

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

JOHN WAYNE ZIDAR, et al.,

Defendants.

No. C00-823C

**ORDER GRANTING
RECEIVER'S MOTION FOR
APPROVAL OF SUPPLEMENTAL
DISTRIBUTION AND PETITION
FOR FEES**

This matter came before the Court on the Receiver's October 19, 2009 Eighth Supplemental Report Regarding Asset Recovery Efforts, Motion for Approval of Supplemental Distribution and Petition for Fees. (Dkt. No. 543.)

The Receiver submitted an attachment with his motion identified as the "Supplemental Distribution Plan." The Supplemental Distribution Plan lists each investor claimant and identifies his or her "Verified Amount" and his or her "Pro Rata Ratio."

As of the date of the motion, the Receiver reported that the assets managed and controlled by his office ("Receivership Assets") totaled \$709,383.86. He also reported that the verified losses ("Verified Amount") for all claimants totaled \$61,568,823.93. The Receiver calculated a "Pro Rata Ratio" by dividing the Receivership Assets by the total Verified Amount. However,

1 the Pro Rata Ratio was calculated after the Receiver made two adjustments to the Receivership
2 Assets. The Receiver reduced the Receivership Assets as follows: (1) \$20,000.00 for future fees
3 and costs, and (2) \$87,368.49 for past fees and costs. Accounting for these adjustments, the new
4 pro rata ratio is \$602,015.37 (assets) divided by \$61,568,823.93 (verified amount), or .97
5 percent. Accordingly, the Receiver recommends that each investor receive a Pro Rata Ratio of
6 .97 percent of his or her Verified Amount.
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8 The Court has considered the Receiver's motion, and the pleadings and declarations on
9 file in this action.

10 Based on the pleadings, declarations and records on file, the Court orders as follows:

11 IT IS ORDERED that the Court approves the Receiver's October 19, 2009 Supplemental
12 Distribution Plan and directs the Receiver to make distributions to each claimant based on the
13 Pro Rata Ratio recommended in the Supplemental Distribution Plan.
14

15 IT IS FURTHER ORDERED that that the Court approves the Receiver's Pro Rata Ratio
16 calculation and the fact that it was calculated after the Receiver deducted the following items
17 from the Receivership Assets: (1) \$20,000.00 for future fees and costs, and (2) \$87,368.49 for
18 past fees and costs.
19

20 IT IS FURTHER ORDERED that that the Receiver shall be paid (1) \$20,000.00 for
21 future fees and costs, and (2) \$87,368.49 for past fees and costs upon the filing of this order with
22 the court clerk.
23

24 IT IS FURTHER ORDERED that, accounting for adjustments, the Pro Rata Ratio
25 distribution is .97 percent of investment loss, or \$602,015.37 (Receivership Assets) divided by
26 \$61,568,823.93 (total Verified Amount of loss).
27

28 IT IS FURTHER ORDERED that given the comment and review period in 2004 and

1 2005, there is no need to allow for a notice and/or objection period prior to administering the
2 final and supplemental monetary distribution.

3 IT IS FURTHER ORDERED that Richard Green, Orest Basil Iwaschuk and Benjamin
4 Sher shall not be included in the supplemental distribution due to their failure to respond to the
5 initial April 15, 2005 monetary distribution and subsequent communication from the Receiver.
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7 IT IS FURTHER ORDERED that the Supplemental Distribution Plan shall be the final
8 determination of approved investor claims in this matter.

9 IT IS FURTHER ORDERED that the Receiver shall make distributions pursuant to the
10 Supplemental Distribution Plan by mailing the disbursement checks via U.S. Mail within twenty
11 (20) days of the Fed. R. App. P. 4(a)(1)(B) deadline for filing a notice of appeal.
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13 IT IS FURTHER ORDERED that the Receiver shall distribute the pro rata equivalent of
14 Mr. Roland Baldwin's \$65,994.00 investment in Rosewood to the 64 investors who invested in
15 the Higher Education Student Assistance Foundation. The 64 investors shall receive a
16 percentage distribution equivalent to their percentage of the \$65,994.00 investment.
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18 IT IS FURTHER ORDERED that the Supplemental Distribution Plan shall incorporate
19 the rulings in all court orders related to the initial April 15, 2005 monetary distribution, including
20 orders entered both before and after the April 15, 2005 distribution.

21 IT IS FURTHER ORDERED that the Receiver shall administer the supplemental and
22 final monetary distribution within twenty (20) days after the Fed. R. App. P. 4(a)(1)(B) deadline
23 for filing a notice of appeal, but not before the Fed. R. App. P. 4(a)(1)(B) deadline has passed.
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25 IT IS FURTHER ORDERED that, consistent with the 2005 distribution, the Receiver
26 shall forward the entire amounts owed attorney David Smith's clients directly to David Smith by
27 wire transfer within twenty days (20) after the Fed. R. App. P. 4(a)(1)(B) deadline, but not before
28

1 the Fed. R. App. P. 4(a)(1)(B) deadline. Attorney David Smith shall forward the disbursements
2 to each of his clients identified in Exhibit E attached to Declaration of Michael D. McKay in
3 Support of Motion for Approval of Supplemental Distribution at ¶6.

4 IT IS FURTHER ORDERED that the Receivership shall wind down once the Receiver
5 distributes the assets pursuant to the Supplemental Distribution Plan and confirms that each
6 investor has been paid pursuant to the plan. The Receiver shall file a notice with the Court that
7 confirms that all funds have been distributed pursuant to the Supplemental Distribution Plan.
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9 Receiver's Motion is GRANTED. (Dkt. No. 543.)

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11 DATED this 12th day of November, 2009.
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17 John C. Coughenour
18 UNITED STATES DISTRICT JUDGE
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