

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

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 SECOND AMENDMENT TO MOTION
TO APPROVE PLAN OF DISTRIBUTION**

Jason S. Alloy, the Court-appointed Receiver for Defendant Detroit Memorial Partners, LLC (“DMP”), files this Second Amendment to his Motion to Approve Plan of Distribution [Doc. 166, the “Motion”].¹

First, since the filing of the Receiver’s first Amendment to Motion to Approve Plan of Distribution on September 16, 2016 [Doc. 169], three claimants have come forward and raised additional issues with the Receiver. As a result of these issues, the Receiver recommends small changes to the schedules attached as Exhibit 1 of the Motion, including minor changes to the Plan and the payout to all Claimants. [See Amended Exhibit 1, Schedules A, B, C, and D, filed as an Exhibit

¹ The Securities and Exchange Commission does not object to this Second Amendment.

to this Motion.] Counsel for plaintiffs in the TD Ameritrade case also sought clarification regarding the TD Ameritrade Assignment, which the Receiver also addresses herein.

Second, the Receiver recommends changing the holding back to 2.45% (from 3.00%) for payment of expenses incurred in the receivership in this process, as well as to ensure there are sufficient funds going forward to wind up the receivership. Thus, the Receiver recommends an initial payout that results in a total recovery of 69.50% and has adjusted the schedules accordingly. [*See i.d.*]

Third, two claimants filed objections by the October 7, 2016 deadline. Those objections are being addressed by the DMP Receiver in separate briefs to the Court. If either objection is sustained, it will have an effect on the schedules attached herein.

A. Change to Schedules B and C regarding Debt Holder Stephen Gartner

The Receiver previously recommended a change for Mr. Gartner in the Receiver's [First] Amendment to Motion to Approve Plan of Distribution filed with the Court on September 16 ("First Amendment"). On September 13 (before filing the First Amendment), the Receiver gave Mr. Gartner notice of the Receiver's proposed change. The Receiver asked Mr. Gartner to contact the Receiver by the next day if he disputed the change, so that the Receiver could potentially address any issue before filing the First Amendment. Having not heard

from Mr. Gartner, the Receiver filed the First Amendment. Later, on September 26, Mr. Gartner provided additional information to the Receiver that further clarified what happened with Mr. Gartner's investment in DMP.

Mr. Gartner stated that his total investment was, in fact, \$300,000 (not \$400,000), and that the \$100,000 "redemption" showing in the Receiver's records reflected the movement of two \$50,000 DMP "units" (\$100,000 total) from one TD Ameritrade account to another, instead of an additional \$100,000 investment. Mr. Gartner obtained past statements from TD Ameritrade that Mr. Gartner provided to the Receiver. Those statements support Mr. Gartner's position that his total investment was \$300,000 and not \$400,000. Mr. Gartner also reviewed his records and ultimately agreed that the Receiver was correct that Mr. Gartner had received \$106,114.73 in prior disbursements.

Thus, the Receiver and Mr. Gartner are now in agreement on his investment and prior disbursements. The Receiver has therefore adjusted Mr. Gartner's investment amount and prior disbursements and moved his claim to Second Amended Schedule B – Claims Accepted as Submitted, with a total recommended payment of \$102,372.75. [*See* Ex. 1 hereto.]

B. Adding Claimant Michael Millikin to Schedule B.

On September 16, 2016, the Receiver was contacted by the spouse of Michael Millikin, who stated that Mr. Millikin never received the DMP Proof of

Claim package when it was sent to potential claimants in 2014. Apparently the address that the Receiver had on file for Mr. Millikin was an old address. Mr. Millikin was listed on the Receiver's original accounting filed February 21, 2014 as a DMP debt holder with a \$75,000 investment and prior disbursements of \$18,281.25.

The Receiver requested that Mr. Millikin submit a Proof of Claim declaration with supporting documents, plus proof of the address change, and a declaration under oath that he was not aware of the DMP receivership until September 2016 and did not receive of a Proof of Claim package until this year. Mr. Millikin returned the declaration, which is attached hereto as Exhibit 2, and the proof of address change, which is attached hereto as Exhibit 3. Mr. Millikin does not dispute that his investment was \$75,000, and that his prior disbursements totaled \$18,281.25. Given the documentation that Mr. Millikin provided, along with the declaration under oath, the Receiver recommends allowing his claim to be accepted after the deadline, with a total recommended payment of \$33,840.26, which is reflected in Exhibit 1 hereto, Schedule B.

C. John Sullivan –Recommendation Not to Accept Late Submitted Claim

On September 20, 2016, the Receiver was contacted by John Sullivan, a former DMP investor who had not submitted a Proof of Claim Declaration. Mr. Sullivan stated that his personal circumstances in 2014 related to issues with his

employment were such that he was not focused on submitting his Proof of Claim on schedule. Mr. Sullivan sent the Receiver a Proof of Claim package on September 22, 2016 and asked the Receiver to consider his late-submitted claim.

The Receiver's records reflect that Mr. Sullivan was sent a claim form in August of 2014, and delivery was confirmed. The Receiver's staff also re-sent an additional claim form to Mr. Sullivan on October 14, 2014. In addition, the Receiver has a record of a telephone conversation with Mr. Sullivan in late 2014 in which Mr. Sullivan confirmed receipt of the claim form.

Mr. Sullivan's Proof of Claim package does not dispute these facts.

The Receiver recommends no payment of Mr. Sullivan's claim because (1) Mr. Sullivan was aware of the DMP Receivership and the claim submission process in 2014 (before the bar date), (2) Mr. Sullivan received a claim form twice before the bar date, and (3) Mr. Sullivan had a telephone conversation with the Receiver about the process but did not submit a form until after the Receiver's Proposed Plan was filed in 2016. It is the Receiver's view that because Mr. Sullivan could have submitted a timely claim and opted not to do so, allowing his claim would render the Court-ordered bar date meaningless.

The Receiver gave notice via email to Mr. Sullivan on October 2, 2016 that the Receiver would recommend to the Court that Mr. Sullivan's claim be denied, in

order to give Mr. Sullivan an opportunity to object by the October 7, 2016 deadline. Mr. Sullivan did not file an objection.

D. Clarification on TD Ameritrade Case Assignment of Recoveries By DMP Claimants

The Receiver was contacted by Badge Humphries, counsel for plaintiffs in the putative class action against TD Ameritrade. Mr. Humphries sought clarification that the assignment proposed in the DMP motion to approve distribution does *not* convey attorneys' fees (due under existing contract of representation or by court award) or reimbursement of expenses in the TD Ameritrade case to the DMP Receivership. The DMP Receiver agrees. The intent and purpose of the assignment was not to convey TD Ameritrade plaintiffs' attorneys' fees to the DMP receivership. To the extent the assignment is vague on this point, the DMP Receiver will not seek those monies through the assignment.

E. Change in Total Recovery Amount to 69.5%

In the Receiver's initial Motion to Approve Plan of Distribution, the Receiver stated that he would recommend a reserve of 3.00% of the total, or \$396,127.42, in order to pay DMP's liability in the Adjustment Proceeding with DMP's former CEO and CFO, plus any professional fees, taxes, or other amounts due now or in the future. [Doc. 166 at 10.] In the initial plan, a 3.00% holdback yielded a 70.20% return for all DMP claimants when prior distributions were included. [See generally Doc. 167]

The adjustments for Mr. Milliken and Mr. Gartner decrease the return for other claimants. In addition, DMP's liability in the Adjustment Proceeding has been paid, further reducing the total amount of funds to be distributed to claimants.

The total Receivership funds now available (prior to third quarter expenses being approved by the Court and paid) is \$13,034,556.73. The Receiver recommends a total distribution at this time of \$12,715,210.09, which results in a total recovery of 69.5% to claimants and a hold back of 2.45% for outstanding and future expenses. To the extent the holdback is not used, it will be paid out to claimants in future distributions.

CONCLUSION

The Receiver recommends accepting the Plan with the changes reflected in this Second Amendment, which results in a small change to the payout to all claimants.

The Receiver recommends that all other terms of the Receiver's Plan of Distribution remain as stated in his Motion to Approve Plan of Distribution [Doc. 166] and his Amendment to Motion to Approve Plan of Distribution [Doc. 169].

As set forth in the Certificate of Service, the Receiver is mailing and emailing a copy of this Second Amendment to the three claimants directly affected by this amendment as well as the counsel in the TD Ameritrade case who raised

the issue regarding the assignment. In addition, the Receiver will also post a copy of this filing on www.dmpreceivership.com.

Respectfully submitted this 17th day of October, 2016.

/s/ Jason S. Alloy

Jason S. Alloy

Georgia Bar No. 013188

ROBBINS ROSS ALLOY BELINFANTE

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*Appointed Receiver for Defendant
Detroit Memorial Partners, LLC*

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **RECEIVER'S SECOND AMENDMENT TO MOTION TO APPROVE PLAN OF DISTRIBUTION** 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 and parties of record.

The foregoing was also served on the following persons specifically named in this motion at the following addresses via U.S. Mail and email:

Stephen R. Gartner
62 Fairway Drive, P.O. Box 954
Bristol, TN 37621-0957
srgartner@aol.com

Michael D. Millikin
340 La Veta Ave.
Encinitas, CA 92024
marlotto@bioagemedia.com
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John R. Sullivan
860 Richmond Hill Drive
Marietta, GA 30068
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Badge Humphries. Esq.
Lewis Babcock L.L.P.
2113 Middle Street
Post Office Box 768
Sullivan's Island, South Carolina 29482
BH@LewisBabcock.com

The foregoing pleading was also personally served by email and U.S. Mail on Defendant Mark Morrow at the following addresses.

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

The foregoing pleading will also be posted on the Receiver's website at www.dmpreceivership.com.

This 17th day of October, 2016.

/s/ Jason S. Alloy
Jason S. Alloy