

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

SECURITIES AND EXCHANGE)
COMMISSION,)
)
Plaintiff,)
)
v.)
)
DETROIT MEMORIAL PARTNERS, LLC)
and MARK MORROW,)
)
Defendants.)

CIVIL ACTION FILE NO.
1:13-CV-01817-WSD

**RECEIVER’S MOTION TO APPROVE INTERIM DISTRIBUTION
AND BRIEF IN SUPPORT THEREOF**

Jason S. Alloy, the Court-appointed Receiver for Defendant Detroit Memorial Partners, LLC (“DMP”), asks the Court for permission to distribute \$250,000 in Receivership funds to approved claimants pursuant to the Receiver’s plan of distribution previously approved by this Court (the “Distribution Plan”). (See Docs. 166, 169, 175, 184-85.)

This is the Receiver’s second request for approval to make a distribution. In late 2016 and early 2017, the Receiver distributed \$12,715,210 to over 180 approved claimants pursuant to the Distribution Plan. The Receiver has \$381,215.59 on hand, and he expects the Receivership to conclude by mid-2019,

after DMP receives its final potential earnout payment from the sale of its interest in Midwest Memorial Group (MMG). After this distribution, the Receiver will have \$131,215.59 to carry the Receivership through its conclusion. Any unused balance will be distributed to claimants at the close of the Receivership.

The Securities and Exchange Commission has reviewed this motion and Exhibit 1 and has represented to the Receiver that it does not object to the proposed interim distribution.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

The Receiver was appointed on November 2013 in order to independently represent DMP's interests, marshal and preserve DMP's assets, and obtain legal counsel for DMP, among other duties. [Doc. 51 at 1.]

After a lengthy process of liquidating DMP's assets, which included selling DMP's 49% interest in private cemetery company MMG to the Canadian company Park Lawn Corporation ("Park Lawn"), the Receiver marshaled approximately \$13.3 million in cash as of August 2016. On August 30, 2016, the Receiver filed a motion to approve claims and distribute over 97% of that cash to claimants. [See Receiver's Mot. to Approve Plan of Distribution, and Br. in Support, Doc. 166.] On September 16, 2016 and October 17, 2016, the Receiver filed minor amendments to the proposed Distribution Plan. [Doc. 169, 175]). The Court held

a hearing on objections on October 18, 2016, and issued a ruling on November 8, 2016. [Doc. 181, 183.] The Receiver filed a Third Amendment to the Motion to Approve Plan of Distribution that same day, in order to make the plan consistent with the Court's order [Doc. 184], and the Court approved the plan as amended on November 10, 2016 [Doc. 185]. Pursuant to the Distribution Plan, the Receiver distributed \$12,715,210.09 to claimants in late 2016 and early 2017 (the "Initial Distribution"). This amount, combined with distribution payments the claimants received from DMP prior to the Receivership, resulted in a total recovery to each claimant of 68.02% of their original investments.

Following the Initial Distribution, the Receiver pursued and collected on a previously-obtained judgment against Mark Morrow, adding \$60,000 to the Receivership estate in June 2017.

Then, in July 2017, a new claimant contacted the Receiver's counsel stating that she had not been notified of the existence of the Receivership until recently. The claimant, Lois Culpepper, said that she had not received a claim form, nor had she seen the website www.dmpreceivership.com or heard anything about the Receiver's claims process. The Receiver asked her to submit a provisional claim form along with supporting documentation, which she did on or about August 8, 2017. Ms. Culpepper claims a \$75,000 investment in DMP, less \$29,250 in

pre-receivership payments. The Receiver reviewed Ms. Culpepper's Proof of Claim Form against his own information, and her claim appeared to be accurate. The Receiver also asked Ms. Culpepper to execute a declaration stating under oath that she had not heard of the DMP receivership before learning about it from Robert Terry, the Receiver for Summit Wealth Management, in July 2017. Ms. Culpepper complied. The Receiver has concluded that Ms. Culpepper's claim is valid, and she should be paid the same percentage as the other DMP noteholder claimants under the formula established in the Distribution Plan. This entitles her to a payment of \$22,406.49. The Receiver requests that Ms. Culpepper be paid out of the \$250,000 requested here, and that the remaining \$227,593.51 be used to pay the other previously-approved claimants through the Distribution Plan formula. This will result in a total return to claimants of 68.9% of their original investments.

Additionally, as part of the consideration for the sale of DMP's 49% interest in MMG to Park Lawn, DMP received "earnout" rights to additional cash consideration if MMG met certain earnings benchmarks in the calendar years 2016, 2017 and 2018. DMP receives MMG's financial results from Park Lawn for each calendar year on or before March 31 of the following year, and those results determine if DMP is eligible to receive an earnout payment. MMG did not meet

the necessary benchmarks to trigger an earnout payment for the calendar year 2016. DMP will receive MMG's financial results for the year 2017 in the coming days, and if they show that DMP is eligible for an earnout payment, the Receiver will promptly amend this motion and increase the amount sought to be distributed. At this time, the Receiver is proceeding on the assumption that DMP will not be eligible for an earnout payment this year.

DMP will learn whether it is eligible for an earnout payment for the year 2018 in late March 2019, after which the Receiver anticipates closing the Receivership.

PROPOSED DISTRIBUTION TO CLAIMANTS

The Receiver has prepared revised distribution schedules that reflect how much each Claimant will receive from the proposed interim distribution. *See* Schedules A, B, C, and D attached. The Receiver used the same mathematical formula used to calculate the Initial Distribution. The four Schedules can be summarized as follows:

Schedule A (Summary Sheet): This schedule contains a summary of amounts that have been paid, and are being paid, to the debt holder claimants (including Lois Culpepper and Leonard Walter), to the DMP members, and to third party McLean Koehler, an accounting firm. This schedule also contains a

summary of the “background calculations” showing the aggregate total current and previous distributions to claimants, and the aggregate recovery for all claimants (over \$18.6 million).

Schedule B (Claims Accepted as Submitted), Schedule C (Claims Accepted But Amounts Reduced), and Schedule D (Claims by Members and Others): When the Receiver filed the motion for approval of the Initial Distribution, the Receiver recommended payments of some debt holder claims “as submitted” – i.e. he agreed with the claimant on the amount due – and for others he recommended that their claims be accepted but reduced for various reasons. Typically, this was because the Receiver had a record of one or more additional pre-Receivership payments that the claimant had not reported. To illustrate which debt holder claims were accepted as submitted and which were reduced, the Receiver listed those claims separately in Schedule B and Schedule C, respectively. The Receiver listed claims by the DMP Members and third parties separately in Schedule D since their circumstances were different from those of the debt holders.

In the revised Schedules B, C, and D submitted with this Motion, the Receiver has added the proposed interim distribution amount of \$250,000 to the Initial Distribution amount of \$12.7 million, then calculated a “Total

Recommended Payment” for each claimant based on the mathematical formula in the Distribution Plan. Then the prior Initial Distribution payment was subtracted from the Total Recommended Payment to get the proposed “Interim Distribution” amount for each claimant. That is the amount that each claimant would receive if this motion is granted. So for example, for the first claimant listed in Schedule B, that calculation is as follows:

	<i>Total Recommended Payment</i>		<i>Prior Initial Distribution Payment</i>		<i>Interim Distribution</i>
Naveed Akhtar:	\$28,593.13	<i>minus</i>	\$27,735.28	<i>equals</i>	<u>\$857.85</u>

Mr. Akhtar would thus receive an additional payment of \$857.85, which is his pro rata share of the \$250,000 Interim Distribution. This calculation is repeated in both Schedule B and Schedule C for each of the debt holder claimants. In total, the previously-approved claimants are being paid an additional .86% of their initial investment amounts, for a total recovery of 68.88% of their initial investments.

The lone exception is Leonard Walter, who received a distribution of \$204,996.02 – the entire amount of his claim – pursuant to this Court’s Order dated November 8, 2016. [Doc. 183.] The Receiver does not recommend any additional

distribution to Mr. Walter, since he has been paid in full for his entire claim in the Receivership.

As discussed above, Ms. Culpepper is being paid \$22,406.49 on her claim, which catches her up to the other debt holder claimants.

The Receiver is recommending that this Interim Distribution be made now because he does not anticipate needing more than the reserve of \$131,215.59 to carry the Receivership through its conclusion, and he believes the bulk of the remaining Receivership funds (\$250,000) can be returned to the claimants now instead of waiting another year until the conclusion of the Receivership.

CONCLUSION

The Receiver hereby respectfully requests that the Court enter an order approving the Receiver's proposed Interim Distribution of \$250,000 to approved claimants. The Receiver has included a Proposed Order granting this Motion for the Court's consideration and convenience.

Respectfully submitted this 30th day of March, 2018.

/s/ Jason S. Alloy _____

Jason S. Alloy

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*Appointed Receiver for Defendant
Detroit Memorial Partners, LLC*

CERTIFICATE OF FONT AND POINT SELECTION AND OF SERVICE

I hereby certify that the foregoing **RECEIVER'S MOTION TO APPROVE INTERIM DISTRIBUTION AND BRIEF IN SUPPORT THEREOF** 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 pleading was also personally served by email and U.S. Mail on Defendant Mark Morrow at the following address.

Mark Morrow
8643 Twilight Tier
Cincinnati, Ohio 45249
mmorr7887@aol.com

This 30th day of March, 2018.

/s/ Jason S. Alloy _____

Jason S. Alloy