit 6.**) I agreed to undertake the responsibility to help correct the past violations and to work with the DEQ for Indian Oil to be issued the proper permits. The requirement to obtain the proper permits was an integral part of Indian Oil's business plan. Before Wasatch

Funding loaned money to Indian Oil in March 2006, I personally discussed with DW, SP and several other people who worked with Indian Oil about the prior violations and my plans to help secure permits for going forward. In May 2006, Indian Oil entered into a Stipulation and Consent Order with the DEQ. (**Exhibit 7.**)

Over the next several months several lenders and I began questioning Kesler's commitment, claims and representations. Although I was helping construct and test the processing facilities, we continued to encounter major obstacles. Finally, in the latter part of 2006, the Board of Directors removed Kesler as CEO of Indian Oil. Although many other people and I continued working at Indian Oil to process oil into fuel and other petroleum products, we could not keep the business financially afloat.

We discovered in the end that Kesler had neither the proprietary technology or means nor the technical ability to process oil into fuel, despite his prior representations. On or about May 22, 2007, DW, SP, Mark White (CEO for Indian Oil) and I filed a complaint with the Division of Securities concerning Kesler's misrepresentations. (**Exhibit 8.**) I spoke with Susan Jones (investigator with Division of Securities) on several occasions and provided her with documentation of my association with Kesler and Indian Oil. On or about January 23, 2009, the Utah County Attorney's Office filed ten felony counts against Kesler, including Securities Fraud, Sale of Unregistered Securities and Pattern of Unlawful Activity.

On or about December 2, 2009, the Utah County Attorney's Office was disqualified from prosecuting Kesler because my brother worked for that office and the Utah Attorney General took over Kesler's prosecution. On August 19, 2010, I testified on behalf of the State of Utah at Kesler's Preliminary Hearing. On cross examination, I admitted to defense counsel that I had a glass crushing business in 1996 that was not

successful (see paragraph “b” in the “Cause of Action” herein for a brief explanation on my glass crushing business) and it was at this point that the Division of Securities began investigating me for securities fraud.

On September 29, 2010, Kesler entered into a Plea in Abeyance to two counts of Securities Fraud, second degree felonies. A restitution hearing is scheduled for May 27, 2011.

B. Statement of Relief Sought by Respondent

Respondent would respectfully request that this matter be dismissed. However, without admitting fault, Respondent is willing to enter into an agreement with the Division of Securities that he will not solicit any investment money from individuals for a period of thirty-six (36) months.

C. Respondent’s Statement Summarizing Why the Relief He is Seeking Should be Granted.

The allegations contained in the Division of Securities’ Order to Show Cause do not allege the Respondent made any misrepresentations to individuals who loaned funds to Indian Oil. While working at Indian Oil, Respondent worked with and relied upon attorneys and other professionals to advise him in connection with lenders to Indian Oil and his efforts to obtain the required permits from the DEQ. It is unfortunate that so many individuals lost their money (including my wife and me), but Respondent submits that Kesler is the individual who created this entire scheme to defraud and that Respondent was duped along with all of the other lenders.

STATEMENT OF JURISDICTION

1. Respondent admits the Division’s jurisdiction over securities offered or sold within the State of Utah. Respondent denies the Division’s assertion of jurisdiction over

the \$250,000 promissory note dated March 16, 2006. Wasatch Funding provided \$195,638.40 to purchase real property and fixtures on real property. Of the remaining \$49,361.60, Respondent understands that \$20,000 was paid as a commission for the loan. The balance, \$29,361.60, went to purchase certain equipment for the processing plant and to pay other Indian Oil expenses. Wasatch Funding also paid \$5,000 for attorney fees.

Utah Code Annotated §61-1-14(2)(e) exempts those securities and transactions involving “a transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit.”

The \$20,000 reflected in the promissory note of August 14, 2006, was used to purchase a tanker of crude oil.

STATEMENT OF FACTS

In response to the Division’s fact allegations set forth in the separately numbered paragraphs, Respondent:

2. Admits.

GENERAL ALLEGATIONS

3. The Division filed this Order to Show Cause on January 12, 2011. Respondent submits that according to the dates set forth in the Division’s allegations (November 2005 to December 2005), the statute of limitations has expired and the Division is precluded from taking action against Respondent. Pursuant to U.C.A. §61-1-12(1), “No indictment or information may be returned or civil complaint filed under this chapter more than five years after the alleged violation.” (In the event this is a typographical error, Respondent will address the remaining allegations.)

Admits that he signed a promissory note for \$250,000 on March 16, 2006, and a promissory note on August 14, 2006, for \$20,000.

4. Denies that the transaction for \$250,000 is a security subject to Utah Uniform Securities Act and Utah Code Ann. §61-1-1. (See response set forth in paragraph 1.) In addition, in or about September 2008, investors SP and DW were asked by the Division to fill out an investor questionnaire concerning loans to Mike Kesler and Indian Oil. On page 3 of the questionnaire, both SP and DW stated the loan would be secured by something of value-- "the land and equipment." (**Exhibit 9.**)

5. Denies.

6. Respondent believes SP and DW had solicited the \$270,000 Wasatch Funding loaned to Indian Oil from other individuals and that none of those funds personally belonged to SP and DW.

7. Admits.

8. Admits that when he initially met with SP and DW, Respondent was Vice President of Operations for Indian Oil and Mike Kesler was President of Indian Oil.

9. Admits.

10. Admits that Mike Kesler made the following representations:

a. The equipment was ready to go into production immediately.

b. The required permits to begin production should be issued in the near future

c. The shareholders would become wealthy based on Kesler's proprietary process for converting used oil to bio-diesel.

d. Indian Oil would need approximately \$1,000,000 to complete the purchase of real property and equipment and to begin production.

e. Wasatch Funding would be granted 33% ownership in Indian Oil if it loaned \$1,000,000.

f. Funds coming into Indian Oil would be used to complete the purchase of real property and equipment and to begin production.

11. Denies. After Respondent began working to obtain the required permits from the Utah Department of Environment Quality (DEQ), Respondent hired Mark Ellis, President of Ellis Environmental/Vision Group in 2005 to advise Indian Oil on environmental and permitting issues. Mr. Ellis is a former employee of the Utah Bureau of Air Quality and the Utah Bureau of Water Pollution Control. Mr. Ellis was hired to assist Respondent in acquiring the necessary DEQ permits.

Respondent inquired of the DEQ concerning the anticipated time frame for the permits to issue. The DEQ would not give Respondent a specific date but promised to inform Respondent when it had completed reviewing Indian Oil's application. Respondent asked the DEQ how long it might take to acquire the permits and was told that if everything went right it should take a few months. Respondent copied and reviewed certain DEQ records to attempt to learn how long it took the DEQ to issue permits to other companies. For example, Thermo Fluids applied for a permit on February 17, 2005, and supplied the DEQ with additional information on April 19, 2005, and again on May 3, 2005. Thermo Fluids received its permit on June 1, 2005. Respondent expected a similar time frame for Indian Oil's permits. Respondent passed on this information to all persons involved with Indian Oil, including DW and SP

After Wasatch Funding loaned funds to Indian Oil, Respondent later learned from the DEQ that the DEQ was reluctant to issue permits to any project associated with Mike

Kesler due to Kesler's checkered history with the DEQ. Kesler was ultimately removed as president of Indian Oil.

12. Admits.

13. a. Admits.

b. Admits.

14. Admits that Indian Oil has not made payments on the \$270,000.

CAUSES OF ACTION

COUNT I

Securities Fraud under §61-1-1 of the Act.

15. See responses to paragraphs 1-14 above.

16. Denies that the \$250,000 is a security under the Act. (See paragraph 1.)

17. a. Admits he petitioned for bankruptcy in or about 1986.

Before Wasatch Funding loaned funds to Indian Oil, Respondent provided SP and DW his resumé which outlined his work history. Respondent's bankruptcy is a matter of public record. Respondent did not misrepresent his bankruptcy and did nothing to discourage SP and DW from researching the public record concerning anything having to do with Respondent. Indian Oil also hired a securities attorney who helped the participants navigate all aspects of all transactions. Respondent worked closely with the attorney and relied upon his expertise in working with potential lenders. The attorney never advised Respondent that he needed to reveal his bankruptcy.

Respondent also submits that a failure to reveal a bankruptcy, within context here, is not a material omission for the following reasons: (i) The lenders represented, unequivocally, that they loaned funds to Indian Oil due to Mike Kesler's (mis-) representation that he owned the proprietary information to convert used oil into diesel

fuel and that this conversion process would make all lenders very wealthy. In other words, the lenders loaned money to Indian Oil due to Mike Kesler's representations, and Respondent submits that disclosure of his bankruptcy would not have been a significant factor in their decision to lend; (2) Respondent's failure to disclose his bankruptcy was not necessary to make his other representations to SP and DW not misleading. It is not sufficient to claim that Respondent failed to disclose a bankruptcy but that he should have disclosed his bankruptcy in order to make his other statements to SP and DW not misleading. The Division has failed to indicate what representations or statements Respondent made to SP and DW that would have made Respondent's failure to reveal his bankruptcy not misleading, and; (3) At the time Wasatch Funding loaned Indian Oil \$250,000, Respondent's job title with Indian Oil was Vice President of Operations. Respondent's responsibilities were mainly as a mechanic working on the equipment as directed by Mike Kesler and to assist in the acquisition of the used oil permits.¹ Therefore, even if it were determined that a failure to reveal a bankruptcy constituted a material omission, Respondent respectfully submits that it was not material for Respondent to fail to disclose his bankruptcy due to his subordinate position at Indian Oil in March 2006.

b. Denies that his 1996 business venture was a failure that needed to be disclosed to SP and DW. In the mid 1990's, Respondent successfully invented a glass crushing machine which would crush and grind recycled glass products into circular bits. The crushed glass could be used as a substitute for regular sand at golf course bunkers or

¹ The \$250,000 promissory note dated 16 March 2006 incorrectly indicates Respondent was President of Indian Oil. Respondent believes he became President of Indian Oil in approximately May 2006. However, Respondent admits that the Promissory Notes indicate, albeit incorrectly, that he was President of Indian Oil.

in sand-blasting equipment. The cost to mass produce these machines was substantial. Respondent was unable to secure sufficient funding to produce these machines and eventually abandoned this project. Respondent contends that this project was not a failure—due to the successful manner in which the glass crusher worked. Moreover, the securities attorney who worked with Indian Oil in 2006 was aware of Respondent’s glass crushing business which Respondent had abandoned and did not inform Respondent that he needed to disclose this information.

c. Respondent admits that he petitioned for Chapter 13 bankruptcy in or about 1998. (See Respondent’s explanation in paragraph 17(a).)

d. Respondent admits that he worked with Kesler to purchase McLachlan’s interest in Indian Oil. Respondent also contends that SP and DW were intimately aware of McLachlan’s interest because they participated in the closing in which significant funds, nearly \$200,000, were wired to the title company for the purchase of real property and fixtures from McLachlan. Attached hereto is an email from DW, dated February 2, 2006 and forwarded to Respondent in which the Zions Bank SBA loan officer asked DW to clarify the terms for the purchase of the land and equipment from McLachlan.

(Exhibit 10.)

e. Respondent admits that he knew the DEQ had levied approximately \$11,000 in fines against Indian Oil when Kesler and McLachlan owned it. However, Respondent strongly contends that he informed SP and DW about these fines prior to Wasatch Funding’s loans

f. Respondent admits that in early 2005 the DEQ informed him about contamination issues on Indian Oil’s property. Throughout 2005 and 2006, Respondent worked vigorously attempting to appease the DEQ’s concerns in order obtain the proper

permits, including hiring Mark Ellis. Whereas obtaining the permits was absolutely critical to implementing the conversion process, it is disingenuous and inaccurate for SP and DW to claim they were not informed about the permit issues. (E.g., **Exhibit 11:** Minutes of Indian Oil Board meetings, March through October 2006, wherein the Board discussed oil permits and fines. The Minutes reveal that SP attended the Board meeting in June 2006, and Respondent asserts that SP also attended Board meetings and regular business meetings before March 2006.)

Attached is a May 17, 2006 Opinion letter authored by Mark Ellis, which describes the work he had done with the Indian Oil property and opines concerning the Indian Oil property's environmental condition. Mr. Ellis stated: "In practical terms this site has less contamination than any other of the 103 properties that Ellis Environments has conducted site remediation. If this were a property regulated under the Underground Storage Tank program, it would not be actively remediated; there is too little contamination to justify the expense." (**Exhibit 12**). Mark Ellis has qualified as an Expert Witness in Utah and Arizona courts on 11 projects.

According to the March 2, 2005, report (referenced in Exhibit 12), produced by Mark Ellis after performing soil samples on the Indian Oil property, Mr. Ellis stated that the property had such little contamination, monitoring would be sufficient to address any contamination, and no extensive remediation was needed. Mr. Ellis stated that the DEQ should allow Indian Oil to move forward. DW and SP received the report in or about January 2006 so they could review and use it as part of their SBA loan applications.

On July 25, 2006, SP wrote a check to Mark Ellis for \$15,150. (**Exhibit 13**.) This check was for environmental work and testing that the DEQ approved for the soil remediation. SP also wrote a check to the DEQ on July 25, 2006 for \$950 for the

violation payment referenced in Exhibit 6. (**Exhibit 14.**) Although these checks were written by SP after Wasatch Funding's initial investment, Respondent includes these exhibits to show SP's knowledge close to the time of Wasatch Funding's initial loan, and definitely before the August 14, 2006 loan.

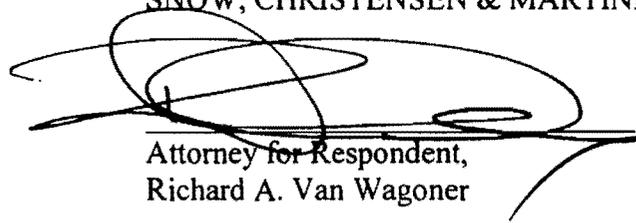
g. Respondent admits he knew about Indian Oil's Notices of Violation in or about November 2005. Once again, Respondent vigorously contends that he met with SP and DW on several occasions prior to Wasatch Funding's March 16, 2006 loan, and he fully disclosed to them the DEQ violations and that he would be working with DEQ to obtain the proper permits.

h. Respondent admits that Kesler initially informed lenders that the DEQ permits should issue in the near future. Respondent contends that he had no basis to believe that Kesler's statement was false when he made it. As stated above, Respondent retained a highly-qualified consultant to prepare and submit the appropriate documents to the DEQ in order to obtain the proper permits. Even after the consultant submitted a 209-page report, along with the documents requested by the DEQ, however, the DEQ still refused to issue the permits. (See also paragraph 11, above.)

Respondent reiterates that Indian Oil's downfall was due to Mike Kesler's false representation that he had invented a viable, proprietary process which could convert used oil into diesel fuel. Respondent borrowed \$65,000 from his sister and invested those funds into Indian Oil; based upon his belief and trust in Kesler, he also committed a tremendous amount of time and resources into the Kesler's "vision" only later to discover that Mr. Kesler's claims were false.

Dated this 10 day of February, 2011.

SNOW, CHRISTENSEN & MARTINEAU



Attorney for Respondent,
Richard A. Van Wagoner

CERTIFICATE OF MAILING

I certify that on the 10 day of February, 2011, a true and correct copy of the foregoing was served on the following *via* hand delivery:

Administrative Court Clerk
c/o Julie Price
Utah Division of Securities
160 E. 300 South, 2nd Floor
Post Office Box 146760
Salt Lake City, Utah 84114-6760

Jeffrey S. Buckner
Assistant Attorney General
160 East 300 South, 5th Floor
Salt Lake City, Utah 84114-0872

A handwritten signature in cursive script, reading "Heather L. Jones", is written over a horizontal line.

025342-0001 1655777.1