

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

**Case No.: 06-20975-CIV-HUCK
Magistrate Judge Simonton**

vs.

**JACK P. UTSICK, ROBERT YEAGER,
DONNA YEAGER, WORLDWIDE
ENTERTAINMENT, INC., et al.,**

Defendants.

**RECEIVER'S MOTION FOR ORDER IMPLEMENTING PROCEDURES FOR
RECONCILIATION OF CLAIMS**

Michael I. Goldberg, the Court-appointed Receiver (the "Receiver") for Defendants Worldwide Entertainment Group, Inc. ("Worldwide"), The Entertainment Group Fund, Inc. ("TEGFI"), American Enterprises, Inc. ("AEI") and Entertainment Funds, Inc. ("EFI"), by and through his undersigned counsel, and pursuant to S.D. Fla. L.R. 7.1, requests entry of an Order implementing procedures for reconciliation of Claims and in support hereof states as follows:

I. BACKGROUND FACTS

A. THE ORDER APPOINTING RECEIVER

1. On April 17, 2006, the Securities and Exchange Commission ("SEC") filed a Complaint (the "Receivership Case") in the United States District Court for the Southern District of Florida (the "District Court") against Worldwide TEGFI, AEI, EFI, John P. Utsick ("Utsick"), who was the principal of Worldwide, TEGFI and EFI, and against Robert Yeager ("Yeager") and Donna Yeager (Yeager and Donna Yeager are jointly referred to as the "Yeagers"), who were the principals of AEI (Worldwide TEGFI, AEI, EFI, Utsick and the Yeagers are collectively the "Receivership Defendants").

2. On April 20, 2006, upon the request of the SEC, the District Court entered an Order Appointing Receiver (the "Receivership Order") appointing Michael Goldberg as receiver over Worldwide TEGFI, AEI, EFI, their subsidiaries, successors and assigns (collectively, the "Receivership Entities").

3. Under the express terms of the Receivership Order, the Receiver is authorized to take immediate possession of all property of every kind of the Receivership Entities. The Receiver also is expressly authorized to: (i) investigate the manner in which the affairs of the Receivership Entities were conducted; and (ii) institute legal actions on behalf of the Receivership Entities and their investors as deemed necessary by the Receiver to collect funds or assets that were wrongfully misappropriated or transferred from the Receivership Entities or otherwise traceable to the funds raised from investors of the Receivership Entities, including but not limited to, avoidance of fraudulent transfers pursuant to Florida's Uniform Fraudulent Transfer Act.

B. THE CLAIMS PROCEDURES AND RISING TIDE METHOD FOR CALCULATION

4. On October 4, 2006, the Receiver filed his Motion to Establish (i) A Mechanism to Calculate Investors' Claims; (ii) A Claims Procedure to Deal with Disputed Claims; and (iii) A Claims Bar Date.

5. On October 10, 2006, the Court entered its Order Granting In Part Receiver's Motion to Establish (i) A Mechanism to Calculate Investors' Claims; (ii) A Claims Procedure to Deal with Disputed Claims; and (iii) A Claims Bar Date (the "October Order"). The October Order set December 4, 2006 as the claims bar date.

6. Pursuant to the October Order, on or about October 12, 2006, the Receiver mailed claim forms to all known potential claimants, including all investors reflected in the records of

the Receivership Entities, instructing claimants to submit their claims on or before December 4, 2006.

7. The Receiver received approximately 2,971 claims (the "Claims") from the investors in the Receivership Entities. Shortly thereafter, the Receiver and his staff began to review, verify and confirm the Claims against the books and records of the Receivership Entities.

8. On February 1, 2007 this Court entered its Order Establishing Method by Which Receiver Shall Calculate Claims (the "Rising Tide Order").

9. The Rising Tide Order set forth the rising tide method for calculating claims requiring the Receiver to subtract withdrawn "profits" *after* determining the investor's pro-rata distribution. To avoid confusion, monies received by investors from the Receivership Entities will be referred to herein as "Distributions" and not as "profits".¹

II. RELIEF REQUESTED

10. For nearly a year the Receiver has been actively attempting to calculate the Claims, however the Receiver requires the Court's guidance on various reconciliation considerations before he can complete the process, *to wit*:

- (i) the treatment of claims filed by spouses;
- (ii) the treatment of minor children's claims;
- (iii) the treatment of major children's claims;
- (iv) the treatment of individuals and their wholly owned businesses;
- (v) the treatment of trust claims; and
- (vi) the treatment of Reinvestments or Rollovers for the rising tide

Calculations.

¹Importantly, as used in the Rising Tide Order, profits include all distributions made by the Receivership Entities *including* return of capital. The Receiver has commenced the filing of fraudulent transfer actions against persons receiving so-called "profits" which "profits represent distributions investors received from the Receivership Entities in a sum greater than the sum of their investments making them "profiteers".

11. The Receiver requests entry of an Order Implementing procedures for the treatment of certain Claims. The Receiver's recommendations and comments concerning each of the reconciliation considerations are discussed below.

A. THE TREATMENT OF SPOUSES

(1) Spouses Maintaining a Joint Account with Receivership Entities

12. In some instances, spouses maintained a joint investment account ("Joint Account") with the Receivership Entities. Claims filed concerning the Joint Account are referred to as a joint claim ("Joint Claims"). Guidelines must be implemented for the treatment of Joint Claims where one or both spouses also maintained an individual account with the Receivership Entities to assure that the Distributions to the Joint Account and individual accounts are accounted for under the rising tide method. The Receiver suggests two options for the Court's consideration.

(a) Option 1 – Allocate Interests in Joint Account To Each Spouse

13. Under Option 1, the Receiver proposes to divide any allowed Joint Claim and the interest in the Joint Account (which takes into account the Distributions) equally between the spouses. Any individual Claim and/or individual account of each spouse would be consolidated with their half interest of the Joint Claim and Joint Account. For example, a husband and wife maintained a Joint Account and invested \$100,000 and received Distributions for the benefit of their Joint Account totaling \$50,000. The husband also maintained a second individual account and invested \$50,000 and received Distributions for the benefit of his individual account in totaling \$25,000. The husband would be entitled to an individual Claim in the amount of \$100,000 (\$50,000 [representing one-half of claim on account of Joint Account] + \$50,000 [representing total claim on account of his Individual Account]). The husband's Distributions for the rising tide calculation would total \$50,000 (\$25,000 [one-half of Distributions to Joint Account] + \$25,000 [Distributions to husband's individual account]). The wife would hold a

Claim in the amount of \$50,000 [one-half of Joint Claim]) and the wife's Distributions for the rising tide calculation would equal \$25,000 [one-half of Distributions to Joint Account]).

(b) Option 2 – Treat Spouses as One Unit

14. A second option is to treat the spouses as one unit consolidating their Joint Accounts and Joint Claim and individual accounts and Claims. This option is less administratively burdensome than Option 1.

15. The Receiver discussed the options with counsel for the SEC. Both the Receiver and the SEC recommend Option 1 for treatment of spouses maintaining a joint account.

(2) THE TREATMENT OF MINOR CHILDREN

16. In some instances accounts were maintained with the Receivership Entities by parents as custodians for the benefit of a minor child and the parent filed a claim on behalf of the minor child. Where such parent(s) also maintained their own account with the Receivership Entities, the Receiver proposes that the accounts of the minor child be consolidated with any accounts of the custodial parent reflected on the minor child's account assuring that all Distributions are accounted for under the rising tide method. In the event the custodial parent does not maintain an account, an account would be created in the name of the custodial parent.

(3) THE TREATMENT OF MAJOR CHILDREN

17. In some cases a parent has filed a claim on behalf of a child who reached the age of majority either prior to or after the appointment of the Receiver. In situations where the parent(s) also maintained an individual account with the Receivership Entities the Receiver proposes that the accounts of the majority child be treated separately from the accounts of the parent(s). An account will be created for the majority child if none exists.

(4) THE TREATMENT OF INDIVIDUALS AND THEIR WHOLLY OWNED BUSINESS

18. In some instances an individual filed a Claim in his or her name. In the instance where a business, wholly owned by the individual, also maintains an account with the Receivership Entities the Receiver proposes consolidation of the individual and business accounts assuring that all Distributions to the wholly owned business are accounted for as a Distribution to the individual under the rising tide method. Where a husband and wife jointly own a business, the business account would be divided equally between the spouses and treated as a Joint Account. *See* discussion *supra* at p. 5.

(5) THE TREATMENT OF TRUST CLAIMS

19. In some instances the trustee of an irrevocable trust filed a Claim (the "Trust Claim").² The Receiver proposes to consolidate the individual Claim with a Trust Claim where the individual is also the sole beneficiary of the trust, assuring that all Distributions to the trust are accounted for as a Distribution to the individual under the rising tide method. If the trust has more than one beneficiary, the Receiver will treat the Trust Claim separately.

(6) THE TREATMENT OF REINVESTMENTS FOR THE RISING TIDE METHOD

(a) Disregard of Reinvestments for the Rising Tide Calculation

20. In some instances investors received Distributions and subsequently reinvested an amount equal to the Distributions received ("Reinvestment"). The Receiver proposes to disregard the Reinvestments for the purposes of the rising tide formulation enabling those investors who reinvested Distributions ("Reinvesting Investors") to be paid dividends by the Receiver without being forced to forego dividends until the other investors were paid the amount of the Reinvestments. By necessity, the claims of the Reinvesting Investors must be reduced by the Distributions paid the investor to account for these Distributions.

²If the Receiver identifies revocable trusts, those claims will be similarly treated.

21. For example, where an investor with principal investments equaling \$50,000 makes Reinvestments totaling \$25,000, the Receiver will recognize the investor's claim in the total amount of \$25,000 (\$50,000 - \$25,000). However, \$0 will be credited as Distributions for the purposes of rising tide calculation. If Reinvestments are not disregarded for purpose of computing the rising tide calculation, the same investor who received Distributions equaling fifty percent of his claim which he then reinvested would hold a claim for \$25,000 but he would not be entitled to share in dividends until all other investors received a dividend totaling fifty percent (50%) (\$25,000 divided by \$50,000). Clearly, investors who reinvested their Distributions will be severely prejudiced if the Distributions that were Reinvested are taken into account when making the rising tide calculation.

22. The Receiver proposes to disregard Reinvestments for purposes of the rising tide calculation as set forth above.

(b) **Reconciliation Where Investor Maintains Both Individual and IRA Accounts and Reinvestments are Disregarded for Rising Tide Calculation**

23. If the Court approves the Receiver's recommendation to disregard Reinvestments for the rising tide calculation, complications arise when dealing with persons who invested directly through an individual account ("Direct") and an IRA account. Where an investor has both a Direct and IRA account, the Receiver must pay separate dividends to each account to preserve the special status of the IRA account. This forces the Receiver to determine how to separate the combined accounts *after* computing the rising tide calculation. The chart set forth below illustrates the issue.

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JOHN DOE INVESTMENT HIS ORY (REINVESTMENTS ALLOWED)					
IRA Direct	Date	Amount Invested	Amount Distributed/Reinvested	Amount Distributed/Not Reinvested	Balance
Direct	5/25/1999	\$ 30,000.00			\$ (30,000.00)
Direct	11/25/1999		\$ 10,000.00		\$ (20,000.00)
Direct	5/24/2000	\$ 20,000.00			\$ (40,000.00)
Direct	5/24/2000		\$ 10,000.00		\$ (30,000.00)
IRA	5/1/2002	\$ 30,000.00			\$ (60,000.00)
Direct	8/15/2002		\$ 5,000.00		\$ (55,000.00)
IRA	1/21/2005	\$ 20,000.00			\$ (75,000.00)
Direct	3/25/2005			\$ 10,000.00	\$ (65,000.00)
Totals		\$ 100,000.00	\$ 25,000.00	\$ 10,000.00	
Amount Invested by Direct					\$ 50,000.00
Amount Invested by IRA					\$ 50,000.00
Percentage Invested by Direct					50%
Percentage Invested by IRA					50%
Total Amount Invested**					\$ 100,000.00
Total Amount Distributed/Reinvested					\$ 25,000.00
Total Amount Distributed/Not Reinvested					\$ 10,000.00
Allowed Claim (\$100,000 [Amt Invested] - \$25,000 [Amt Reinvested])					\$ 75,000.00
Rising Tide % (\$10,000 [Amt Not Reinvested] / \$75,000 [Allowed Claim])					13%
Based on the sample above, this investor would start sharing in the distribution once all other investors with allowed claims received back 13% of their principal investment.					
**Includes Reinvestments					
DISTRIBUTION PAYOUT WHERE REINVESTMENTS ARE ALLOWED					
Allowed Claim Amount		\$75,000			
IRA's % of Allowed Claim		50%			
Direct's % of Allowed Claim		50%			

24. As shown above, the Investor's total Direct and IRA investments (including Reinvestments) equals \$100,000. The percentage of the total investments by the Direct and IRA accounts are fifty percent (50%). The total Distributions received but not reinvested equal \$10,000. The total Reinvestments received and reinvested equal \$25,000. The Distributions received by the Direct account and not Reinvested equal \$10,000. The Distributions received and not reinvested by the IRA account equals zero.

25. The total allowed claim equals \$75,000 (\$100,000 [invested] minus \$25,000 [reinvestments]).

(i) Option One

26. Option One proposes to allocate the investors' combined \$100,000 claim pro-rata based on the percentage interest of the Direct and IRA account in the total investments. Thus,

the allocated claims for the Direct and IRA accounts would equal \$37,500 (50 % each of \$75,000).

27. If Reinvestments *are permitted* for rising tide purposes, the only distribution considered for the rising tide calculation will be the \$10,000 which was not reinvested. Thus, the total pro-rata distribution for the rising tide calculation will equal thirteen percent (13%) (10,000/75,000). The Trustee proposes to allocate the combined 13% rising tide percentage between the Direct and IRA accounts based on each accounts percentage interest in the investments, 50%, making the rising tide calculation for both the Direct and IRA account 6.5%.

(ii) Option Two

28. Option Two proposes reconciling the Direct and IRA accounts separately. Although it would be less burdensome on the Receiver, this method prejudices the investor maintaining both a Direct and IRA account as he may not be credited for all Reinvestments. In the example above, the Direct account will hold a claim for \$50,000 and reinvestments of \$10,000. However, distributions that will be considered as to the Direct account for the rising tide calculation will be \$35,000. Thus, the rising tide percentage for the Direct account will equal seventy percent (70%) (Amount Received [\$35,000] divided by Amount Invested [\$50,000]) which means that the Direct account will not receive any distributions on account of its claim until other investors receive a pro-rata distribution in the amount of 70%.

29. The IRA account will hold a claim for \$50,000 and reinvestments of \$0. Because there were no reinvestments by the IRA account the rising tide calculation would be zero and the rising tide percentage will equal zero entitling the IRA Account to share in all dividends paid by the Receiver.

30. This investor is prejudiced because he will not share in any dividends on account of its \$50,000 claim concerning his Direct Account until all investors are paid 70% on account of

their claims. As illustrated in Option 1, if the accounts were combined, the Direct Account would share in dividends after 13% was paid on account of other investor claims.

31. The Receiver discussed the options with counsel for the SEC. Both the Receiver and the SEC recommend Option 1 where an investor maintains both an Direct and IRA account and reinvestments are disregarded for rising tide calculations.

WHEREFORE, the Receiver respectfully requests entry of an Order implementing claims reconciliation procedures for:

- (i) the treatment of claims filed by spouses;
- (ii) the treatment of minor children's claims;
- (iii) the treatment of major children's claims;
- (iv) the treatment of individuals and their wholly owned businesses;
- (v) the treatment of trust claims;
- (vi) the treatment of Reinvestments for the rising tide calculation; and
- (i) for such other relief as this Court may find just and equitable.

III. MEMORANDUM OF LAW IN SUPPORT OF MOTION

A. FACTS

The relevant facts are set forth above and are not repeated here.

B. ARGUMENT

(1) THE COURT SHOULD PROVIDE GUIDANCE CONCERNING THE IMPORTANT MATTER OF CLAIMS RECONCILIATION.

It is appropriate for a receiver to seek guidance from a court regarding a matter of such import and wide discretion as devising a claims process in an equity receivership. As has been noted, “[i]t is the court itself which has the care of the property in dispute ... [and the] receiver is but the creature of the court.” *S.E.C. v. Safety Fin. Serv., Inc.*, 674 F.2d 368, 373 (5th Cir. 1982). It has further been observed that “[i]n accepting or rejecting the claims of creditors, as well as in

filing a report of findings of fact and conclusions of law, a receiver acts like a master ... [and] a district court must decide de novo all objections to findings of fact and conclusions of law made or recommended by a master before ruling on the master's recommendations (citations omitted)." *U.S. v. Fairway Capital Corp.*, 433 F. Supp. 2d 226, 231 (D.R.I. 2006). Moreover, guidance from a court based on the facts and circumstances of a particular case would be especially helpful to a receiver because "case law involving district court administration of an equity receivership (once the receivership is underway) is sparse and is usually limited to the facts of the particular case." *S.E.C. v. Hardy*, 803 F.2d 1034, 1037 (9th Cir. 1986).

One principle that has been consistently recognized is that the district court has extremely broad powers and wide discretion to determine relief in equity receiverships. *See e.g. S.E.C. v. Capital Consultants LLC*, 397 F.3d 733, 738 (9th Cir. 2005); *SEC v. Basic Energy & Affiliated Res. Inc.*, 273 F. 3d 657, 668 (6th Cir. 2001); *S.E.C. v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992), *rev'd in part on other grounds*, 998 F. 2d 922 (11th Cir. 1993). 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. *See Capital Consultants*, 397 F.3d at 738; *Hardy*, 803 F.2d at 1037 (because a district judge supervising an equity receivership faces a myriad of complicated problems in dealing with the various parties and issues involved in administering the receivership, then reasonable administrative procedures, crafted to deal with the complex circumstances of each case, will be upheld). Accordingly, a district court's decisions relating to the choice of a distribution plan for the receivership are reviewed for abuse of discretion. *See S.E.C. v. Credit Bancorp Ltd.*, 290 F.3d 80, 87 (2nd Cir. 2002); *Elliott*, 953 F.2d at 1569-70; *Hardy*, 803 F.2d at 1037-38.

The Receiver is seeking guidance concerning the crucial process of reconciling Claims. Because the Receiver is but a "creature" of this Court, it is appropriate that the Receiver requests that the Court formally approve of the reconciliation process adopted by the Receiver. Here,

where the reconciliation process is complex because of the adoption of the rising tide method, it is important that the Court provide guidance to the Receiver concerning the process. In the event the Court approves of disregarding Reinvestments for the purpose of conducting the rising tide calculation, the reconciliation process becomes even more complex when dealing with investors maintaining both individual and IRA accounts, further necessitating the guidance of this Court.

C. CONCLUSION

Based on the foregoing arguments and authorities, the Receiver respectfully requests entry of an Order implementing procedures for reconciling Claims concerning the treatment of Claims filed by spouses; the treatment of minor children's Claims; the treatment of major children's Claims; the treatment of individuals and their wholly owned businesses; the treatment of trust Claims; the treatment of Reinvestments for the rising tide calculation; and for such other relief as this Court deems just and equitable.

LOCAL RULE 7.1 CERTIFICATION OF COUNSEL

Pursuant to Local Rule 7.1, undersigned counsel hereby certifies that the Receiver has conferred with counsel for the United States Securities and Exchange Commission who has no objection to the motion, counsel for the Yeagers and Utsick have taken no position on the relief requested herein.

Respectfully submitted,

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By: /s/ Joanne Gelfand

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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on this 24th day of January, 2008, I electronically filed Receiver, Michael I. Goldberg's, Motion for Order Implementing Procedures For Reconciliation of Claims with the Clerk of the Court by using the CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notice of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronic notices.

/s/ Joanne Gelfand

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