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A. Jacobson and Allen R. Jacobson*

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

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

MANAGEMENT SOLUTIONS, INC., a
Texas Corporation; WENDELL A.
JACOBSON; ALLEN R. JACOBSON,

Defendants.

**RECEIVER'S MOTION TO APPROVE
SECOND DISTRIBUTION**

Civil Action No. 2:11-cv-01165

Judge Bruce S. Jenkins

Gil A. Miller as receiver for Defendants Management Solutions, Inc., Wendell A. Jacobson, Allen R. Jacobson, and others (the "Receiver"), by and through counsel, hereby moves the Court for an order approving the Receiver's proposed second distribution to the Claimants¹ in this case (the "Second Distribution").

¹ Unless otherwise defined herein, capitalized terms are defined in the Plan of Distribution attached as Exhibit A to the Court's Order at CM/ECF No. 2460.

I. The Proposed Second Distribution

The Receiver is ready and able to make an additional distribution on Approved Claims in this case. The Claims Analysis Report previously filed by the Receiver (CM/ECF No. 2522) is approved and binding on all Claims/Claimants except for those 17 Claimants that filed an objection to the Motion to Approve Claims Analysis Report . Since the objections were filed, as discussed below, disputes with three of the 17 objecting Claimants have been resolved. The approved Plan of Distribution expressly states that, if a Claimant does not object to the treatment of their own Claim or the treatment of other Claims in the Claims Analysis Report by the deadline, which was May 28, 2015, the “Claims Analysis Report shall be final and binding as to that particular Claim.” (Article V, Section 5.) Therefore, the Claims Analysis Report is now binding as to the remaining Claimants, who have no objections to the treatment of their Claims, and are anxious to receive additional distributions.

Based on the Claims Analysis Report, the Receiver requests that the Court authorize him to make a Second Distribution to Classes 4 and 5 in the following total amounts:

Class 4 – Trade Creditor Claims	\$ 70,000.00
Class 5 – Investor Claims	\$5,000,000.00
<u>TOTAL</u>	\$5,070,000.00

Attached hereto as **Exhibit A** is a schedule that shows the amounts paid to all classes thus far, as well as the amounts proposed to be paid to Classes 4 and 5 with this proposed Second Distribution. For Investors that will participate in this Second Distribution, it will result in a Percentage Return of 83.25% of their Adjusted Investor Claim under the rising tide, considering amounts they received from MSI after December 31, 2008 and prior to the appointment of the

Receiver, plus the amounts distributed with the First Distribution and the amounts proposed to be distributed with the Second Distribution. As with the First Distribution, checks will be made out to the individual or entity listed in the "Claimant Name" column of Exhibit A, unless the Claimant Name has been amended.

II. Resolved Claim Disputes and Adjusted Claim Amounts

Several claims and objections have been resolved or compromised.

Laney Jacobson has withdrawn her objection to the Claims Analysis Report (CM/ECF No. 2737). Therefore, her Unpaid Claim amount will be allowed at the amount originally set forth in the Claims Analysis Report, which was \$1,650.00. The Receiver had reserved \$234,059.00 pending the outcome of the dispute with Laney Jacobson, but given the withdrawal of her objection, these funds will no longer need to be reserved.

Jason W. and Casey J Coutts withdrew their claim altogether in this case (CM/ECF No. 2738). The Receiver had reserved \$740,652.00 pending the outcome of the dispute with the Coutts, which amount will no longer need to be reserved.

The Claims Analysis Report originally listed Bement and Company as a Trade Creditor in Class 4 (having submitted a claim in the amount of \$177,412.01), but it listed no proposed claim amount, indicating the claim was "Disputed and Reserved." The Receiver has reached a compromise with Bement and Company, subject to Court approval of this Motion, to pay an allowed claim of \$70,000.00 total as shown on Exhibit A at page 5. The compromised amount is also subject to Bement and Company withdrawing its Objection to the Motion to Approve Claims Analysis Report (CM/ECF No. 2556) and stipulating to this Motion. The Receiver had reserved the full \$177,412.01 for Bement and Company's claim pending the outcome of the

dispute regarding its claim. This amount will no longer need to be reserved, although the \$70,000 claim will need to be paid.

The Receiver met with Kim Anderson, who provided the Receiver with additional information regarding his Claim. In the Claims Analysis Report, the Receiver had originally deducted \$117,000.00 from Mr. Anderson's claim because he had received that amount from MSI. After evaluating information provided by Mr. Anderson, the Receiver is persuaded that such amounts were received as fair compensation for work performed by Mr. Anderson and should not be used to offset the amounts of Mr. Anderson's investment. Therefore, as shown on page 14 of Exhibit A, Mr. Anderson's claim has been adjusted accordingly.

Likewise, with respect to Dustin Barrett's claim, the Receiver originally deducted what appeared to be a loan in the amount of \$2,900 to Dustin Barrett that was never repaid. Mr. Barrett was able to provide, to the Receiver's satisfaction, information that showed he never in fact received the money, notwithstanding that it was booked as a loan to him. Therefore, as shown on page 14 of Exhibit A, Mr. Barrett's claim has been adjusted accordingly.

The Receiver had negotiations with Bradley Jacobson over his claim as well. Originally, the Receiver had deducted from Bradley's Claim \$50,000 that he received in two \$25,000 payments as fees for work he performed for MSI. Bradley claims that these fee amounts were fair compensation for work he performed and were unrelated to his investment amounts for his claim. He filed an objection to the Motion to Approve the Claims Analysis Report (CM/ECF No. 2566). After negotiations, he and the Receiver agreed, subject to Court approval, to a compromise whereby the Receiver would allow one of the \$25,000.00 fee amounts. In other words, the Receiver agreed to only deduct from Bradley's claim amount a total of \$25,000.00.

Bradley agreed to this, and based on this agreement, he withdrew his objection to the Motion to Approve Claims Analysis Report (CM/ECF No. 2583). Bradley Jacobson's new total claim amount and proposed distribution is shown on page 14 of Exhibit A.

Bille and Dwayne Benson submitted two late claims to the Receiver. The Bensons have recently moved and did not get notice of the claim form. Additionally, Mr. Benson has been ill and had multiple surgeries. In the Receiver's view, the Bensons provided adequate explanation for submitting the late claims. The Receiver, in his discretion provided for in the Plan of Distribution (*see* CM/ECF No. 2460, Ex. A at 2), determined to accept and not object to the Bensons' late filed claims. They are shown on page 14 of Exhibit A.

III. Proposed Reserve Amounts

The Receiver currently has a cash balance of approximately \$35 million. The Receiver estimates that assets remaining to be liquidated are valued at approximately \$10.4 million.

There remain a number of disputes with various parties, including alleged insiders, as to whether they should be permitted to participate in distributions and, if so, at what amounts. The Receiver previously reserved excessive funds for such disputes, reserving 100% of the amount to which the objecting parties claimed they were entitled.² The Receiver hereby seeks to reduce the amount held in reserve pending the resolution of such disputes. Not only does 100% reserve amount presume that the objecting parties may recover all of the amounts they seek, it also treats them more favorably than all of the other Investor Claimants in this case, who after the Second

² With respect to the Claim of Black Cliffs Investment, LLC, MJ5 Investments, LLC, Matthew Nielson, and Jill Nielson (collectively, "Nielson"), the Receiver previously agreed to reserve the entire value of the Providence Estates property pending the outcome of the dispute. However, Nielson only claims to own less than 50% of Providence Estates, and therefore, the previous reserve amount is far too high, and much greater than 100% of the Nielson claim. On page 18 of Exhibit A, the Receiver proposes to reserve 48.5% of the value of Providence Estates for the Nielson dispute.

Distribution will have only received 83.25% Percentage Return with no guaranties that they will receive 100%. Even if the objecting parties prevail, to the extent they are considered Class 5 Investors, they cannot argue that they would be entitled to a greater Percentage Return than other Class 5 Claimants. Therefore, the Receiver requests that the Court approve a reduction of the reserve amount for each of the objecting parties to 83.25% of their claims³, as opposed to 100%, to put them on equal footing with the other Claimants in this case. The total proposed reserve amount is \$26,965,602.12, and the proposed adjusted reserve amounts for each of the remaining objecting parties is shown on page 18 of Exhibit A. Of course, if the Receiver proposes an additional distribution prior to the resolution of the disputes with the objecting parties, he may have to correspondingly increase the amounts of the reserves.

IV. Conclusion

For the foregoing reasons, the Receiver requests that the Court approve the proposed Second Distribution, as well as the proposed reserve amounts for pending disputes.

DATED this 11th day of August, 2015.

HOLLAND & HART LLP

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³ The only exceptions are the Nielsons' Claim and Fannie Mae's Claim, for which the Receiver maintains 100% reserve for the disputes regarding their respective Claims. If these parties prevail, there is a possibility that they will receive 100% of their claim amounts even if Investors only receive 83.25% Percentage Return. Still, as stated above, the Receiver should be permitted to limit the reserve for Nielsons' Claim to 48.5% of the value of Providence Estates.

INDEX OF EXHIBIT

A - Schedule.

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