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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

**RECEIVER’S RESPONSE TO
NOVEMBER 2, 2004 ORDER TO
SHOW CAUSE ON NECESSITY
OF IN-COURT HEARING
REGARDING OBJECTIONS TO
DISTRIBUTION PLAN AND THE
RECEIVER’S RESPONSES
THERE TO**

COMES NOW the court-appointed Receiver, Michael D. McKay, who responds to the Court’s November 2, 2004 Minute Order directing parties to show cause why an in-court hearing is necessary regarding the proposed distribution and objections. An in-court hearing is unnecessary. The Receiver believes that the Court can resolve all outstanding matters without a hearing by analyzing each objection and the Receiver’s October 27, 2004 Response to Objections to Proposed Distribution Plan and Recommendation on Petitions for Participation in Distribution Plan (“Response”).

Throughout the Receivership, our office has attempted to provide the Court recommendations based on equitable principles supported by caselaw. We have asked that each

1 investor-claimant provide the documentation necessary to confirm an investment in one of the
2 defendants' investment schemes. And when documentation could not be provided, we attempted
3 to confirm an investor's claim through the defendants' financial records. We explained our
4 analysis as thoroughly as possible, and we are confident that the Court can make a final
5 determination based on the information provided within the Receiver's April 27, 2004 Proposed
6 Distribution Plan, the investor objections, and our Response.

8 As noted in its July 23, 2004 order, the Court shall approve the Receiver's Distribution
9 Report¹ for each investor who did not object to the distribution proposal. Once the Court
10 considers the objections and our responses, we will amend the Distribution Report's Verified
11 Amounts² based on the Court's conclusions and rulings.

13 At that time, we will recalculate the pro rata ratio based on the Court-approved and
14 recommended Verified Amount changes. We will also recalculate the pro rata ratio if the Court
15 orders our office to add the names of new investors who recently petitioned the Court for
16 participation in the distribution plan. Of course, we provided recommended Verified Amounts
17 regarding these new applicants in our Response.

19 The Court's September 16, 2004 order directed our office to provide recommendations as
20 to whether the new claimants provided a good faith reason for not responding to the Receiver's
21 December 6, 2002 query in a timely manner. We attempted to do so in our Response. However,
22 it is noteworthy that many new applicants failed to explain why he or she filed a late claim. And,
23 in those situations, it was impossible to determine whether an applicant acted in "good faith." As
24 a result, we defer to the Court's discretion based on its review of the petitions and our respective
25

27 ¹ The Distribution Report was published on the Receiver's website on August 2, 2004, pursuant to Court order. The
28 Distribution Report lists each investor claimant and the Receiver's recommended Verified Amount.

² As noted in our April 26, 2004 Petition for Approval of Proposed Distribution Plan, the Verified Amount is
defined as the total amount invested less investment funds returned and commission payments.

1 responses.

2 Again, we are confident that all parties have thoroughly and thoughtfully addressed the
3 pending issues, and we believe the Court has the information necessary to make informed,
4 equitable decisions without an in-court hearing.

5 Finally, the Receiver will soon file a motion and memorandum seeking the Court's
6 clarification and direction on a few outstanding matters, including the handling of funds frozen at
7 ANZ Bank New York. However, none of the issues relate to or affect the determination of
8 whether to adjust an individual's Verified Amount or add new claimant's to the distribution. Our
9 motion should not delay the Court's consideration of the pending matters.
10

11 Respectfully submitted this 10th day of November, 2004.

12
13 **McKAY CHADWELL, PLLC**

14 By: s/ Michael D. McKay

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