

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

<p>SECURITIES AND EXCHANGE COMMISSION,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>MOBILE BILLBOARDS OF AMERICA, INC., INTERNATIONAL PAYPHONE CORPORATION, TIGER MEDIA, INC., RESERVE GUARANTY TRUST, CALIFORNIA MOBILE BILLBOARDS, INC., WESTERN RESERVE GUARANTY TRUST, MICHAEL A. LOMAS and MICHAEL L. YOUNG,</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;">CIVIL ACTION NO. 1:04-CV-2763-WBH</p>
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**BRIEF IN SUPPORT OF THE MOTION
FOR APPROVAL OF THE RECEIVER’S PLAN FOR
CLAIMS ADMINISTRATION AND DISTRIBUTION OF PROCEEDS**

S. Gregory Hays, Receiver, files this Brief in Support of the Motion for Approval of the Receiver’s Plan for Claims Administration and Distribution of Proceeds, and respectfully shows the Court as follows:

BACKGROUND

This action commenced when the Securities and Exchange Commission (“SEC”) filed the above-styled civil enforcement action (the “Enforcement

Action”) on September 21, 2004. The Receiver was appointed by an Order of this Court of the same date. The Order was subsequently amended by Orders dated October 18, 2004 and February 7, 2005 (collectively the “Receivership Orders”). The Receivership Orders grant the Receiver broad authority over the organization, management, control and disposal of the assets of the Receiver Entities (the Receiver Entities and their assets are collectively referred to as the “Receiver Estate”).

As more fully described in the Receiver’s First, Second, Third, and Fourth Interim Reports (Doc. Nos. 43, 67, 78 and 110), filed with this Court on December 1, 2004, March 3, 2005, June 13, 2005, and June 19, 2006 respectively, the Receiver and professionals working with him have engaged in numerous activities since his appointment. Among other things, the Receiver and the professionals have: (1) collected, reviewed and analyzed the records of the Receiver Entities; (2) performed an extensive accounting and funds tracing that involved the analysis of voluminous amounts of material including bank statements, check copies, cancelled checks, deposit slips and wire advices associated with at least 105 different bank accounts; (3) taken control of and secured the value of the assets in the Receiver Estate; and (4) investigated and successfully pursued claims against third parties.

As part of his duties, the Receiver is charged with determining the amounts invested in the Receiver Entities and filing a report with the Court describing his activities and estimating the time it will take to distribute available assets and wind up the receivership. To that end, and as detailed in the Plan of Distribution, the Receiver has analyzed the MBA books and records in order to determine the amount of each claim, and has sent Claim Determination Notices to each known investor and creditor who has filed a claim with the Receiver Estate.

The Receiver now seeks approval of his proposed Plan for Claims Administration and Distribution of Proceeds.

FACTS¹

This case involves two fraudulent securities offerings, the “MBA Offering” and the “NPC Offering.” As explained below, both offerings actually a Ponzi scheme that operated as a common enterprise by the same individuals to defraud unsuspecting investors out of approximately \$73 million (\$55.9 million for the MBA offering and \$17.4 million for the NPC Offering).

¹ A more detailed accounting of the relevant facts can be found in the four Interim Reports which have been posted on the Receiver’s website, www.haysconsulting.net.

The MBA Offering

The Mobile Billboards of America, Inc. (“MBA”) offering employed a network of sales agents to sell more than \$55.9 million in mobile billboard investments to unsuspecting investors from 2001 through 2004. Investors purchased billboard “units” for \$20,000 each, and simultaneously leased the billboards back to Outdoor Media for a seven-year term. Outdoor Media was affiliated with MBA and owned and operated by MBA’s principals.

Investors were assured that Outdoor Media would (1) arrange for placement of the billboards on a truck for advertising and (2) make monthly lease payments to investors that provided a return of approximately 13.49% per year. As a part of the billboard purchase, MBA agreed to repurchase the billboard at the end of the seven-year lease term for the full purchase price.

Investors also were promised that MBA had established a trust, Reserve Guaranty Trust (“RGT”), to assure that money would be available to fund its repurchase obligation and that a portion of the purchase money paid by the investors was being deposited into RGT for this purpose. In consideration for the portion of the payment made to RGT, the investors were issued a “Trust Secured Certificate” that entitled them to an interest in the assets of RGT with a liquidation amount of up to \$20,000 times the number of billboards they purchased. While

RGT was touted as being independent, it was also affiliated with MBA and controlled by MBA's officers.

In truth, MBA's investment program operated as a Ponzi scheme, in that Outdoor Media's mobile billboard business did not generate sufficient revenues to make the monthly lease payments to the investors, but instead relied on new investors' purchase monies to make the promised payments to earlier investors. Using monies paid by recent investors, MBA transferred money to Outdoor Media to fund the lease payments to investors. Moreover, the promised funds were not deposited into RGT, nor was RGT managed in accordance with the representations made to investors.

The NPC Offering

Prior to the MBA scheme described above, from March 2000 until approximately November 2001, the same individuals behind the MBA scheme developed, promoted and sold similar sale and lease back investments in pay telephones using a corporation known as National Payphone Company ("NPC"). Investors paid approximately \$17.4 million into this payphone scheme. International Payphone Corporation ("IPC") was the company that leased the payphones from investors and was responsible for their management and operation. IPC was affiliated with NPC and owned and operated by NPC's

principals. Over \$17.4 million was raised through the payphone investment scheme.

In theory, payphone revenues were generated by coin deposits into the payphones and by “dial around” revenue. Coin deposits were collected by service technicians and turned over to IPC for deposit. “Dial around” revenue was generated from the long distance carrier or other service provider as a result of calls made with credit cards and prepaid calling cards.

In reality, although the payphones made some money, the funds made from the payphones were not sufficient to make the lease payments to the investors. Instead, new investors’ purchase monies were used to make the promised payments to earlier investors. Moreover, payphones were not installed and operating for each investor that purchased one.

To the extent actual payphones existed, some of the individual payphones were randomly “assigned” to investors without regard to the location or profitability. This “assignment” was illusory as revenue generated from the “assigned” payphones was commingled into the same accounts as the monies raised from the unassigned payphones, and there is no evidence to suggest that any particular NPC investor to whom a payphone was “assigned” was treated differently from other NPC investors or that they ever received the actual revenue

generated by the particular payphone purportedly “assigned” to him. As such, there was no meaningful difference between the NPC investors to whom payphones were assigned and other NPC investors.

The Consolidation of the Assets and Liabilities of MBA and IPC

NPC and IPC changed the focus of their sales from payphones to the mobile billboard investments in or about November 2001. MBA was formed for this purpose, and NPC was merged into MBA on or about November 1, 2001. The funds raised by both the billboard and payphone schemes were commingled in the same accounts and used interchangeably and transferred to IPC, d/b/a Outdoor Media to make the monthly “lease” (Ponzi) payments to the previous investors.

At the time of the shift in focus from payphones to billboards, existing payphone investors were given the option to exchange their payphone investments for billboard investments. Only a limited number of payphone investors declined to accept the exchange offer and continued to receive payments pursuant to the terms of payphone leases.

None of the investors to whom a specific payphone was “assigned” and who declined to exchange their payphone investment for mobile billboards ever assumed responsibility for the management or operation of “their” payphones. That responsibility remained with IPC. Moreover, it would have been logistically

impossible for individual investors to manage and operate the payphones themselves. If the payphone existed and was installed and operating, it was frequently located thousands of miles from the residence of the investor and most often subject to a site lease with a property owner and likely was one of a group of phones that was the subject of a master site lease involving multiple locations. Additionally, licensing and servicing requirements were such that it was not feasible for an individual to undertake this activity. There also were complicated issues involving “dial around” revenue collection and the payment of “master telephone bills” that covered a large number of phones, which made independent management of individual phones practically impossible.²

Based on his extensive investigation in this case, the Receiver has concluded that, at all times relevant hereto, NPC, MBA, and IPC were operated as a common enterprise by the same individuals and the assets and liabilities of NPC and MBA were commingled and consolidated. Accordingly, for purposes of making distributions to claimants under the Plan of Distribution, the assets marshaled by

² As detailed in the Receiver’s Interim Reports, the Receiver took over IPC’s management of the payphones in existence at the time of his appointment. To the extent any “assigned” payphones were in the portfolio of payphones at that time (which was often impossible to determine given the poor records kept by NPC and IPC), the Receiver has continued IPC’s practice of disregarding those purported “assignments” and treating each of the payphones as a common asset of the Receiver Estate.

the Receiver have been consolidated into one common pool. Further, to the extent there were purported assignments of actual payphones to a limited number of NPC investors, the Receiver has determined that these assignments should be disregarded because: (1) such “assignments” were illusory in that they frequently did not involve an actual payphone and never resulted in any meaningful difference for any NPC investor and it would be inequitable to recognize any assignment, (2) the “assignments” were not documented in a manner that would permit the Receiver to discover which investors (if any) were assigned phones, and (3) practical considerations related to the management and eventual sale of the payphones made recognition of particular payphone assignments impossible. Accordingly, the Receiver has continued to treat all Receivership Assets as a common pool of assets and has and will not recognize any claims as being associated with particular assets in the Receivership Estate.³

Receivership Assets

As detailed in the Interim Reports, the vast majority of the investment money raised in the MBA and NPC schemes was either (1) spent on monthly “lease” (Ponzi) payments to investors and business operations, (2) used for the

³ Moreover, no investor has made a claim related to any particular payphone, which corroborates the Receiver’s finding that any “assignments” were illusory.

personal benefit of the perpetrators of the fraud, or (3) otherwise spent prior to the initiation of this action. As a result, of the \$73.3 million raised pursuant to this Ponzi scheme, there was approximately \$870,000 in the Receiver Estate upon the Receiver's appointment. The Receiver, however, successfully collected, recovered, gained control over, and was able to liquidate a variety of assets on behalf of the Receiver Estate such that he is now in a position to make a distribution to the aggrieved investors and other creditors that will be between approximately \$2.3 million (net of all expenses).

Among the assets acquired and taken over by the Receiver was IPC payphone operation, which was not operating in a profitable manner at the time of the Receiver's appointment. As more fully explained in the Interim Reports, the Receiver was able to turn that company around and ultimately sold it. Additionally, the Receiver asserted claims against numerous third parties that led to favorable settlements and/or judgments for the Receiver Estate. The Receiver has liquidated all of the assets in the Receivership Estate and is now in a position to make a final distribution.

ARGUMENT AND CITATION OF AUTHORITY

As set forth in more detail in the Plan for the Distribution of Proceeds (the "Plan"), attached as Exhibit A to the Motion filed contemporaneously herewith, the

Receiver proposes a process to administer claims and to distribute funds to investors and other creditors based on approved claims. The legal basis and rationale for the Receiver's proposed Plan are addressed below. Any order approving a plan of distribution in an equitable receivership such as this is disturbed on appeal only upon the showing of an abuse of discretion. See SEC v. Elliot, 953 F.2d 1560, 1567 (11th Cir. 1992).

I. Claims Administration

A. Claims

The Plan treats the two categories of claims identically: (1) investor claims and (2) creditor claims (together the "Claims"). Given the value of the assets currently in the Receiver Estate, the Receiver anticipates making distributions to investors and creditors who have filed a proof of claim with the Receiver ("Claimant") through a single distribution.

Investor Claims. The amount of funds distributed to each investor with an approved claim will be based on that investor's net loss. In other words the amount of the approved claim is calculated on a "cash-in – cash out" basis – *i.e.*, the amount of principal invested less any returns, referral fees, or other funds received by the investor, including funds received from settlements or sources other than a Receivership Entity, will equal the investor's net loss. See SEC v.

Capital Consultants, Inc., 2002 U.S. Dist. LEXIS 27399 (D. Or. Dec. 4, 2002) (upholding a Receiver's calculation of amount for distribution on a money-in/money-out basis and a pro rata distribution). Accordingly, each investor's net loss will provide the basis for the amount of his or her approved claim.

Creditor Claims. Creditor Claims will be treated on a like basis as investor Claims. The amount of an approved Creditor Claim will be based on the amount currently owed by a Receivership Entity to the creditor, as reflected in the approved claim.

B. Process

In October 2004, the Receiver provided a claim form to all known investors and creditors. In June of 2008, the Receiver provided a claim form to all known investors and creditors that did not respond to the October 2004 mailing.

Additionally, claim forms have been available on the Receiver's website since October 2004. As of the filing of this motion, approximately 1,178 Claims have been submitted to the Receiver. Using the Funds Tracing Database,⁴ information

⁴ The Receiver Team has developed a financial database, the "Funds Tracing Database," which includes approximately 68,000 transactions (i.e. payments, deposits and other movements of money). The information in the database is a compilation of the MBA cash transactions and it has been supplemented with information revealed through the course of the Receiver's investigation. Specifically, the database contains cash transactions from 26 entities and or related individuals encompassing 105 bank accounts. The database is essentially a

provided by claimants and the Defendant's records and bank statements, the Receiver team has performed a review and reconciliation of all 1178 claims.

Those investors and creditors who filed claims have been sent a "Claim Determination Notice," detailing the results of the Receiver's analysis. Each Claim Determination Notice provides a net allowed claim amount, which is the actual net loss to the investor or creditor. The Claim Determination Notice also provides claimants with notice of and opportunity to contest the Receiver's determination. If a claimant disputes the Receiver's determination and the Receiver is unable to settle the dispute, the claimant will be entitled to summary proceedings before this Court. However, the Receiver will make every effort to resolve all disputes before resorting to Court adjudication of claims. Upon the resolution of all disputed claims, the Receiver will provide this Court with a schedule detailing all of the approved claims and will make a recommendation to the Court as to the timing and manner of the final distribution of funds on the approved claims.

C. Use of Summary Proceedings to Resolve Disputed Claims

The Receiver proposes the use of summary proceedings to adjudicate any

compilation of the books and records of the Receivership Entities and bank statements of those entities.

disputed Claims that require the attention of the Court. Each Claim Determination Notice provided to Claimants that will include Claim dispute form. As the title indicates, Claimants may complete the form if they object to the net allowed claim amount determined by the Receiver. The Receiver anticipates that disputed Claims, if any, will primarily involve simple fact questions regarding the net loss of particular investors, and that most of these disputes will be resolved without the intervention of the Court. However, in the event disputed Claims require the attention of the Court, the Receiver will present them to the Court in the form of a motion to resolve disputed claims. This summary proceeding will provide objecting investors with notice and an opportunity to be heard and enable to Receiver to continue with the efficient management of the Receiver Estate.

The decision to use summary proceedings to determine appropriate relief is within the jurisdiction of the Court. SEC v. Basic Energy and Affiliated Res., Inc., 273 F.3d 657, 668 (6th Cir. 2001); Elliot, 953 F.2d at 1566. The use of summary proceedings furthers the Receivership's primary purpose to promote the orderly and efficient administration of the estate for the benefit of investors and other creditors. See, e.g., SEC v. Hardy, 803 F.2d 1034, 1037-40 (9th Cir. 1986). Summary proceedings enable a receiver to consolidate all litigation concerning the receivership in a single district court and before a single district judge, and avoid

the formalities of plenary proceedings that would slow down the resolution of disputes. Id. Moreover, summary proceedings reduce litigation costs, and in turn, preserve a greater amount of the receivership assets for distribution. Id.

Summary proceedings provide parties with notice and a meaningful opportunity to be heard, but require an evidentiary hearing only if there are disputed issues of fact. See Elliot, 953 F.2d at 1566-67 (citing Codd v. Velger, 429 U.S. 624 (1977) (*per curiam*)). Such proceedings are appropriate in receiverships and may be used to allow or disallow the claims of investors and creditors. See Hardy, 803 F.2d at 1040.

Summary proceedings are particularly appropriate in this case. Because MBA and NPC operated what amounts to one large investment scheme, commingled funds from both companies, and treated MBA as well as NPC investors equally, there is little likelihood of any complex factual disputes in the claims administration process. The Receiver anticipates that disputed Claims, if any, will primarily involve simple fact questions regarding the net loss of particular investors, and that most of these disputes will be resolved without Court intervention. In the event disputed Claims require the attention of the Court, summary proceedings will enable to Receiver to continue with the efficient management of the Receiver Estate.

II. Distribution

A. Single Pool of Assets

The Receiver's Plan aggregates all of the Receiver Entities' assets (including the assets of NPC and MBA) into one pool. As the Supreme Court noted in the original Ponzi case, receiverships involving Ponzi schemes "call strongly for the principle that equality is equity." Cunningham v. Brown, 265 U.S. 1, 13 (1924); SEC v. Forex Asset Mgmt. LLC, 242 F.3d 325, 331 (5th Cir. 2001) (holding that the district court did not abuse its discretion when it determined that, despite the fact that some of the funds available for distribution were segregated and traceable to one investor, allowing one investor to trace its funds and avoid a pro rata distribution among all of the investors would be an inequitable remedy).

Aggregation of assets into a single pool is particularly appropriate in receiverships involving a Ponzi scheme that included numerous investors in multiple related investment programs. See, e.g., Basic Energy & Affiliated Res., Inc., 273 F.3d at 660-61, 670-71.

The facts of this case are directly analogous. The individuals behind NPC, who later formed and merged NPC into MBA, operated the businesses as one Ponzi scheme. Returns to early investors, including investors in NPC, were paid from investment funds contributed by later NPC and/or MBA investors. They also

disregarded the corporate structures of IPC, d/b/a Outdoor Media (the entities purportedly responsible for “managing” the billboards and payphones and which were obligated to make monthly payments to the investors). MBA, NPC, and IPC were managed by the same individuals, ultimately under the direction and control of Defendants Michael Lomas and Michael Young. The monthly lease payments to investors were supposed to come from IPC, d/b/a Outdoor Media and were supposedly derived from the operation of the billboards and payphones. In reality, however, the payments, if any, were actually being funded by MBA and NPC from purchase money received from later investors. In fact, MBA and NPC simply transferred money to IPC so that it could make the required monthly lease payments. MBA and NPC made no material distinction between investors in MBA or NPC, and there is no basis for making such a distinction for purposes of any distribution of Receivership assets. Those who initially invested with NPC and converted their payphone investments to billboard investments were treated identically to the MBA investors. Additionally, the Receiver’s investigation has revealed that the limited number of investors who declined to convert their NPC investments to billboards were treated just as the MBA investors in that all of the money invested in NPC was pooled together with the MBA investments, and to the extent there were any returns to the investors, those returns did not come from any

particular payphones, but instead came from funds received from subsequent investors in NPC and MBA. In other words, all of the funds from investors in this case, whether NPC or MBA, were commingled and to the extent they received any payments, the investors received monthly “lease” (Ponzi) payments from the same sources.

In sum, all investors (MBA and NPC), in this case who suffered a net loss, are similarly situated and will be treated equitably. Accordingly, aggregation of MBA and NPC’s assets into a single pool against which all Claims will be made provides for the fairest method of claims administration and distribution.

B. Final Distribution

After all objections to the Receiver’s claim determinations have been settled or adjudicated and the amount of all approved Claims has been determined, the Receiver will file a “Schedule of Claims” detailing the amount of each approved claim and make a recommendation to the Court as to the manner and timing of distributions of funds from the Receivership Estate. The amount of money distributed to Claimants will be on a pro rata basis as determined from the Schedule of Claims filed with the Court.

CONCLUSION

WHEREFORE, S. Gregory Hays, Receiver, respectfully requests that the

Court review and approve the Plan for Distribution of Proceeds.

This 12th day of October, 2008.

By: /s/ Merle R. Arnold III
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Georgia Bar No. 205125
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Local Rule 7.1D Certificate of Compliance

The undersigned certifies that this brief has been prepared with on of the font and point selections approved by the Court in Local Rule 5.1B.

By: /s/ Merle R. Arnold III
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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
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<p>SECURITIES AND EXCHANGE COMMISSION,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>MOBILE BILLBOARDS OF AMERICA, INC., INTERNATIONAL PAYPHONE CORPORATION, TIGER MEDIA, INC., RESERVE GUARANTY TRUST, CALIFORNIA MOBILE BILLBOARDS, INC., WESTERN RESERVE GUARANTY TRUST, MICHAEL A. LOMAS and MICHAEL L. YOUNG,</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;">CIVIL ACTION NO. 1:04-CV-2763-WBH</p>
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CERTIFICATE OF SERVICE

This is to certify that on October 12, 2008, I electronically filed ***Brief In Support of the Motion For Approval Of The Receiver's Plan For The Distribution Of Proceeds*** with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record:

James Alexander Rue
William P. Hicks
Julie M. O'Daniel, Esq.
Nina Marino, Esq.

This 12th day of October, 2008.

By: /s/ Merle R. Arnold III