

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

vs.

GLOBAL ONLINE DIRECT, INC.,  
BRYANT E. BEHRMANN and  
LARRY "BUCK" E. HUNTER,

Defendants.

Civil Action No. 1:07-CV-0767-WSD

**OMNIBUS MOTION REGARDING CLAIMS AND MEMORANDUM OF  
POINTS AND AUTHORITIES [EXHIBITS "A"-"B"]**

I.

**INTRODUCTION**

On June 4, 2008, Michael A. Grassmueck, was appointed as receiver (the "Receiver") in this action pursuant to Court order (the "Receiver Order"). The Receiver Order identifies the Receiver's duties and responsibilities as encompassing, among others, the following general categories: (i) securing, protecting and recovering receivership estate (the "Receivership Estate") assets, (ii) preparing an accounting and investigating the status and whereabouts of Receivership Estate assets, (iii) liquidating Receivership Estate assets, and (iv) determining the necessary distributions to investors and creditors, based on review and allowance of such investors' and creditors' claims.

In connection with his duties under the Receiver Order, and based on the timing of this case and the existence of funds available for distribution to investors and creditors, the Receiver determined it appropriate to commence the claims review and analysis process. The Receiver sought and obtained Court approval of a claims procedure, which included a process for notice, solicitation, review and allowance of claims; a claims bar date of April 10, 2009 ("Claims Bar Date"); and the form of notice of the Claims Bar Date, (collectively, the "Claims Procedures").

The Receiver followed the Claims Procedures. Upon receiving the claims, the Receiver commenced a review and analysis of the claims in order to reconcile the claims with the books and records of the Receivership Estate and the Receiver's forensic accounting. In addition, the Receiver addressed the reality that there will only be nominal distributions made on account of each allowed claim.

As such, the Receiver worked to establish an allowed claim for each investor reflecting their principal investment, less any deductions for withdrawals of investment funds, if any. The Receiver completed his claims review and analysis, and the results of his analysis are reflected on Exhibit "A" attached to this Motion. By this Motion, the Receiver seeks approval of objections to certain claims filed in

this case, and the approval of the allowance and disallowance of claims reflected on Exhibit "A".

## II.

### FACTS

#### A. The SEC Action and Investigation of Global's Business Operations

On April 25, 2007, the Securities and Exchange Commission ("SEC") commenced an action against the Defendants for violations of various federal securities laws. According to the SEC, the Defendants were involved in the fraudulent offer and sale of approximately \$45 million of unregistered securities, beginning in October 2005. On June 4, 2007, this Court appointed Michael A. Grassmuck as receiver pursuant to the Receiver Order.

#### B. Claims Process and Anticipated Distribution

The Receiver balanced the cost of processing claims filed against the Receivership Estate against the actual proceeds available for distribution. The processing cost includes, among other things, reviewing the claim (including reviewing any documentation in support of such claim), conducting any additional follow-up correspondence or telephone calls in respect to such claim, appearing at a hearing on allowance of the claims, and distributing the payout on claims (including any fees to process payment of such claim and mailing and postage of such claim) (collectively, the "Administrative Cost").

The Receiver previously estimated to the Court an Administrative Cost to be \$55.50 for each of the Receivership Estate claims. The Receiver determined that if the Receiver had to review and fully process all such claims, the Administrative Cost would likely consume almost a third of the entire amount available for distribution. Further, the Receiver determined that for claims of \$2,000 or less, the cost of reviewing and processing each of these claims would be greater than the pro rata distribution that each of the claimants would receive on their respective claims.

The Receiver had previously provided an estimate for this Administrative Cost to be \$55.50, but through his office's considerable efforts to conserve expense and efficiently streamline the process, the Receiver has so far limited the Administrative Cost to \$30.78 for Administrative Cost for each of the claims. However, this Administrative Cost could substantially increase and reach the estimate of \$55.50, depending on the level of activity necessary to resolve any claims issues, following the filing and service of this Motion.

Given the Administrative Cost, and the amounts available to make a *pro rata* distribution to claimants, the Receiver proposed, and the Court previously approved, a maximum payment of \$10.00 to those claimants who file proofs of claim based on an investment of \$2,000 or less, or for those claimants who file their proofs of claim and do not have or do not wish to produce documents supporting their claim ("Convenience Class Claim"). The Convenience Class Claims are notated in the chart in Exhibit "A" as "CC". As for the balance of the allowed claims, the Receiver anticipates distributions of less than 5% on such claims.

### III.

#### **STATEMENT ON CLAIMS**

The Receiver received 2,407 proofs of claims filed against the Receivership Estate which totaled \$47,746,813.38. As is often the case, some claimants filed multiple claims and/or requested payment of amounts in excess of the principal amount of their investment (e.g. lost opportunity costs, interest, fees, etc.). Based upon the resources available for distribution, the Receiver requests that the Court allow only the principal amount of each investor claim.

The Receiver requests, by this Motion, that the Court allow or disallow, as applicable, certain claims, as set forth in the Claims List attached as Exhibit "A". The Claims List identifies claimants by number only instead of by investor name in order to protect the identity of the investors and creditors. The Receiver requests

that the Court allow the total amount of \$21,537,893.93 in claims in whole or in part, which represents 2,124 of the 2,407 claims, and disallow the remainder of the claims.

The Receiver e-mailed the Notice of Claims Bar Date and Proof of Claim form to the investors and creditors as listed in the Receiver's database for investors and creditors, and in accordance with the e-mail notice procedures previously approved by this Court. The investors and creditors were authorized to either file their proofs of claim on-line at the Receiver's website, or file their proofs of claim with the Receiver by mailing such proof of claim form, with a self-addressed stamped return envelope for confirmed copy.

#### IV.

#### **PROCEDURE ON CLAIMS OBJECTIONS**

In conjunction with the filing of this Motion, the Receiver will transmit a postcard to all claimants, who have filed claims against the Receivership Estate. The postcard will (i) notify the claimants of the filing of this Motion, (ii) instruct such claimants to review the treatment of their filed claims per this Motion on the Receiver's website for this case at [www.grassmueckgroup.com/global\\_online.php](http://www.grassmueckgroup.com/global_online.php), which Motion will be uploaded for the claimants' review, and (iii) provide them with their claim number to cross-reference the chart listing the claim numbers to determine how their claims are to be treated, which chart is attached as Exhibit "A" to this Motion.

An example postcard sent to claimants regarding the Receivership Estate's proposed treatment of their claims is attached hereto as Exhibits "B". Claimants with disputed claims or any other interested parties may contact the Receiver's office to discuss their respective claims, and the possible resolution of the claims. The Receiver requests that the claimants, prior to determining whether to contact the Receiver's office, carefully consider that the anticipated distributions will be nominal in this case.

If the claims cannot be resolved through this informal process, the claimant must file an objection to the Receiver's proposed treatment to claims on or before 20 business days (i.e., excluding weekends and holidays), after the service date of this Motion, or on or before September 16, 2009. The Receiver shall then file his reply to any such objections not later than 10 business days, following receipt of the objection, or on or before September 30, 2009.

Since this Motion is filed, and may be possibly determined, with no hearing date, the Receiver agrees to extend the Court's generally required deadline for filing an objection of 10 business days, to 20 business days, to provide claimants adequate opportunity to attempt to informally resolve such disputed claim. If it cannot be resolved, the claimants may prepare and file a formal objection to the Motion by the extended deadline. To provide the Receiver adequate time to prepare and file a reply, the Receiver will file and serve a reply to the Court, 10 business days following filing and service of the objection.

## V.

### **CLAIMS PARAMETERS**

The value of the assets available for distribution to claimants is significantly less than the total amount of claims filed. In addition, many of the claims filed appear to be based upon (a) duplicate filed claims, (b) speculative and unproven damages, (c) improperly filled-in proof of claim forms, (d) incorrectly designated as secured claims when they are actually unsecured claims, (e) designated in Canadian currency, and not properly converted to U.S. currency, and without proper substantiation, and (f) untimely filed after the Claims Bar Date. As a result, certain parameters must be set and applied to categories of claims so that all investors and creditors are treated fairly.

For example, investors should not receive distributions on amounts claimed for accrued or unpaid interest, consequential damages or lost profits, or attorney's fees until all investors have at least received a distribution equaling their principal

investment. There will not be sufficient money to make such a distribution in this case because there are insufficient funds available to pay the fund amount of the principal owed to investors. Likewise, any trade creditor claimant should not receive any distribution on the amount claimed based on tort or other theories, unless and until such trade creditor receives the full principal amount owed without consideration of such ancillary damage claims.

## VI.

### **THE COURT'S BROAD DISCRETION TO ESTABLISH PARAMETERS FOR TREATMENT OF CLAIMS**

Federal District Courts have broad power to supervise a receivership or receivership and promote an orderly and fair administration of assets. *See, e.g., S.E.C. v. Hardy*, 803 F.2d 1034 (9th Cir. 1986); *see also S.E.C. v. Universal Financial*, 706 F.2d 1034, 1037 (9th Cir. 1985). Specifically, the District Court has the power to use "summary procedures in allowing, disallowing, and subordinating claims of creditors . . . ." *United States v. Arizona Fuels Corp.*, 739 F.2d 455, 458 (9th Cir. 1984). In overseeing a receivership, the Court must "make rules which are practicable as well as equitable." *Hardy*, 803 F.2d at 1039 (quoting *First Empire Bank-New York v. FDIC*, 572 F.2d 1361, 1368 (9th Cir. 1978)).

The Receiver requests that the Court accept and order that the following rules apply to claims filed in this case in the interest of fairly and efficiently administering this case.

#### **A. Investor Claims**

The Receiver has received 2,403 proofs of claim filed by investors ("Investor Claims"). Some of the Investor Claims have been submitted by attorneys representing clients, and some by the clients themselves. A portion of these proofs of claim include itemized amounts claimed for accrued or unpaid interest, attorneys' fees or other damages. Other proofs of claim contain a general statement demanding recovery of lost principal, lost income, prejudgment interest,

attorneys' fees, and treble or punitive damages. And yet other proofs of claim assert a secured status for the claim, when they are correctly unsecured claims.

Equity requires that until each Investor receives a distribution equal to the full amount of their principal investment, none should receive a distribution on account of amounts claimed for accrued or unpaid interest, attorneys' fees, consequential damages or lost profits, punitive damages, or tort damages.<sup>1</sup> Moreover, the Receiver asserts that no Investor shall be paid on a claim where no actual money was paid by the Investor for the interest, shares or units received or where the Investor fails to adequately demonstrate that a monetary investment was made in return for their alleged interest in the enterprise.

To effect these principles, the Receiver has diligently worked to reconcile the claims with the Receivership Estate's records and other records. Where disputes existed between a claimant's assertion of a claim and the records of the Receivership Estate and other records, the Receiver communicated directly with claimants to obtain the back-up documentation to substantiate, among other things, the identity of the claimant and the amount of the investment.

Through this process, the Receiver was able to resolve a substantial number of the initially disputed claims. The results of Receiver's audit and his recommendations for allowing and disallowing Investor Claims are set forth in the chart attached hereto as Exhibit "A". Exhibit "A" includes a list of all Investor Claims, and reflects: (1) the amount of each claim; (2) the basis to allow or disallow the claim in whole or in part (*e.g.*, unsubstantiated, overstated, subject to certain deductions for account withdrawals, etc.); and (3) the Receiver's recommendation to allow or disallow part or all of each claim.

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<sup>1</sup> In theory, all Investor Claims could instead be allowed in an amount that included all the categories of claimed amounts the Receiver seeks to exclude and, at the end of the day, equitable treatment should still result. Reviewing, reconciling and ensuring that all amounts claimed are fair *vis-à-vis* other investors would, however, be a significant administrative and logistical burden.



It is one of the most fundamental principles of equity that similarly situated claimants be treated similarly, and that none should receive interest or lost profit type damages until all have received a distribution equal to the principal amount of their claim. It is equally fundamental that no claimant should be paid more than they invested and no claim should be paid without evidence that the claimant actually suffered a loss of their investment capital. This notion of equality among claimants applies to those claimants improperly seeking a priority distribution as a secured claimant, when all claimants are *pari passu* unsecured claimants of the Receivership Estate.

These principles are also reflected in the statutory scheme of the Bankruptcy Code and the litany of cases addressing the allowance of claims and the priority of distributions from asset pools insufficient to make claimants whole. *See, e.g.*, 11 U.S.C. § 502 (requiring the proof of a claim); 11 U.S.C. § 726 (priority of payments in chapter 7 liquidation reflects a preference for paying the principal amount of claims before interest or punitive damages); *Commodity Futures Trading Commission v. Hoegh*, 205 F. 3d 1107,1115 (9th Cir. 1999) (allowed amount of claims limited to net investment); *In re Tedlock Cattle Co. Inc.*, 552 F.2d 1352 (9th Cir. 1977) (claims must be limited to net equity to ensure ratable participation in a limited pool of assets); *SEC v. First Securities Company of Chicago*, 507 F. 2d 417 (7th Cir. 1974) (reversed on other grounds) (stockbroker liquidation adopts priority scheme and claim allowance approach of Bankruptcy Code).

Given the amount of assets held by the Receiver and the aggregate amount of claims asserted by Investors, even in the proposed allowed amount, the Investors will not receive distributions equal to their principal investment. However, the Receiver reserves the right to review and make recommendations about additional amounts that should be allowed to Investors, in the unlikely event

there are additional funds available for distribution in excess of their principal investment.

Many Investors filed claims in which they could not or did not substantiate their assertion that they had invested money with the Relief Defendants. The Receiver asserts that only those people who actually invested money should have an allowed claim. Many others asserted claims for invested money, without properly deducting amounts Investors withdrew or received from the enterprise.

The Receiver asks that the Court (i) disallow all or a portion of claims necessary to account for the amount of the claimant's withdrawals from their account or accounts, and (ii) to allow those Convenience Claims, which includes those claimants who did not provide supporting documentation but whose claims were checked against the Receivership Estate records, in the maximum amount of \$10.00.

The Receiver additionally requests that the Court disallow the numerous claims which were filed after the Claims Bar Date. All claimants had ample notice and opportunity to timely file their proofs of claim on-line with the Receiver, and those who timely filed, should not be compelled to carve-out distributions on their claims, for the sake of those claimants who failed to comply with the claims procedures, and timely file their proofs of claim with the Receiver.

Finally, the Receiver requests that the Court disallow those claims which were not properly converted from Canadian currency to U.S. dollars, or were not otherwise properly substantiated. The Receiver is cognizant of the numerous investors which are Canadian citizens. To that end, the Receiver has spent considerable efforts in converting where applicable, the claimants' claims from Canadian currency to U.S. currency. The Receiver determined that those claims were properly substantiated, and tied to specific investor deposits to the Receivership Estate which could be reconciled against the Receivership Estate's records.

However, many of the claims in Canadian currency were not tied to specific investor deposits and could not be reconciled against the Receivership Estate. The necessity to convert currency to reconcile these claims made the task even more difficult. The Receiver is hopeful that this claims process will cause these claimants to come forward with further information to substantiate their claims in U.S. dollars, and facilitate the Receiver's ability to tie the claims to specific deposits. But to the extent that these "currency" claims are not ultimately reconciled, the Receiver maintains his request to disallow such claims.

Based on the foregoing, the Receiver requests that the Court order that each Investor Claims set forth in Exhibit "A", in the column "Allowed Amount", be allowed, with the balance of claims being disallowed.

**B. Trade Claims**

The Receiver has received 4 proofs of claim filed by trade creditors ("Trade Claims") (which are claim numbers 100000010, 100000399, 800000704, and 800001053). The same equitable principles that require the disallowance of certain items included in the proofs of claim filed by Investors, mandate that proofs of claim filed by trade creditors be allowed or disallowed, as set forth in Exhibit "A". The Receiver requests that the Court disallow the Trade Claims in its entirety.

Accordingly, the Receiver requests that the Court order that each Trade Claim set forth in Exhibit "A", in the column "Allowed Amount", be allowed, with the balance of claims being disallowed.

**VII.**

**RESERVATION OF RIGHTS AND LIMITS ON OBJECTIONS**

The Receiver expressly reserves the right to amend, modify, or supplement this Motion and to make additional objections to any and/or all of the above-referenced undocumented claims or any other claim (filed or not), which may be asserted against the Receivership Estate. Should one or more of the grounds of objection stated in this Motion be overruled, the Receiver reserves the right to

object on other stated grounds or on any other grounds that the Receiver may discover during the administration of this case.

**VIII.**

**CONCLUSION**

WHEREFORE, the Receiver's goal is the efficient and equitable administration of claims in this case. As the assets available for distribution are not sufficient to pay all claims in full, it is imperative that the Receiver eliminate excessive and/or inequitable claims. Accordingly, the Receiver respectfully requests that the Court enter an order: (a) allowing the Investor Claims in the amounts set forth in Exhibit "A", and disallowing the remainder of the Investor Claims in their entirety as set forth in Exhibit "A", and (b) allowing the Trade Claims in the amounts set forth in Exhibit "B", and disallowing the remainder of the Trade Claims in their entirety as set forth in Exhibit "B"; and (c) for such other relief as the Court deems just and necessary.

Dated: August 19, 2009

Respectfully submitted,

/s/ David R. Zaro, Esq.

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