**UNITED STATES DISTRICT COURT**
**NORTHERN DISTRICT OF GEORGIA**
**ATLANTA DIVISION**

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| SECURITIES AND EXCHANGE COMMISSION, | ) | |
| Plaintiff, | ) | CIVIL ACTION FILE NO. 1:13-CV-01817-WSD |
| v. | ) | |
| DETROIT MEMORIAL PARTNERS, LLC and MARK MORROW, | ) | |
| Defendants. | ) | |

**RECEIVER'S MOTION TO APPROVE PLAN OF DISTRIBUTION, AND BRIEF IN SUPPORT**

Jason S. Alloy, the Court-appointed Receiver for Defendant Detroit Memorial Partners, LLC ("DMP"), asks the Court for permission to distribute receivership assets to approved claimants pursuant to the below-described plan of distribution (the "Plan"), and for the Plan to govern any subsequent distributions.[1] The Receiver asks the Court to set a date for a hearing on this matter and a deadline for filing of objections to this plan.

[1] The Securities and Exchange Commission represented to the Receiver that it does not object to this Motion or the Plan, subject to its right to evaluate and opine on any specific objections that may be submitted by claimants.

## I. BRIEF OVERVIEW OF THE DMP INVESTMENT SCHEME

Based upon the pleadings filed in this case, the Receiver's investigation of the activities of DMP, the Receiver's accounting filed February 14, 2014, and the deposition of Defendant Mark Morrow ("Morrow") taken in this case, the Receiver has determined that investors were defrauded in an amount totaling approximately $20,000,000.00 – roughly the total amount of all claims submitted to the Receiver by former DMP investors.

In 2007, Morrow pursued a bid to purchase 28 cemeteries in Michigan that were in receivership in a Michigan state court. In September 2007, Morrow formed DMP to facilitate the purchase of the cemeteries. During the period in which Morrow was executing his fraudulent investment scheme, he had complete operational control over DMP.

Morrow needed to raise money to purchase the cemeteries. He formed a company called Midwest Memorial Group, LLC ("MMG") with William Belzberg, a businessman from Beverly Hills, California, with the intention that MMG would be the actual purchaser of the cemeteries. Belzberg's company, Westminster Memorial Group ("WMG"), owned 51% of MMG, and DMP owned the other 49%. Through WMG, Belzberg invested approximately $22,000,000.00 in the acquisition of the cemeteries.

In addition to the $22,000,000.00 investment from WMG, Morrow needed approximately $10,000,000.00 to fund DMP's share of the MMG purchase of the cemeteries. To raise this money, Morrow sought the assistance of Angelo Alleca of Summit Wealth Management, an investment advisory firm headquartered in Atlanta, Georgia. Debt was issued by DMP in the form of "notes" sold in $50,000.00 increments. From October to December 2007, $9.5 million worth of debt was sold to approximately 99 people, evidenced by "Subscription Agreements."

A DMP private placement memorandum was circulated to investors in connection with the 2007 note offering that contained numerous misrepresentations, including that the notes were secured by "real property and equity interest in 28 Michigan cemeteries." In fact the notes were unsecured and DMP had no assets with which to secure the notes. In effect, the notes were presented as if they were being issued by MMG, the owner/manager of the cemeteries, instead of DMP, the 49% owner of MMG with no assets other than its interest in MMG.

In late 2007 or early 2008, certain proceeds of the note sales were transferred to an equities trading account. More than $5 million was lost in risky, short-term equity trading in early January 2008. To make up the losses, more

promissory notes were sold between January 23, 2008 and September 16, 2009, which totaled approximately $8,200,000. Potential investors were again presented with the fraudulent private placement memorandum.

Using the funds from investors who had purchased the DMP notes (the "Debt Holders"), DMP funded its share of MMG's purchase of the 28 Michigan cemeteries in the summer of 2008.

Subsequently, in 2012, DMP issued another round of debt to approximately 16 investors shortly before many of the initial notes were due to mature. DMP issued a two-page "Fact Sheet" in connection with the 2012 debt offering, which stated that the funds would be used to retire DMP's debt. The Fact Sheet again stated that DMP owned the 28 cemeteries, among other material misstatements and omissions. The proceeds of the 2012 offering were used to redeem the notes of some of the prior Debt Holders.

Following the 2012 offering, Morrow brought in five purported equity investors to DMP who invested approximately $4,500,000 in DMP. The members thought they were getting an equity of interest of 61% in DMP. Morrow misrepresented to them that DMP had no debt, and Morrow told the investors that he had personally borrowed the money to fund his "capital contribution" to DMP, listed in the company records as $5.8 million. Morrow had in fact used the

proceeds from the note offering to fund his equity interest, but he concealed this fact from the members.

## II. THE RECEIVER'S WORK

As detailed in the Receiver's Quarterly Status Reports and Applications for Compensation and Reimbursement of Expenses, the major events in the course of the Receivership have been as follows:

**A. Receipt of $7M Settlement Payment for Smith Barney Settlement**: On January 6, 2014, the Receiver obtained DMP's distributive share of a settlement between MMG and Smith Barney in the lawsuit MMG v. Singer et al., No. 10-000025-CR (Ingham County Mich. Cir. Ct.), totaling $7,776,363.00 (the "Settlement Funds").

**B. Discovery.** Soon after his appointment, the Receiver reviewed all documents obtained by the SEC and the DMP members and served subpoenas on the following persons and entities:

- American Express
- Bank of America
- PNC Bank
- RBC Capital Markets
- Goldman Sachs Group, Inc.

- Goldman Sachs Execution & Clearing, L.P.
- US Bancorp
- JP Morgan Chase & Co.
- Landmark Investment Group
- Landmark Capital Management, Inc.
- LCM Landmark Series Trust

In addition to sending the subpoenas, the Receiver requested and shared information with Summit Wealth Management Receiver Robert Terry, and TD Ameritrade, among others. This process enabled the Receiver to acquire to obtain the information needed to complete his accounting pursuant to the Court's Order Appointing Receiver, see Doc. 51 at ¶ 9, and ultimately to complete this Recommendation to the Court.

**C. Receiver's Accounting:** Using the information obtained in discovery, on February 21, 2014 the Receiver filed an accounting of all the Receivership Property, with complete documentation, plus a record of all of DMP's transactions to date. [Doc. 73.]

**D. Claims Proceeding.** In August 2014, the Receiver set the bar date for the submission of claims for Friday, November 14, 2014 and sent claim forms to

all known DMP investors and potential claimants. To date, the Receiver has received claim forms from 185 potential claimants.

**E. Retention of ACMC to sell the 49% Interest:** The primary reason why the Receiver could not close the receivership after the claim form submissions was the fact that DMP's largest asset, its 49% interest in Midwest Memorial Group, was illiquid, and distribution of fractional shares of that interest to 180+ claimants was not a practical solution. This was particularly true given the fact that MMG needed periodic capital calls to fund its operations,[2] and a diffuse set of interest holders would have difficulty organizing well enough to fund a capital call initiated by WMG, resulting in dilution of the value of their shares. The Receiver determined that it was in the best interest of DMP to attempt to sell the 49% interest for cash and to distribute cash to the claimants. On August 21, 2014, the Receiver retained American Cemetery/Mortuary Consultants ("ACMC") to assist with the marketing and sale of DMP's 49% interest in MMG. ACMC was ultimately successful in brokering the sale of the 49% interest to Park Lawn Corporation ("Park Lawn") in March 2016.

[2] The Receiver funded $1,852,000.00 in MMG capital calls from July 2014 to February 2016 to keep the business running. [See Docs. 92, 93, 101, 108, 113, 114, 123, and 124.]

**F. Involvement with the Management of MMG and Payment of Capital Calls.** MMG officers and board members David and Aaron Shipper resigned from MMG in May 2014. The Receiver then appointed a new group of MMG board members (DMP had the right to nominate 3 of the 7 seats on MMG's Board of Managers) and took an active role in the oversight of MMG (including attending three meetings and multiple phone calls with MMG management), with an eye to positioning DMP's 49% interest in MMG for sale. The Receiver, working in conjunction with WMG and its broker ACMC, was ultimately successful in attracting a buyer for 100% of the interests in MMG.

**G. Sale of DMP's 49% Interest in MMG.** In March 2016, both DMP and WMG sold their respective interests in MMG to Park Lawn for a base purchase price of $16,000,000, less certain post-closing deductions. Under the terms of the sale, DMP received 49% of the total proceeds, and to date the Receiver has received $7,919,425.00. In addition to the base purchase price, the sale to Park Lawn included an "earn-out" provision (the "Earn-Out") whereby DMP is entitled to receive additional cash consideration if MMG meets certain earnings benchmarks (defined in the Agreement) in the years 2016, 2017, and 2018. Under the terms of the Earn-Out, DMP may elect to receive not less than 10% but up to 100% of its share of the Earn-Out for the 2016 calendar year. DMP

may elect to receive not less than 33% but up to 100% of its share of the Earn-Out for the 2017 calendar year. For the 2018 year, DMP will receive the remaining percentage of its share of the Earn-Out. Ultimately, while DMP has a minimum percentage of the Earn-Out that it must elect to receive for years 2016 and 2017, DMP could opt to accelerate the Earn-Out in either of those years.

**H. Adjustment Proceeding.** As part of the sale to Park Lawn, WMG and DMP agreed to retain the liability of MMG to its former Chief Executive Officer Jim Price and Chief Operating Officer Doug Miller for money contractually due to Mr. Price and Mr. Miller from the sale of MMG. DMP and WMG were parties to a contractually-based adjustment proceeding (the "Adjustment Proceeding") to determine the amount of compensation owed to Mr. Price and Mr. Miller. Mr. Price and Mr. Miller's respective employment contracts incentivized them to increase the value of the company, and rewarded them by giving them a share of any increase in value upon the sale or change of control of MMG. The parties disagreed on how that increase in value was to be measured. The issue was decided in part in the Adjustment Proceeding.

The amount that Mr. Price and Mr. Miller are entitled to receive from DMP is 4.9% of the difference between the "sale price" of MMG and "base value" of MMG. In short, the sale price is the price for which MMG was sold ($16 million)

minus certain expenses. The amount of those expenses will hopefully be agreed upon by the parties shortly. The "base value" was determined to be $12 million in the Adjustment Proceeding. While we will not know DMP's exact liability to Mr. Price and Mr. Miller until the expenses are determined, DMP's maximum *possible* liability to Mr. Price and Mr. Miller, collectively, is $196,000. Once a final amount is determined, it will be paid out of receivership funds.

## III. ASSETS AVAILABLE FOR DISTRIBUTION

Following the close of the sale of the 49% Interest to Park Lawn, DMP's assets are entirely in cash in the DMP Receivership Account. As of this date, the receivership funds total $13,204,247.43. The Receiver recommends holding back a reserve of approximately 3% of the total, or $396,127.42 (the "Holdback"), leaving $12,808,120.01 to distribute.

The Receiver requests the Holdback to pay DMP's liability from the Adjustment Proceeding, plus any professional fees, taxes, or other amounts due now and in the future, which would include time incurred in hearing investors' objections to this Plan of Distribution. This would also include time spent (expected to be minimal) during the Earn-Out period. At the close of the Receivership, the Receiver will distribute to the claimants any Holdback amounts left along with any funds received under the Earn-Out.

## IV. RELATED LITIGATION

There is currently a case pending before the United States Court of Appeals for the Eleventh Circuit styled Curry et al. v. TD Ameritrade, Inc. et al., No. 16-12041, which was originally filed in the U.S. District Court for the Northern District of Georgia against TD Ameritrade by a prospective class of Summit Wealth Management and DMP investors who alleged that TD Ameritrade facilitated Morrow and Alleca's Ponzi scheme in its role as the custodian of the investors' accounts. The defendants in the case (TD Ameritrade and two of its affiliated entities) filed a successful motion to dismiss that was granted by U.S. District Judge Leigh Martin May on March 18, 2016, and that decision has been appealed to the Eleventh Circuit.

In order to ensure that there is no double-recovery by the investors who are members of the putative plaintiff class in the TD Ameritrade case, the Receiver proposes that each Claimant must assign to DMP any payment received through the TD Ameritrade Case. Thus, in the event that the plaintiff class in the TD Ameritrade Case is ultimately successful in recovering funds, such funds would be payable to DMP, for re-distribution to all claimants on the same basis as the distribution recommended here. A copy of the proposed Assignment to all claimants is attached hereto as Exhibit 2. The Receiver proposes that within thirty

days of approval of the Plan, each Claimant must complete the assignment enclosed herein as Exhibit 2 and return it to the Receiver via email at DMPReceiver@robbinsfirm.com or via mail at Robbins Ross Alloy Belinfante Littlefield LLC, 999 Peachtree St. NE, Suite #1120, Atlanta, GA 30309, in order to be paid the distribution proposed herein.

## V. CLAIMS DATA

### A. General Information Regarding Debt Holder Claims.

There are 178 Debt Holders who have filed claim forms, with supporting documentation, representing $14,754,941.40 in claims against the Receivership. 166 of the Debt Holders filed claims for notes/subscriptions issued in the 2007-2009 time period, and 12 Debt Holders filed claims for the 2010-2012 time period. Certain Debt Holders received payments denominated as either "interest" or "return of capital," periodically, although the payments were not made consistently. In early to mid-2012 the payments stopped completely. Because the interest payments were not uniform, the Receiver has determined that Debt Holder claims will be valued by the amount of the principal minus any amounts received from DMP, however denominated (e.g. interest, return of capital, redemption, or otherwise), and that the "rising tide" method of calculating distributions discussed below shall be used.

**B. Analysis of Debt Holder Claims.**

The Debt Holder claim forms were required to list all payments received from DMP and include supporting documentation. Some of the claim amounts matched the Receiver's records exactly, others different slightly, and a few differed substantially.

If a Debt Holder's claim was equal to or less than the amount anticipated based on the Receiver's records, the Receiver accepted the Debt Holder's claim as presented. If a Debt Holder's claim exceeded the amount reflected in the Receiver's records, but it was supported by documentation, the Receiver allowed the claim for the amount presented. If the Debt Holder's claim exceeded the amount reflected in the Receiver's records, but it was not supported by adequate documentation, the Receiver awarded the amount supported by the Receiver's documentation.

There are a few claims in which the amount submitted exceeded the amount expected by $100.00 or less. In those cases the Receiver determined that it would accept the claim as submitted. The benefit of investigating these claims was outweighed by the expense of determining the nature of the difference, and to handle any related dispute over the difference.

### C. Redemptions

There were certain DMP investors who had their DMP investments completely redeemed with interest. They were as follows, with amounts redeemed in parentheses: Travis Bull ($20,578.12), Rose Little ($224,334.94), Barry Rosenberg ($78,656.26), Megan Rubenstein ($20,578.12), Thomas Rynalski ($130,875.00) and Linda Tracey ($54,875.00). Although the Receiver considered pursuing these investors to "claw back" the amounts that were redeemed, he made this decision not to do so for two reasons:

First, courts generally permit a receiver to claw back only the profits returned to investors, not the principal payments. See U.S. Commodity Futures Trading Comm'n v. Gresham, 3:09-CV-75-TWT, 2012 WL 1606037 (N.D. Ga. May 7, 2012). Since the investors in this case who were redeemed generally received, at most, a few additional interest payments over their principal, the amount of money that the Receiver could pursue is limited.

Second, the amounts that could be clawed back would require pursuing individual investors across the country, hiring local counsel, and filing lawsuits that may or may not succeed that could take many years to litigate against investors who may or may not have assets to satisfy such a judgment.

In the interests of cost, efficiency, fairness, and finality, the Receiver determined it was not in the best interests of DMP to pursue these claims.

**D. Claims Accepted But Amounts Reduced.**

As discussed above, the Receiver compared each Debt Holder's information to the Receiver's information. In particular, the Receiver checked to make sure the Debt Holder was reporting all of the distributions he or she received as "interest" or "returns of capital" during the period of time when DMP was paying distributions. The Receiver ultimately determined that there were twenty-two (22) Debt Holders who submitted claims that differed with the Receiver's documentation. The Receiver accepted their claims, but made certain adjustments based upon his records. These claims are reflected in Exhibit 1, Schedule C, titled "Claims Accepted But Amounts Reduced." Below is a listing of each Debt Holder reflected on Schedule C, with an explanation of the adjustment made for each Claimant:

- **Thomas Arlotto**: Mr. Arlotto submitted a claim on his own behalf for $75,000.00, with no deduction for disbursements received. The Receiver's records, which are attached hereto as Exhibit 3, reflect that Mr. Arlotto received $14,625.00 in disbursements. Therefore, the Receiver allowed Mr. Arlotto a claim of $60,375.00.

- **Barbara Cleary**: Ms. Cleary submitted a claim on behalf of the Barbara Y. Cleary Living Trust for $250,000.00, with no deduction for disbursements received. The Receiver's records, which are attached hereto as Exhibit 4, reflect that the trust received $80,076.88 in disbursements. Therefore, the Receiver allowed Ms. Cleary a claim of $169,923.12.
- **Michael Davis**: Mr. Davis submitted a claim on behalf of himself and Maria F. Davis, joint tenants with the right of survivorship, for $50,000.00. The claim form noted that the account received $9,342.64 in disbursements, but that amount was not deducted from the total claim. Further, the Receiver's records, which are attached hereto as Exhibit 5, reflect that account actually received $16,655.14 in disbursements. Therefore, the Receiver allowed Mr. Davis a claim of $33,344.86.
- **Joseph Dicks**: Mr. Dicks submitted a claim on his own behalf for $250,000.00, with no deduction for disbursements received. The Receiver's records, which are attached hereto as Exhibit 6, reflect that Mr. Dicks received $73,024.83 in disbursements. Therefore, the Receiver allowed Mr. Dicks a claim of $176,975.17.

- **Lonnie Edwards**: Mr. Edwards submitted a claim for $25,000, with no deduction for disbursements received. The Receiver's records, which are attached hereto as Exhibit 7, reflect that Mr. Edwards received $6,093.75 in disbursements. Therefore, the Receiver allowed Mr. Edwards a claim of $18,906.25.
- **Marleen Edwards**: Mrs. Edwards submitted a claim for $20,125, calculated as a total cash investment of $25,000.00 minus disbursements of $4,875. The Receiver's records, which are attached hereto as Exhibit 8, reflect that Mrs. Edwards received $6,093.75 in disbursements. Therefore, the Receiver allowed Mrs. Edwards a claim of $25,000.00 minus the $6,093.75, for a total of $18,906.25.
- **Stephen Gartner**: Mr. Gartner submitted a claim for $213,385.98, calculated as a total cash investment of $400,000.00 minus disbursements of $86,614.02. The Receiver's records, which are attached hereto as Exhibit 9, reflect that Mr. Gartner received $196,364.73 in disbursements. Therefore, the Receiver allowed Mr. Gartner a claim of $400,000.00 minus the $196,364.73, for a total of $203,635.27.

- **Barbara Henning**: Ms. Henning submitted a claim for $50,000.00, with no deduction for disbursements received. The Receiver's records, which are attached hereto as Exhibit 10, reflect that the Ms. Henning received $14,604.97 in disbursements. Therefore, the Receiver allowed Ms. Henning a claim of $35,395.03.
- **G. Stanley Hill**: Mr. Hill submitted a claim for $85,000.00, with no deduction for disbursements received. The Receiver's records, which are attached hereto as Exhibit 11, reflect that the Mr. Hill received $20,718.75 in disbursements. Therefore, the Receiver allowed Mr. Hill a claim of $64,281.25.
- **Kenneth Jochum**: Mr. Jochum submitted a claim for $50,000.00, with no deduction for disbursements received. The Receiver's records, which are attached hereto as Exhibit 12, reflect that the Mr. Jochum received $19,500.00 in disbursements. Therefore, the Receiver allowed Mr. Hill a claim of $30,500.00.
- **W. Gordon Kay**: Mr. Kay submitted a claim of $250,000.00, with no deduction for disbursements received. The Receiver's records, which are attached hereto as Exhibit 13, reflect that Mr. Kay received

$60,937.50 in disbursements. Therefore, the Receiver allowed Mr. Kay a claim of $189,062.50

- **Lynda Land**: Ms. Land submitted a claim of $50,000.00, with no deduction for disbursements received. The Receiver's records, which are attached hereto as Exhibit 14, reflect that Ms. Land received $12,187.50 in disbursements. Therefore, the Receiver allowed Ms. Land a claim of $37,812.50.
- **William Land**: Mr. Land submitted a claim for $150,000.00, with no deduction for disbursements received. The Receiver's records, which are attached hereto as Exhibit 15, reflect that Mr. Land received $36,562.50 in disbursements. Therefore, the Receiver allowed Mr. Land a claim of $113,437.50.
- **Christopher Libbey**: Mr. Libbey submitted a claim on behalf of himself and his wife, Amanda Libbey for $65,000.00, with no deduction for disbursements received. The Receiver's records, which are attached hereto as Exhibit 16, reflect that Mr. and Mrs. Libbey received $18,986.46 in disbursements. Therefore, the Receiver allowed Mr. Libbey a claim of $46,013.54.

- **Peter Maltese**: Mr. Maltese submitted a claim for $37,812.50, consisting of a $50,000.00 cash investment minus $12,187.50 in disbursements received. The Receiver's records, which are attached hereto as Exhibit 17, reflect that Mr. Maltese received $15,291.81 in disbursements. Therefore, the Receiver allowed Mr. Maltese a claim for $34,707.19.
- **Victor Miceli**: Mr. Miceli submitted a claim for $250,000.00 on behalf of the Victor Miceli Revocable Living Trust, with no deduction for disbursements Received. The Receiver's records, which are attached hereto as Exhibit 18, reflect that the trust received $87,723.28 in disbursements. Therefore, the Receiver allowed Mr. Miceli a claim of $199,327.92.
- **G. Paul Nietzel**: Mr. Nietzel submitted a claim for $80,812.60, consisting of a cash investment of $100,025.00 minus $19,212.40 in disbursements received. The Receiver's records, which are attached hereto as Exhibit 19, reflect an initial cash investment of $100,000.00 and disbursements totaling $24,375.00. Therefore, the Receiver allowed Mr. Nietzel a claim of $75,625.00.

- **Mary Jane Pizzitola**: Ms. Pizzitola submitted a claim for $150,000.00, with no deduction for disbursements received. The Receiver's records, which are attached hereto as Exhibit 20, reflect that Ms. Pizzatola received $51,127.40 in disbursements. Therefore, the Receiver allowed Ms. Pizzatola a claim of $98,872.60.
- **Virginia Rohrer**: Virginia Rohrer submitted a claim for $67,537.84 on behalf of the Virginia M. Rohrer Trust, consisting of a cash investment of $100,000.00, less $32,462.16 in disbursements. The Receiver's records, which are attached hereto as Exhibit 21, reflect disbursements totaling $33,477.23. Therefore, the Receiver allowed Ms. Rohrer a claim of $66,522.77.
- **Bryan Spaulding**: Mr. Spaulding submitted a claim for $50,000.00, with no deduction for disbursements received. The Receiver's records, which are attached hereto as Exhibit 22, reflect disbursements totaling $14,604.97. Therefore, the Receiver allowed Mr. Spaulding a claim of $35,395.03.
- **Leonard Walter**: Mr. Walter submitted a claim based on a default judgment Mr. Walter received in the United States District Court for the Eastern District of Michigan in September 2013 (the "Michigan

Lawsuit"). Mr. Walter's initial investment was $200,000.00, less $59,866.79 in disbursements, for a net investment of $140,133.21. However, Mr. Walter has asserted a claim based on a default judgment in the Michigan Lawsuit for $204,875.00, and claims that he is entitled to a priority position because he obtained the judgment before the Receiver was appointed. For the reasons set forth below in Section 4.01 of the Plan of Distribution, the Receiver does not believe giving Mr. Walter a priority position is warranted. Instead, the Receiver believes that Mr. Walter should be treated on an equal footing with the other DMP investors. The Receiver's records, which are attached hereto as Exhibit 23, reflect that Mr. Walter had an initial investment of $300,000.00 and received $190,715.07 in disbursements. Therefore, the Receiver allowed Mr. Walter a claim of $109,284.93.

- **Robert Weber**: Mr. Weber submitted a claim for $33,384.93, consisting of a cash investment of $50,000.00, less $16,615.07 in disbursements. The Receiver's records, which are attached hereto as Exhibit 24, reflect that Mr. Weber received disbursements totaling $43,875.00. Therefore, the Receiver allowed Mr. Weber a claim of

$6,125.00. Since he had 87.75% of his investment returned to him, and the other investors are only receiving 70.81% under the current distribution formula, he will not receive a distribution at this time. However, if DMP receives additional funds (e.g. through the Earn-Out) that permits a total percentage recovery for all claimants greater than 87.75%, Mr. Weber would be eligible for a distribution.

**E. Member Claims**

There are five purported DMP members (the "Members") who filed claims totaling $8,662,900.18. The Members are David Shipper, Aaron Shipper, Steve Kester, Doug Topkis, and Bruce Toll. The Receiver recommends treating the members' claims on an equal footing with the Debt Holders under the "rising tide" calculation discussed below. The primary reason for treating equity holders equal to Debt Holders is because, based upon the testimony given in the case and interviews with Morrow and the members, the members had no awareness, or any opportunity to discover, the existence of the Debt Holders. It is clear to the Receiver that the Members would never invested in DMP had they known the company had millions of dollars of debt to over 180 people. Thus, in the Receiver's opinion, the members have been equally "wronged" as a result of

Morrow's fraudulent scheme, and any typical "priority" that would be given to a debt holder over an equity holder should not apply here.

That being said, because the Receiver recommends that the members be treated on equal footing with the Debt Holders, the Receiver has determined that he will only use the amounts invested, and the amounts distributed, in calculating the Members' claims. Additional Member claims for lost wages, interest, etc. have been disallowed by the Receiver.

Four of the five Members provided material assistance with respect to the sale of DMP's 49% interest in MMG to Park Lawn, as follows:

- **David Shipper** provided material advice regarding the death care industry and the business of MMG, which was helpful given his significant industry experience and service as the CEO of MMG, and a Board Member of MMG, from its inception until his resignation in May 2014. He also provided material assistance in positioning MMG for sale once MMG's majority owner, WMG, decided that it was willing to sell its 51% ownership stake alongside DMP's 49%. In particular, in addition to providing his personal assistance, Mr. Shipper allowed MMG to utilize his company's (Indiana Memorial Group's) Controller, Chris Lyon, as a consultant during the period in which DMP was marketing its 49% Interest for sale. Mr. Lyon had

formerly served as MMG's controller. Their advice proved incredibly valuable.

- **Aaron Shipper** was MMG's former Vice President and Board Member. He was in charge of sales at MMG from its inception until his resignation in May 2014. Mr. Shipper provided material advice to the Receiver during the sale period regarding positioning MMG for sale.
- **Steve Kester** is a private equity investor, an MBA graduate from the Wharton School, and a former partner at Accenture with extensive business experience. Mr. Kester served as one of DMP's representatives on the MMG Board from February 2015 to March 2016. Mr. Kester served DMP well on the Board and provided material assistance in positioning MMG for sale.
- **Doug Topkis** is the Chief Executive Officer at Lehigh Natural Resources and is also an MBA graduate from the Wharton School. Mr. Topkis served alongside Mr. Kester as a DMP representative on MMG's Board from February 2015 to March 2016, and also provided material assistance in positioning MMG for sale.

The Receiver explicitly asked these members for assistance on multiple occasions, and each was responsive to those requests. None of them has been

separately compensated for their time and efforts. While it is not possible to put an exact value on their time and efforts (and the Receiver understands none of them recorded their time), the Receiver estimates that the Members' contributions were at least as valuable as the broker DMP hired to sell its 49% interest. That broker received a $235,000.00 commission at closing. Thus, the Receiver proposes that the initial contributions/investment that David Shipper, Aaron Shipper, Steve Kester, and Doug Topkis be increased by a total of $235,000.[3] The Receiver further suggests that these amounts be applied to each individual on a pro rata basis in proportion to their capital contributions to MMG. This addition is reflected in Schedule D, which shows the Receiver's recommended disposition for each member's claims.

### F. Claim by the Summit Wealth Management et al. Receiver

The Court-appointed Receiver for Summit Wealth Management, Robert Terry, asserted a claim against the Receivership in this case for $7,308.124.21 on behalf of Private Credit Opportunities Fund, LLC (PCOF), and $210,000.00 on behalf of Asset Class Diversification Fund (ACDF).

[3] Under the current "rising tide" recovery formula recommended herein, the members will receive 70.20% of $235,000, split among them on a pro rata basis.

As Mr. Terry stated in a letter to the Receiver dated November 13, 2014 (attached hereto as Exhibit 25), Mr. Terry's position is that, although the records reflect some commingling of the business affairs of PCOF and ACDF, he believes the net transfers from those entities to DMP add up to the amounts claimed. The Receiver's position, as explained in his January 22, 2015 letter to Mr. Terry (attached hereto as Exhibit 26), is that DMP appears to have wired almost $1,000,000 more to funds controlled by Angelo Alleca than PCOF and ACDF are individually claiming from DMP. Specifically:

a. DMP wired $3,678,350 more to Summit Capital Holdings ("SCH") than SCH wired to DMP. (SCH only wired $2,531,050 to DMP and received $6,209,400 from DMP.)

b. DMP wired $4,590,138.64 to Summit Investment Fund, L.P. even though DMP received nothing from that fund.

c. DMP wired $200,000.00 to Summit Wealth Management, even though DMP received nothing from Summit Wealth Management.

Additionally, it is possible, if not likely, that investors in PCOF and ACDF filed their own Proof of Claim forms directly with DMP. The Receiver has no way to determine whether the claims by PCOF and ACDF are not already encompassed in claims submitted by investors in PCOF or ACDF.

The Receiver is not interested in spending the two receiverships' limited assets litigating Mr. Terry's claim, but given the information available to date to the Receiver, the Receiver sees no basis to prefer Summit investors over DMP investors. Therefore the Receiver recommends that neither PCOF nor ACDF receive any direct distribution of receivership funds.

### G. Claim by McLean Koehler Sparks and Hammond for Services Provided to DMP Prior to Receivership.

The accounting firm McLean Koehler Sparks & Hammond in Frederick, Maryland, Maryland (MKSH) has been working for the Receiver since March 2014. MKSH has been providing accounting services to MMG and DMP since those entities were first formed. MKSH notified the Receiver in early February 2016 that DMP had an outstanding balance of $5,192.30 for the preparation of DMP's tax returns in the tax years 2008, 2009, 2010, and 2011. The Receiver directed MKSH to submit a claim to the Receiver for that amount, and MKSH did so on February 8, 2016.

The Receiver is unaware of evidence that MKSH had any knowledge of Morrow's fraudulent investment scheme, or of the false statements made in connection with the issuance of debt to the Debt Holders. Although MKSH could have notified the Receiver of the outstanding balance when it was retained by the Receiver, it was unaware of the claims process at the time and there are no late

charges applied to the outstanding balance and thus no prejudice to the estate in paying the claim. Because the claim is relatively small, and because MKSH does not appear to have had any special knowledge of Morrow's scheme than the other investors did not have, the Receiver proposes to treat MKSH's claim the same as all other claimants.

### H. Claim by Donna Jo Hoffman Brownstone Relating to Investment in Memphis Memorial Partners, LLC.

Investor Donna Jo Hoffman Brownstone submitted two different types of claims, both of which are unique here. The claims total $250,000.00, minus $15,958.44 in cash returned to her. The first investment is a $150,000.00 investment in *Memphis Memorial Partners, LLC* on a purported "8% Secured Promissory Note" that was allegedly "real estate/asset backed" with a maturity date of Sept. 25, 2013. Although the alleged maker of this note, Memphis Memorial Partners, is an entity apparently unrelated to DMP, the $150,000.00 principal of the note was wired into the DMP PNC account ending -443 on November 16, 2010, and the funds were thereafter intermingled with the other investors' funds. Ms. Brownstone was never paid on this note. Therefore, the Receiver recommends that Ms. Brownstone's claim for $150,000.00 related to this note should be allowed.

The second investment is an $85,000.00 promissory note dated August 8, 2012 from Ms. Brownstone, as holder, *to Mark Morrow*, as maker, payable in a

lump sum of $100,000.00 on October 8, 2012 – just two months after the note was made. Although Morrow apparently made payments totaling $7,312.50 over the term of the note, he did not pay the note as and when due, and Ms. Brownstone obtained a judgment against Mr. Morrow for $102,040.64 (principal plus attorneys' fees) on June 4, 2013. Now, Ms. Brownstone has submitted a claim to the Receiver for $100,000.00, i.e. the judgment minus attorneys' fees.

The Receiver's records reflect that Ms. Brownstone's $85,000.00 was wired to DMP's PNC bank account ending -2002 on August 8, 2012 and intermingled with DMP's other funds, including funds that were used to pay other DMP Debt Holders. Under the circumstances, the Receiver recommends allowing Ms. Brownstone's claim of $85,000, less a deduction for $7,312.50 in cash out, for a subtotal on the note of $77,687.50.

Based on Ms. Brownstone's two investments, the Receiver has determined that she is entitled to a claim amount of $227,687.50. However, as further discussed in Section 4.03 below, in order to collect her distribution, the Receiver recommends that Ms. Brownstone be required to execute an assignment of her judgment against Morrow to the Receiver, to avoid the possibility of a double-recovery that is not available to the other claimants.

## VI. SUMMARY OF THE DISTRIBUTION PLAN AND CONSIDERATION OF ALTERNATIVE METHODS

After considering several methods for the treatment of pre-receivership disbursements, the Receiver has determined that the "Rising Tide" method is the most equitable. Under that method, the Receiver will deduct the amount of a claimant's pre-receivership disbursements s **after** calculating the claimant's pro rata share of any distribution. If the result is negative – meaning that the claimant has already received pre-receivership disbursements in excess of his or her calculated pro rata share of a distribution – that claimant will not participate in that distribution, although he or she may participate in later distributions. This method recognizes that claimants have already recovered differing percentages of their investment, and seeks to achieve an equal total percentage recovery for all claimants. The formula for the calculation of a claimant's pro rata distribution amount under the Rising Tide method is:

**(amount invested x pro rata multiplier) – pre-receivership disbursements = distribution amount**

Consider an example with only two investors, each of whom invested $100,000. Investor A has received no disbursements, but Investor B has received pre-receivership disbursements totaling $20,000. Assuming a distribution fund of

$40,000, the Rising Tide method would distribute those dollars among the two investors using the following steps:

1. Calculate a pro rata multiplier by dividing the distribution fund amount by the amounts invested by the investors to be involved in this distribution. In this example the pro rata multiplier is determined to be 20% ($40,000 divided by $200,000).
2. Multiply each investor's amount invested by the pro rata multiplier. This action results in an initial gross distribution allocation to each investor of $20,000 ($100,000 x 20%). Note that the gross distribution amount is the same for each investor in this example, because Investor A and Investor B had each invested equal, $100,000 amounts.
3. Determine each investor's net distribution amount by subtracting their respective pre-receivership disbursements from their gross distribution amounts. (Investor A has not yet recovered any of his investment, so no deductions will be made to his $20,000 gross. Since Investor B recovered $20,000, a $20,000 deduction will be made in this first distribution round and Investor B receives nothing in this round.)
4. Re-allocate any remaining distribution fund amount. Because the above steps have distributed only $20,000 of the $40,000 distribution

> fund total among the two investors, a second round of distribution is necessary to determine the allocation of the $20,000 remainder of the distribution fund. Calculating it in the same manner as in the first round, the pro rata multiplier for this second round is determined to be 10% ($20,000 divided by $200,000). This second-round multiplier is then applied to each investor's invested amount to allocate a second-round gross distribution amount of $10,000 to each ($100,000 x 10%). Because neither investor has any pre-receivership disbursement balance that has not already been offset by a (first round) gross distribution amount, each investor is allocated a $10,000 net distribution of this $20,000 distribution fund remainder in this second round of calculations.

In this simplified example, then, Investor A's total recovery amount (the sum of pre-receivership disbursements and distributions) is $30,000 ($0 pre-receivership + $20,000 + $10,000), and Investor B's total recovery amount is also $30,000 ($20,000 pre-receivership + $0 + $10,000). Even if the invested amounts had been different, one can confirm the equity of this method by dividing each investor's respective recovery amount by his amount invested. In this example, each investor's recovery percentage is the same at 30% ($30,000 divided by

$100,000). Table A below summarizes the results of this Rising Tide distribution example.

**Table A**

**Total Recovery Amount (including pre-receivership disbursements)**

| | **Investor A** | **Investor B** |
|---|---|---|
| Pre-receivership disbursements | $0 | $20,000 |
| First round distribution | $20,000 | $0 |
| Second round distribution | $10,000 | $10,000 |
| Total Recovery Amount | $30,000 | $30,000 |
| Total Recovery Percentage | 30% | 30% |

**Total Distribution Fund = $40,000**
**Each investor invested $100,000**
**Investor A received no pre-receivership disbursements**
**Investor B received $20,000 in pre-receivership disbursements**

As an alternative, the Receiver could demand return of all disbursements, to be followed by a redistribution of the collected funds. The Receiver rejected that approach as unduly costly and inefficient, as it would involve litigation and collection efforts against a large number of investors, including all 185 claimants who received pre-receivership disbursements, only to eventually redistribute that money.

The Receiver also considered and rejected, as inequitable, the "Net Investment Method." Under that method investors keep 100% of their disbursements and still recover their pro rata share of their net investment (investments minus disbursements). At least two courts have rejected that method, noting the inequitable results it creates. See Commodity Futures Trading Comm'n v. Equity Fin. Grp., Inc., No. CIV.04-1512 RBK AMD, 2005 WL 2143975, at *25 (D.N.J. Sept. 2, 2005); Commodity Futures Trading Comm'n v. Hoffberg, No. 93 C 3106, 1993 WL 441984, at *2-3 (N.D.Ill. Oct.28, 1993).

As an example of this Net Investment Method, consider the two investors described in the Rising Tide example. Under the Net Investment Method, Investor A – whose net investment is 125% of Investor B ($100,000 vs. $80,000) – would receive a 25% greater distribution amount than Investor B ($22,222 vs. $17,778). But, because Investor B had already received $20,000 in pre-receivership disbursements, his total recovery amount under this method is still higher than Investor A's total recovery amount ($37,778 vs. $22,222). This results in a total recovery percentage of 37.8% for Investor B, while Investor A's total recovery percentage will be only 22.2%. Table B illustrates the recovery results for each investor under each method considered by the Receiver.

**Table B**

**Total Recovery Amount/Percentage (including pre-receivership disbursements)**

| **Method** | **Investor A** | **Investor B** |
|---|---|---|
| Rising Tide | $30,000 / 30% | $30,000 / 30% |
| Net Investment | $22,222 / 22.2% | $37,778 / 37.8% |

**Distribution Fund = $40,000**
**Each investor invested $100,000**
**Investor A received no pre-receivership disbursements**
**Investor B received $20,000 in pre-receivership disbursements**

As Table B shows, the Rising Tide method produces a more equitable recovery among those included in a distribution, paying distribution amounts first to those who have thus far recovered nothing from their investments.

As reflected on Schedules A, B, C, and D, attached, the initial distribution proposed in the Receiver's Plan will result in a first-round distribution at a pro rata share of 47.87%. After that, there will be a second round distribution at a pro rata share of 22.12%, and a third round at a pro rata share of 0.21% to distribute the remainder. Ultimately, when the pre-receivership disbursements are factored in, each claimant will receive a return of 70.20% of their total investment.

The Receiver plans to make a future, final distribution of the Holdback, plus any amounts received from Park Lawn pursuant to the Earn-Out. In any event, the

total recovery of each claimant is already more than 70% of their initial investment.

The Receiver, therefore, asks the Court to approve his Rising Tide Plan of Distribution, the terms of which are set forth here:

## VII. RECEIVER'S PLAN OF DISTRIBUTION

The Receiver asks the Court to approve his Rising Tide Plan of Distribution, the full terms of which are set forth here:

### ARTICLE I – DEFINITIONS

All capitalized terms shall have the meanings stated below:

**"ALLOWED"** refers to the amount of a Claim from which Distributions will be calculated.

**"ALLOWED CLAIM"** means all or a portion of a Claim designated as Verified by the Receiver.

**"BAR DATE FOR CLAIMS"** or **"CLAIMS BAR DATE"** means Friday, November 14, 2014.

**"CLAIM"** refers to a written demand received by the Receiver from any Claimant that demands payment from the Receivership Estate.

**"CLAIM FORM"** means the Proof of Claim Form used to assert a Claim as authorized and approved by this Court in the Claim Form Order. Claims that do

not conform to the Proof of Claim Form instructions may be considered by the Receiver in his sole discretion on case-by-case basis.

**"CLAIM FORM ORDER"** refers to the Order Granting Receiver's Motion to Approve Claim Form, dated August 13, 2014, which set November 14, 2014 as the Bar Date for Claims.

**"CLAIMANT"** refers to any Person who has asserted a Claim in this case, including any entity controlled by that Person.

**"OFFERING"** refers to any one of the securities offerings that are the subject of the SEC's action against DMP and Mark Morrow.

**"CONTESTED CLAIM"** is a Claim to which an Objection is properly presented by the Claimant to this Court and the Receiver.

**"COURT"** refers to the United States District Court for the Northern District of Georgia.

**"DEFECTIVE CLAIM"** means a Claim not submitted in accordance with the Proof of Claim Form Instructions, but does not include Late Claims.

**"DENIED CLAIM"** or **"DISALLOWED CLAIM"** means (1) any Claim or portion of a Claim that the Receiver has rejected in a writing filed with the Court or sent to the Claimant at the address stated on the Claim Form; or (2) any

Claim or portion of a Claim which the Receiver deems to be a Defective Claim under the terms of this Plan.

**"DISBURSEMENT"** refers to any payment of supposed interest, return of capital, and/or other payments received from DMP or Defendant Mark Morrow prior to the Order Appointing Receiver.

**"DISTRIBUTION"** refers to a payment by the Receiver on an Allowed Claim in accordance with the procedures outlined in this Plan of Distribution.

**"DISTRIBUTION PLAN"** or **"PLAN"** or **"PLAN OF DISTRIBUTION"** refers to this Plan of Distribution.

**"LATE CLAIM"** means a Claim submitted or posted after the July 11, 2008 Claims Bar Date.

**"OBJECTION"** refers to a written document filed by a Claimant with the Clerk of the Court, disputing the Receiver's determination of the Claimant's Allowed Claim and/or objecting to this Plan of Distribution.

**"OBJECTOR"** refers to a Person who files an Objection and seeks a hearing with respect to that Objection.

**"ORDER"** refers to an Order of this Court.

**"ORDER APPOINTING RECEIVER"** refers to the Order Appointing Receiver, dated November 22, 2013.

**"PERSON"** means any natural person, corporation, limited liability company, partnership, association, trustee, agent, or other entity of any kind.

**"PROOF OF CLAIM"** refers to the Proof of Claim Form approved by this Court and provided by the Receiver to Claimants to document Claims against DMP.

**"RECEIVER"** refers to Jason S. Alloy, Receiver, appointed pursuant to the Court's Order Appointing Receiver [Doc. 51], and those employed to assist in that mandate.

**"RECEIVER'S WEBSITE"** refers to www.dmpreceivership.com.

**"RECEIVERSHIP ASSETS"** refers to the assets described above in Section III.

**"RECEIVERSHIP ESTATE"** refers to the Receivership Assets that have been or may be collected by the Receiver.

**"RECOVERY AMOUNT"** is the sum of a Claimant's Disbursements and Distributions.

**"RECOVERY PERCENTAGE"** or **"RP"** is the quotient determined by dividing (a) a Claimant's Recovery Amount by (b) that Claimant's Allowed Claim.

**"SEC"** refers to the United States Securities and Exchange Commission.

**"TIMELY CLAIM"** means a Claim submitted in accordance with the Proof of Claim instructions on or before the Claims Bar Date or Claim that the Receiver determines is otherwise timely.

**"VERIFIED"** is the amount of a Claimant's Claim that the Receiver was able to verify via the records available.

## ARTICLE II – CLAIMS REVIEW AND DETERMINATION

**Section 2.01: Discretion of Receiver.** The Receiver is authorized, in the exercise of his sole discretion after consideration of all available evidence, to determine whether a Claim should be designated as an Allowed Claim and what information, if any, to require before allowing or disallowing a claim.

**Section 2.02: Filing Requirement.** Except as otherwise ordered by the Court, on or before the Claims Bar Date, each Claimant should have delivered to the Receiver a properly completed Proof of Claim Form, reflecting the amount of the Claim and including all supporting documentation. All Proof of Claims should have been delivered to the Receiver, and not the Court. Unless waived by the Receiver in writing, in the Receiver's sole discretion and for good cause shown, any Claimant who did not file a properly completed and documented Proof of Claim on the prescribed Proof of Claim Form before the Claims Bar Date is forever barred from asserting a Claim against the Receivership Estate or the

Receivership Assets. Any purported filing of a Proof of Claim that is not properly documented or that does not reasonably comply with the Proof of Claim Form instructions, may be rejected by the Receiver and treated as if no Proof of Claim had been timely filed by the Claimant. The burden is on the Claimant to ensure that his or her Proof of Claim has been properly received by the Receiver and that all requested information has been provided.

**Section 2.03: Claim Determinations Generally.** The Receiver has reviewed each Proof of Claim to determine the apparent validity and amount of such Claim, and whether to make any additional recommendations to the Court on issues relevant to the Claim. To the extent the Receiver has determined to make any additional recommendations, they are set forth herein. Each Claimant has the burden of proof to establish the validity and amount of his or her Claim. The Receiver has the right to request, and the Claimant is obligated to provide to the Receiver, any additional information and/or documentation deemed relevant by the Receiver. The Receiver has, in his sole discretion, determined what information, if any, to require before allowing or disallowing a Claim. The Receiver may divide a Claim, treat a part of the Claim as an Allowed Claim, or treat the balance as either a Disallowed Claim or reserve a determination with respect to the balance of the Claim. In determining the amount of an Allowed Claim, the Receiver will

consolidate the multiple claims of a Claimant, and has the right to set-off any Disbursements. Failure to provide complete and truthful information may result in the Claim being deemed a Defective Claim.

**Section 2.04: Further Determination.** The Receiver has computed for each Claim a Total Recommended Payment which is included in the Schedules attached hereto in Exhibit 1.

**Section 2.05: Late or Defective Claims.** The Receiver has no obligation to consider any Late or Defective Claims until all Timely Claims have been (1) approved by the Receiver, (2) approved by the Court, or (3) denied both by the Receiver and the Court. The Receiver shall, however, be entitled, in his sole discretion, to consider and approve Late or Defective Claims in due course to the extent that processing such Claims does not unreasonably delay the handling of Timely Claims, and to the extent that, in the Receiver's opinion, good cause existed for the tardiness or defectiveness of the Late or Defective Claim. The Receiver has determined that he will accept Late Claims from the accounting firm McLean Koehler Sparks & Hammond (as noted above) and from Debt Holder Glen Jones, both for good cause shown.

**Section 2.06: Notice of Claim Determination and Hearing Notice.** The Receiver has prepared the attached Exhibit 1, Schedules A, B, C and D, showing

the Receiver's recommendation of how each Claim should be paid. The Receiver has mailed this recommendation to those Claimants known to the Receiver and posted the Schedules on his website. The Receiver will provide notice, to those Claimants known to the Receiver, by separate mailing and by posting on the Receiver's Website, of the hearing date upon which the Court will rule on the Receiver's Claim determinations and Plan of Distribution and hear any Objections.

**Section 2.07: Objection by Claimants.** Any Claimant who is dissatisfied with the Receiver's Claim Determination and/or Plan of Distribution may file an Objection with the Court. Objections must be filed in writing by the Claimant with the Clerk of the District Court, United States District Court for the Northern District of Georgia, Atlanta Division, Richard B. Russell Federal Building and Courthouse, 75 Spring Street SW, Room 2211, Atlanta, GA 30303-3361. Claimant must also send a copy of the Objection to the Receiver's office at 999 Peachtree Street, Suite 1120, Atlanta, Georgia 30309. Objections must be received by the Court and the Receiver on or before October 7, 2016, and the Court shall set a date as soon as practicable after the Objection Submission Date to take evidence and hear argument on any Objections to the Plan. At a minimum, any Objection must contain the following:

(1) A caption setting forth the name of the Court, the names of the plaintiff, and defendants, and the case number as noted above;

(2) The name of Claimant and a description of the basis for the amount of the Claim;

(3) A concise statement setting forth the reasons why the Claim should not be disallowed or modified as set forth in the Plan of Distribution and/or why another distribution method would be more equitable for all Claimants;

(4) All documentation or other evidence of the claim upon which Claimant will rely in opposing the Claim determination and Plan of Distribution; and

(5) The physical address, email address, and phone number for Claimant to which the Receiver may send Claimant any reply.

If no Objection is received, the Court may enter an Order allowing or disallowing the Claims as set forth in the Plan of Distribution. Should a Claimant make an Objection to the Distribution Plan, Claimant must be present to defend the Claim on the hearing date set by the Court or the Court may enter the relief requested by the Receiver in the Plan of Distribution. If a Claimant wishes to attend the hearing by telephone, he or she (or his or her counsel) should notify the Clerk of Court in advance.

**Section 2.08: <u>Opportunity to be Heard.</u>** The Court shall hold a hearing, and following the conclusion of such hearing, shall make the final determination – for each Claim and Objection – as to the amount approved for payment and classification(s). An Objector shall have the burden of proof in such hearing. Those Claims approved by the Court shall thereafter be deemed Allowed Claims.

## ARTICLE III – PAYMENT OF CLAIMS

**Section 3.01: Claim Distributions.** The Receiver is hereby expressly authorized to pay the Claims set forth in Exhibit 1, Schedules B, C, and D, using the Rising Tide method described above using funds from the Receivership Estate (in the form of a check made payable to the Claimant, and sent by reasonable means to the Claimant using the information listed on the Claim Form).

**Section 3.02: Payment of Distributions.** The Receiver is hereby expressly authorized to pay Allowed Claims from Receivership Assets (in the form of a check made payable to the Claimant and sent by reasonable means to the Claimant using the information listed on the Claim Form) as set forth in this Plan of Distribution. The Receiver shall make the Distributions contemplated in Schedules B, C and D as soon as practicable, but no later than sixty (60) days after a final Order is entered by the Court approving the Plan of Distribution. Subsequent Distributions may be made, subject to the discretion of the Receiver, when material amounts are available to distribute and/or upon entry of an Order by the Court that resolves any Contested Claims. Such Distributions shall be made in accordance with the terms of this Plan, unless the Court orders otherwise. The Receiver may, at his discretion, make no further Distributions until such time as the Receiver

determines that it is appropriate to make a final Distribution and close the case pursuant to an Order of the Court.

**Section 3.05: Final Distribution.** At such time as all Receivership Assets have been fully administered, all Claims have been resolved by Final Order of the Court, and after approval of a final Receiver's Application for Compensation and Reimbursement of Expenses, the Receiver shall make a final Distribution.

**Section 3.06: Reserve Permitted But Not Required.** The Receiver will make reasonable efforts to notify any and all Claimants pursuant to this Plan of Distribution. The Court expressly authorizes the Receiver to pay Claims according to the terms of this Plan without regard for the possibility that Claims may, with good cause, be presented late. The Court will consider any such Late Claims on a case-by-case basis, but will not expect the Receiver to have accrued Receivership Assets to guard against this possibility. The Receiver may reserve funds for such Claimants. To the extent that the Receiver does reserve funds, the Receiver shall so notify the Court and the SEC, and shall report to the Court and the SEC on a quarterly basis in accordance with the Order Appointing Receiver regarding the Receiver's plan for ultimate disposition of the reserved funds. In the event that any additional Claimants do come forward, the procedures herein regarding the Claims process shall apply as to those Claimants.

**Section 3.07: Notice.** By effecting notice of Claim determinations according to the terms of this Plan, the Receiver shall be deemed to have provided reasonable and sufficient notice to all Persons.

**Section 3.08: Payment Effects Release.** If a Claim is paid by the Receiver pursuant to this Plan, then any and all claims, demands, rights, and causes of action of any nature whatsoever, whether arising at law or in equity, known or unknown, asserted or unasserted, for all damages (whether actual or punitive, known or unknown, latent or patent, foreseen or unforeseen, direct or indirect or consequential, matured or unmatured, and accrued or not accrued), debts, and liabilities of whatever nature that are or could be asserted by the Claimant or any other person against the Receiver or his agents, any defendant, or any Receivership Assets are hereby discharged, released, extinguished, and satisfied. Neither the Receiver nor any Person accepting Receivership Assets from the Receiver shall have any liability to any Person other than the Receiver to return any Receivership Assets used for payment or satisfaction of an Allowed Claim. Neither the Receiver nor any Person acting at his direction shall have any liability in any respect for having paid or otherwise satisfied an Allowed Claim, nor for any other action taken in good faith under or relating to this Plan or arising out of the processing of any Claim, including, but not limited to, any act or omission in connection with or

arising out of the administration of Claims or this Plan or the Receivership Estate to be distributed hereby. In the event of any Claim being made against the Receiver for such matters – whether or not willful misconduct is alleged – the Receiver shall be entitled to a defense by counsel of its choice, payable as any other professional expenses herein.

**Section 3.09: Unclaimed Distributions.** Except as otherwise provided herein, any Person who fails to claim any Distribution within ninety (90) days from any payment date shall forfeit all rights thereto; subject, however, to any request or recommendation made by the Receiver for additional time to locate any Person who may be unaware of a Distribution award because such Person has not received notice about this Claims process.

**Section 3.10: Disposition of Remaining Receivership Assets.** As the Receiver described in his Notice of Sale of 49% Interest in Midwest Memorial Group, LLC [Doc. 138], DMP sold its 49% interest in MMG to Park Lawn Corporation for approximately $7,840,000 (subject to certain adjustments), plus an additional potential three-year Earn-Out based on the future financial performance of MMG in the years 2016, 2017, and 2018. Should additional assets come to the Receiver by virtue of the Park Lawn Earn-Out – or otherwise – the Receiver shall

so notify the Court and seek the Court's approval for final disposition of the remaining Receivership Assets.

## ARTICLE IV – PARALLEL AND RELATED PROCEEDINGS

**Section 4.01: Claims Involving Receivership Property Asserted Outside the Receivership.** The Receiver is aware of one claimant, Leonard J. Walter, who obtained a default judgment in the United States District Court for the Eastern District of Michigan against DMP in the amount of $204,875.00 after this SEC action was filed, but before the Order Appointing Receiver [Doc. 51] was entered. (See Feb. 2, 2015 Letter from F. White to J. Alloy re: Leonard Walter / Receivership of Detroit Memorial Partners LLC, attached hereto as Exhibit 27.) Mr. Walter obtained a charging order against DMP's membership interest in MMG and contends that that he is a "lien creditor" of DMP, entitled to a priority distribution of the full amount of his claim.

Contrary to Mr. Walter's position, however, he is not entitled to a priority position. In S.E.C. v. Amerindo Inv. Advisors Inc., No. 05 CIV. 5231 RJS, 2014 WL 2112032, at *15-17 (S.D.N.Y. May 6, 2014), a group of investors (the "Mayers") argued that their claim in an SEC receivership should receive special treatment because they had a judgment against certain defendants and that their judgment must be given priority. The Southern District of New York disagreed,

concluding that the argument by the Mayers "fundamentally misunderstands the nature of the receivership and the distribution." Importantly, the court held that it does not matter if the Receiver is bound by the prior state court judgment or not, because the ultimate decision of how much to distribute and to whom is the court's alone, and does not belong to the receiver. Id. (citing Credit Bancorp, SEC v. Credit Bancorp, Ltd., 290 F.3d 80, 87 (2d Cir. 2002).) The court further stated that the court's role in determining how much to distribute and to whom is one of equity.

Thus, the underlying merits of claims are key, not technicalities or legal gamesmanship. Id. (citing Young v. Higbee Co., 324 U.S. 204, 209 (1945) ("Equity looks to the substance and not merely to the form."); see also SEC v. Credit Bancorp, Ltd., 290 F.3d 80, 82–83 (2d Cir. 2002) (affirming approval of distribution plan as "within the equitable discretion of the District Court"); S.E.C. v. Byers, 637 F. Supp. 2d 166, 174 (S.D.N.Y. 2009) (holding court has broad authority to craft remedies for violations of federal securities laws). The Court is "not required to favor one victim over others simply because that one raced to the courthouse and obtained a judgment." Id. The court further reasoned that any other rule would be inefficient because investors would be encouraged to bring individual suits and to fight against each other. In addition, courts need to cut

through formalities, gather all interested parties in one proceeding, and consider all of their interests at once, which is more efficient and fairer to all involved. Id.

Here, an investor like Mr. Walter who received priority because of a judgment would have his judgment satisfied with other investors' money – an inequitable result. Thus, the Receiver has decided to treat Mr. Walter's claim on par with all the other noteholder claimants. Other than the claim asserted by Mr. Walter, the Receiver is not aware of any other claims regarding receivership property asserted outside the receivership.

**Section 4.02: Assignment of TD Ameritrade Claim.** As discussed above, there is currently pending a case in the U.S. District Court for the Northern District of Georgia styled Curry et al. v. TD Ameritrade, Inc. et al., No. 16-12041, which was filed by a prospective class of Summit Wealth Management and DMP investors who alleged that the defendants in that case facilitated Morrow and Alleca's Ponzi scheme, violated federal and state securities laws, and breached their common law duties to the investors. The defendants filed a successful motion to dismiss that was granted by U.S. District Judge Leigh Martin May on March 18, 2016, and that decision has been appealed to the Eleventh Circuit.

In order to ensure that there is no double-recovery by the investors who are members of the putative plaintiff class in the TD Ameritrade case, each Claimant,

as a condition of accepting their respective Distribution set forth Schedules B, C, or D, shall execute the Assignment of their claims against the defendants in the TD Ameritrade case in the form of which is attached hereto as Exhibit 2, within thirty days of approval of the Plan.

**Section 4.03: Assignment of Morrow Judgment Held by Brownstone.**

As discussed above at page 12, one investor, Donna Jo Hoffman Brownstone, has a judgment against Defendant Morrow for $102,040.64 (principal plus attorneys' fees), which she obtained on June 4, 2013, and on which she is not basis part of her claim against DMP. For the reasons stated above in Section V, the Receiver is willing to consider the judgment as part of her claim, but in order to avoid a double recovery, the Receiver recommends that Ms. Brownstone be required to execute an assignment of the judgment to DMP in order to avoid the possibility of a double-recovery that is not available to the other claimants. A proposed assignment for Ms. Brownstone is attached for the Court's consideration as Exhibit 28.

## ARTICLE V – RETENTION OF JURISDICTION

**Section 5.01: Exclusive Jurisdiction.** This Court has had jurisdiction since May 30, 2013 [Doc. 1], and shall continue to retain exclusive jurisdiction over the Receiver, the Receivership, and all Receivership Assets. Accordingly, in determining whether a Claim or any portion thereof is an Allowed Claim, the

Receiver may, but shall not be required to, consider (nor shall the Receiver be subject to) any judicial determination rendered by any court, tribunal, agency or authority whatsoever (other than this Court) as to any Receivership Assets from and after May 30, 2013, unless this Court directs otherwise. No action taken by or against the Receiver with regard to any pending matter in any other court shall be deemed to have terminated, limited, reduced, waived, or relinquished this Court's exclusive jurisdiction.

**Section 5.02: Continuing Jurisdiction.** This Plan and the Order approving this Plan are not, and are not intended to be, and therefore shall not be deemed to be, either a final adjudication of this matter or a termination, limitation, reduction waiver or relinquishment of this Court's exclusive jurisdiction with regard to all Receivership Assets and all matters in controversy in this case. This Court shall continue to have and retain exclusive jurisdiction over all matters existing or arising in this Receivership or related in any way thereto, including, but not limited to, all matters relating to approving or denying Claims, making Distributions on Approved Claims, and locating, recovering, settling claims, and liquidating Receivership Assets. Furthermore, this Court, upon the request of the Receiver or the SEC, or upon its own motion, may make further modifications to this Plan or the Order approving this Plan, including, but not limited to, modifications which

may affect the Receiver's determination with respect to, or payment of, any particular Claim, or the amount of any particular Distribution.

## CONCLUSION

The Receiver hereby respectfully requests that the Court enter an order approving the above Plan of Distribution, and that the Court set October 7, 2016 as the date by which claimants may file with the Court and submit to the Receiver any objections they may have to the Plan of Distribution (the "Objection Submission Date"). The Receiver further requests that the Court set a date as soon as practicable after the Objection Submission Date to take evidence and hear argument on any Objections to the Plan.

A proposed Order Setting Hearing to Consider the Receiver's Proposed Plan of Distribution and Any Objections to That Proposed Plan is attached hereto as Exhibit 29. A proposed Order Approving the Receiver's Plan of Distribution is attached hereto as Exhibit 30.

Respectfully submitted this 30th day of August, 2016.

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*Appointed Receiver for Defendant Detroit Memorial Partners, LLC*

## CERTIFICATE OF SERVICE

I hereby certify that the foregoing **RECEIVER'S MOTION TO APPROVE PLAN OF DISTRIBUTION, AND BRIEF IN SUPPORT** has been prepared with one of the font and point selections approved by the Court, and that it has been filed electronically with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all attorneys of record.

The foregoing was also served on the DMP claimants at the following addresses via 2-day Federal Express with the exception of Exhibits 3-24, which are available at www.dmpreceivership.com:

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This 30th day of August, 2016.

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