

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

**MOTION FOR ORDER APPROVING DISTRIBUTION PLAN AND
AUTHORIZING DISTRIBUTION TO HOLDERS OF ALLOWED CLAIMS**

Michael A. Grassmueck (the "Receiver"), the duly appointed receiver for Global Online Direct, Inc. ("Global") and its subsidiaries Global Online Depository, Global Online SPIP, Global Online Auction Stores, Triple Diamond B, Bodaga Bay, Bodaga Bay Trucking, Inc., Catherine Crick Riders, Double B Broadcasting, Inc., The AM Show, Double B MPG, Global Online Direct, U Loan We Pay, and Bargain Hunter, Inc. and their subsidiaries and affiliates and any entities controlled by them (collectively referred to as the "Receivership Entities"), hereby moves this Court (the "Motion") for an order approving a distribution plan and authorizing distribution to holders of allowed claims.

I. INTRODUCTION.

On June 4, 2007, this Court appointed Michael A. Grassmueck as receiver pursuant to the entry of the Court's Order Appointing a Receiver, Freezing Defendants' Assets, and Ordering Other Ancillary Relief ("Receiver Order"). The Receiver was appointed as receiver over Global Online Direct, Inc. ("Global") and its subsidiaries Global Online Depository, Global Online SPIP, Global Online Auction Stores, Triple Diamond B, Bodaga Bay, Bodaga Bay Trucking, Inc., Catherine Crick Riders, Double B Broadcasting, Inc., The AM Show, Double B MPG, Global Online Direct, U Loan We Pay, and Bargain Hunter, Inc. and their subsidiaries and affiliates and any entities controlled by them (collectively referred to as the "Receivership Entities"). Section V.D of the Receiver Order provides that the Receiver is empowered to make such "ordinary and necessary payments, distributions, and disbursements, as he deems advisable or proper for the marshaling, maintenance, or preservation of the Receivership Estate".

The Receiver has concluded the claims administration process in this case, the liquidation of all Receivership Estate ("Estate") assets, and is now ready to proceed with distribution of funds in the Estate. Thereafter, the Receiver will move to close the case and seek a discharge of the Receiver.

Based on the Receiver's review of the claims, the Receiver had allowed (or partially allowed) 2,136 claims. The total allowed amount in claims against the Estate is \$21,897,027.30. These claims consist of: 736 convenience class claims ("Convenience Class Claims"), which are \$2,000 or less, or are not supported by sufficient documentation but verifiable against the Estate's records, ("Allowed CC Claims"); and 1,400 general unsecured allowed claims in the amount of \$21,889,667.30 ("Allowed GU Claims"). These Allowed GU claims will share in the remaining Estate funds on a *pro rata* basis, following distribution to the Allowed CC Claims.

Based on the Receiver's calculations, the Receiver estimates a distribution return of 5% for Allowed GU Claims on a *pro rata* basis ("Allowed GU Claims Distribution"), after distribution of \$10.00 for each of the Allowed CC Claims ("Allowed CC Claims

Distribution"). The Receiver does not anticipate any further recoveries, which would increase the Allowed GU Claims Distribution Return.

The Estate currently holds approximately \$1,152,795.91 in cash ("Estate Proceeds") for the Allowed GU Claims Distribution and Allowed CC Claims Distribution (collectively, "Distribution Return"). The Estate Proceeds are exclusive of allowance and payment of final professionals' fees and expenses for the fourth and final interim period totaling approximately \$75,000. To implement the distribution of the Distribution Return, the Receiver has prepared a Distribution Plan, which is concurrently filed herewith. Based on the foregoing, the Receiver requests that the Court approve the Distribution Plan.

II. STATEMENT OF 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. Grassmueck as receiver pursuant to the Receiver Order.

B. The Claims Determinations

The Receiver concluded the claims administration process in this case, and is ready to proceed with distribution of the Estate Proceeds. Indeed, the Receiver obtained approval of an omnibus motion for claims determination in this case ("Omnibus Motion"). The Court approved the Omnibus Motion which, among other things, sought pre-approval of a convenience class whereby a maximum of \$10.00 would be distributed to those claimants (i) whose claims were less than \$2,000, and/or (ii) where claimants did not have sufficient back-up documentation, but still wanted a distribution (collectively, "Convenience Class Claims").

The Receiver requested approval of a Convenience Class, after determining that the administrative cost of processing each of these claims far exceeded the amount of return on these Claims. Moreover, the Receiver determined that the administrative cost of processing all claims without a convenience class would necessarily consume the distribution amounts for those allowed claims greater than \$2,000. Accordingly, the Receiver determined, and the Court approved that a distribution of \$10.00 to the Convenience Class Claims.

Based on the Receiver's review of the balance of the claims, the Receiver determined there were a total of 2,410 claims filed against the Receivership Estate in the amount of \$47,819,814.38. Of the 2,410 claims, the Receivership Estate objected to 274 claims in full, and allowed (or partially allowed) 2,136 claims. The total allowed amount in claims against the Estate is \$21,897,027.30.

C. The Liquidation of Assets and the Conclusion of Claw-Back and Third-Party Litigation

The Receiver has liquidated all Estate assets, and has liquidated those real property assets which were recovered from certain claw-back litigation filed against third parties (*i.e.*, *Michael A. Grassmueck, Receiver v. Mary C. Hunter, et al.*, Case No. 1:07-CV-2532). The Receiver has sold all such claw-back properties, or otherwise determined to abandon certain claw-back properties which were of inconsequential value to the Estate. The Receiver has also elected to terminate certain claw-back litigation against third parties for monetary recoveries in the District of Oregon, prosecuted by special counsel Larkins Vacura LLP (*i.e.*, *Grassmueck v. Bishop, et al.*, Case No. 09-CV-1257-HU). This determination was made based upon the cost of collecting on any judgments obtained in the litigation relative to the unlikely prospect of assets available for collection and the prospect of discharge of such judgments in bankruptcies filed by the judgment debtors.

III. SUMMARY OF PROPOSED DISTRIBUTION PLAN.

To implement the distribution, the Receiver has prepared a Distribution Plan, which is concurrently filed herewith. In developing and selecting the Distribution Plan, the Receiver carefully analyzed and considered all options for distribution, determining that the one contained in the Distribution Plan is the most equitable and practicable for all interested parties.

In general, the Distribution Plan contemplates distributions for three types of allowed claims against the Estate: (i) Administrative Claims¹, comprised primarily of the expenses incurred by the Receiver and his professionals, (ii) Creditor Claims, comprised of any claims of vendors or service providers for goods and services rendered to the Estate, and (iii) Investor Claims, comprised of claims held by persons or entities who invested funds in the Estate.

The Receiver proposes, and seeks Court approval thereof, to pay Creditor Claims and Investor Claims that hold Allowed GU Claims *pro rata* from the Estate Proceeds. The Receiver estimates that the Allowed GU Claims will be paid at 5% *pro rata*.

The Receiver proposes that Administrative Claims, after Court approval, will be paid in full. The Receiver has included in the Administrative Claims its estimate for the remaining Receiver's fees and costs, and those of his professionals, which will be incurred to the date of entry of order closing the case, (the "Estate Administrative Expenses").

The Receiver will make the distribution under the Distribution Plan as soon as practicable, but no later than sixty (60) days after a Final Order is entered by the Court approving the Distribution Plan. Any distribution under the Distribution Plan which is unclaimed after sixty (60) days following the date of distribution shall be forfeited, and such distribution together with all interest earned thereon shall become part of, and increase the amounts available for redistribution to only those allowed claims which are

¹ All capitalized terms not defined herein shall have the same meanings as set forth in the Distribution Plan.

\$10.00 or greater. The Receiver proposes this specific treatment for unclaimed distributions, since the administrative cost of ensuring redistribution of unclaimed distributions to those allowed claims less than \$10.00 would actually exceed the amount of the unclaimed distribution itself.

IV. THE RECEIVER SEEKS COURT APPROVAL OF DISTRIBUTION TO THE ALLOWED GU CLAIMS AND ALLOWED CC CLAIMS.

The power of a district court to appoint a monitor, a receivership, or grant other forms of ancillary relief, does not in the first instance depend on a statutory grant of power from the securities laws. Rather, the authority derives from the inherent power of a court of equity to fashion effective relief. *SEC v. Wencke*, 622 F.2d 1363, 1369 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly and efficient administration of the estate by the district court for the benefit of creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir 1986). As with the appointment of a receiver, the Court has the authority to approve a plan of distribution which provides for the equitable and fair distribution of assets. *See S.E.C. v. Elliot*, 953 F.2d 1560, 1569 (11th Cir. 1992).

District courts have the broad power of a court of equity to determine the appropriate action in the administration and supervision of an equity proceeding. *See SEC v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005). The Ninth Circuit explained (in respect to a receivership, but which is equally applicable to a monitor proceeding):

A district court's power to supervise an equity receivership and to determine the appropriate action to be taken in the administration of the receivership is extremely broad. The district court has broad powers and wide discretion to determine the appropriate relief in an equity receivership. The basis for this broad deference to the district court's supervisory role in equity receiverships arises out of the fact that most receiverships involve multiple parties and complex transactions. A district court's decision concerning the supervision of an equitable receivership is reviewed for abuse of discretion.

Id. (citations omitted); *see also Commodities Futures Trading Comm'n. v. Topworth Int'l, Ltd.*, 205 F.3d 1107, 1115 (9th Cir. 1999) ("This court affords 'broad deference' to the court's supervisory role, and 'we generally uphold reasonable procedures instituted by the district court that serve th[e] purpose' of orderly and efficient administration of the receivership for the benefit of creditors."). Accordingly, the Court has broad discretion to approve a plan of distribution, and authorize the Estate to make a distribution.

Distributions to Allowed GU Claims Should Be Made on a *Pro Rata* Basis and Distributions to Allowed CC Claims Should be \$10.00

Pro rata distribution is recognized by case law as an appropriate procedure for distributing assets in this type of proceeding. *See, e.g., In re Golden Triangle Capital, Inc.*, 171 B.R. 79 (9th Cir. BAP 1994) (individual investor's claims of constructive trust give way to requirement of an equitable distribution); *In re Lemons & Associates, Inc.*, 67 B.R. 198 (Bankr. D. Nev. 1986); *see also Cunningham v. Brown et al.*, 265 U.S. 1 (1924) (all of Ponzi's victims were creditors and nothing more, and the Court holds strongly for the principle that equality is equity).

All Allowed GU Claims should be treated the same under the Distribution Plan. They are all victims of the same Ponzi-like scheme perpetrated by the Receivership Entities. These investors lost money, whether they sent money to the Receivership Entities early in the scheme or toward the end. Some claimants received a portion of their money back from the Receivership Entities. Others invested funds and received no payments. In other words, all claimants have suffered a similar kind of injury, and therefore should receive the same treatment.

The money-in, money-out (or "MIMO") formula for calculating allowance of claims, limits claims to the amount of each claimant's loss. The proposed Distribution Plan provides that all Allowed GU Claims will receive the same percentage of their allowed claims. This is the most fair and equitable method of distributing Estate Proceeds to the Allowed GU Claims. Therefore, the Receiver requests that the Court

authorize the distribution on a *pro rata* basis to the Allowed GU Claims, and approve the Distribution Plan, which implements such distribution.

The Receiver also seeks approval of distribution to the Allowed CC Claims in the amount of \$10.00. The Receiver has sought and obtained Court approval of this distribution amount, in connection with the Omnibus Claims Motion. All Allowed CC Claims will receive a distribution of \$10.00.

V. CONCLUSION.

Based on the foregoing, the Receiver respectfully requests that the Court enter an order: (a) granting the Motion, (b) approving the Distribution Plan, (c) authorizing the Receiver to make a final distribution, as set forth in the Distribution Plan, of the Estate Proceeds, and (d) granting such other relief as the Court deems just and necessary.

Dated: August 18, 2010

Respectfully submitted,

/s/ David R. Zaro, Esq.

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