

**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>PINNACLE DEVELOPMENT PARTNERS LLC and GENE A. O'NEAL,</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;">CIVIL ACTION NO.</p> <p style="text-align: center;">06 CV 2431-JTC</p>
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**RECEIVER'S MOTION FOR APPROVAL OF  
REVISED APPROVED CLAIMS SCHEDULE**

S. Gregory Hays, the court-appointed Receiver for Pinnacle Development Partners, LLC, files this Motion for Approval of Revised Approved Claims Schedule, and shows as follows:

**BACKGROUND**

1.

Pursuant to the terms of an Order dated October 11, 2006 (the "Receivership Order"), S. Gregory Hays was appointed as Receiver for Pinnacle Development Partners, LLC ("Pinnacle") and its assets, including all assets of partnerships or other entities controlled by Pinnacle (the "Receiver Estate"). The Receivership

Order grants the Receiver broad authority over the organization, management, control and disposal of the assets of the Receiver Estate.

2.

In furtherance of his duties, the Receiver provided Investors and other Creditors with Claim Forms, which were approved by this Court by Order dated January 22, 2007. The January 22, 2007 Order also established a Claims Bar Date of March 1, 2007. Subsequently, on April 18, 2007, the Court approved the Receiver's Plan for Claims Administration and Distribution of Proceeds (the "Plan").<sup>1</sup>

3.

On July 27, 2007, the Receiver filed a Motion for Approval of Interim Distributions Pending Final Resolution of All Disputed Claims. In his motion, the Receiver sought the Court's approval of 1923 Investor Claims, totaling \$40,050,169.57, and 23 Creditor Claims, totaling \$289,327.10. The Receiver further sought to make interim distributions on these Approved Claims pending the final resolution of all Disputed Claims.

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<sup>1</sup> Capitalized terms not defined herein, such as "Investor," "Creditor," "Approved Claims," and "Disputed Claims," shall mean and refer to those terms as defined in the Plan.

4.

On August 24, 2007, the Court granted the Receiver's motion and entered the Receiver's Approved Claims Schedule.

5.

As discussed in further detail below, the Receiver files this motion to obtain the Court's approval of the Receiver's Revised Approved Claims Schedule, which corrects and updates the earlier Approved Claims Schedule and adds claims allowed by the Receiver since July 27, 2007. The Receiver will at a later time seek the Court's resolution of the remaining Disputed Claims pursuant to Section 2.6.3 of the Plan. At that time, the Receiver also will seek the Court's resolution of certain Claims that were approved by the Court's August 24, 2007 Order, but regarding which the Receiver has since discovered discrepancies in submission and other related issues.

**REVISED APPROVED CLAIMS SCHEDULE**

6.

Upon the Court's entry of its August 24, 2007 Order approving interim distributions, and after notice to and consent by the Securities and Exchange Commission, the Receiver prepared to make an initial distribution on all Approved Claims.

7.

During its initial claims analysis and review process, the Receiver Team sought to limit the review costs incurred by the Receiver Estate by relying primarily on information provided by Investors and Creditors on their Claim Forms, which were signed under penalty of perjury. The Receiver Team also attempted to reconcile the information provided on the Claim Forms with records created and maintained by Pinnacle, but found that Pinnacle's records often were incomplete and lacked appropriate documentation.

8.

In preparing for the interim distribution, the Receiver Team analyzed a random sampling of Claims to ensure that they had been properly approved. In reviewing these Claims, the Receiver Team discovered numerous issues that required resolution prior to making the interim distribution. These issues included:

- Investors made investments with funds from both individual accounts and corporate entity accounts, but filed only one Claim Form in the name of the individual. Similar issues arose with respect to Investors who made investments in their own name and through Individual Retirement Accounts, and sought all returns to be made to the individual, without considering the concomitant tax implications. To avoid funds being returned to the wrong individuals or entities, the Receiver deemed it necessary to determine the proper Claimant(s) to whom to issue distribution checks. This process was complicated further by Pinnacle's incomplete and inaccurate records.

- Claim Forms were submitted by individuals or entities that never invested in Pinnacle at all, but were making claims based on investments made by others, including friends, family members, partnerships and other entities. Again, the Receiver determined it was necessary to correct these Claims to reflect the proper Claimant.
- Investors failed on their Claim Forms to account for certain returns made by Pinnacle, or double-counted returns, making the amount of their Approved Claims incorrect. Pinnacle's records often times reflected information inconsistent with both the Claim Forms and the actual amounts invested and returned.

In most of the above instances, the Receiver Team needed to go back to underlying bank records, including monthly statements, wire transfer advices and other documentation, to reconcile the discrepancies.

9.

Based upon the issues discovered during the Receiver Team's analysis of the sample Claims, the Receiver determined that a complete Claim review was necessary to avoid making distributions to the wrong individuals or entities and paying too much or too little to Investors, and to resolve other omissions, errors and issues associated with the sworn Claim Forms. This review built on the prior claims processing conducted by the Receiver team.

10.

Beginning in September 2007, the Receiver Team reviewed and thoroughly analyzed all Investor Claims. The Receiver Team discovered that the issues

discovered during the Receiver's sampling of Claims were widespread and that the majority of the Claims had significant issues related to Claimant identity and/or Claim amount. Between September 2007 and January 2008, the Receiver Team contacted over 800 Investors to resolve Claim issues. The Receiver Team communicated with Investors orally and in writing, and, ultimately, obtained over 750 Investor declarations, signed under penalty of perjury, correcting and resolving Claim issues. The Receiver Team also was able to resolve a large number of other issues without additional action by investors.<sup>2</sup>

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<sup>2</sup> Although the Receiver obtained declarations resolving most Claim issues, there were certain exceptions: (1) for Claims where the declarations were not returned by the time of the filing of this Motion, the Receiver accepted email or other written confirmation from the Claimants, and will follow up to obtain declarations; (2) for approximately 20 Claims that were approved in an amount of \$5,000 or less that may have benefited from a declaration identifying the proper Claimant, but for which the Receiver was unable to obtain a declaration, the Receiver has included the Claims on the Revised Approved Claims Schedule, approved in the name of Claimants who filed the Claim Forms – there were not competing Claims for funds associated with these investments; and (3) for three claims regarding which the Receiver's analysis showed that a downward adjustment of less than \$5,000 may be appropriate, but to which downward adjustments the Claimants would not agree, the Receiver included the Claims on the Revised Approved Claims Schedule at their original approved amount. All of these compromises were made by the Receiver because he determined that the costs associated with bringing these issues to the Court's attention for resolution would have outweighed the benefit to the Receiver Estate.

11.

Though the Claims review process required a tremendous amount of time and effort from the Receiver Team, it was necessary to ensure that Claims were approved in the name of actual Pinnacle Investors and in the appropriate amounts.

12.

As of the date of this filing, the Receiver Team has contacted all Investors who have issues associated with their Claims. The Receiver Team has been able to correct almost all of the discrepancies associated with the previously Approved Claims, and the Receiver has made a 30% interim distribution on these Claims.

13.

Attached for the Court's Approval as Exhibit A hereto is a revised Investor Approved Claims and Creditor Approved Claims schedule (the "Revised Approved Claims Schedule"), which includes all revisions necessary to accurately reflect the correct Investor identity and Approved Amount for each Approved Claim.<sup>3</sup>

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<sup>3</sup> As with the previously approved schedule, the Revised Approved Claims Schedule includes only limited identifying information for individual Investors. Upon the Court's request, the Receiver is prepared to provide the Court, or to file under seal, a schedule that provides the full name of individual Investors. Due to the numerous changes made in the Revised Approved Claims Schedule, the Claim numbers, Claimant identities, and approved amounts do not correspond directly to the prior schedule.

14.

Due to the modification of previously Approved Claims and the addition of newly allowed Claims, the Revised Approved Claims Schedule reflects 1945 Investor Claims, totaling \$39,772,419.23, and 24 Creditor Claims, in the amount of \$299,327.10.<sup>4</sup>

15.

The Receiver Team's analysis resulted in the reduction of previously Approved Claims by \$693,300.34.<sup>5</sup> Since the July 27, 2007 filing of his Motion for Approval of Interim Distributions, however, the Receiver has allowed: (a) seven timely filed Claims that were not included on the original Approved Claims Schedule, totaling \$122,500; (b) four late filed Claims, totaling \$16,550; and, (c) six Claims that were originally Disputed Claims, but regarding which the investors withdrew their disputes, totaling \$286,500. These newly allowed Claims are

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<sup>4</sup> One Investor Claim, No. 3011, in the amount of \$252,250 was approved by the Receiver and is included on the Revised Approved Claims Schedule pending verification from the Claimant's bank regarding ownership of certain accounts. There are no issues with respect to the amount of this Claim.

<sup>5</sup> Included in this reduction are nine previously approved Claims that are now in dispute and require the Court's resolution. These claims previously were approved in an aggregate amount of \$82,250, and the Receiver anticipates that, after resolution by the Court, these Claims will be approved in an aggregate amount between \$40,000 and \$75,000.

included on the Revised Approved Claims Schedule, and the Receiver will make interim distributions on these Claims upon the Court's approval of the Revised Approved Claims Schedule. Accordingly, the Revised Approved Claims Schedule reflects a net reduction in Approved Claims of \$267,750.34.

**RESOLUTION OF DISPUTED CLAIMS  
AND PREVIOUSLY APPROVED CLAIMS NOW IN DISPUTE**

16.

Not included in the Revised Approved Claims Schedule are nine Claims previously approved by the Court's August 24, 2007 Order, regarding which the Receiver has since discovered errors in submission and other issues. The claim numbers associated with these claims are 2371, 2395, 2407, 2506, 2908, 3048, 3554, 3719, and 3742. These claims will require resolution by the Court at a later date.

17.

In addition to the previously approved Claims that now require Court resolution, the Receiver intends to submit to the Court the seven remaining Disputed Claims that the Receiver has been unable to resolve. Pursuant to Section 2.6.3 of the Plan, the Receiver will submit these remaining Disputed Claims to the Court for final resolution.

18.

The Receiver plans to file a motion with respect to the previously approved Claims now in dispute and the remaining Disputed Claims within 30 days of the filing of this motion.

**CONCLUSION**

WHEREFORE, S. Gregory Hays, Receiver, respectfully requests that the Court enter the Receiver's Revised Approved Claims Schedule.

This 30<sup>th</sup> day of January, 2008.

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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/ J. David Dantzler, Jr.  
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Georgia Bar No. 205125

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**CERTIFICATE OF SERVICE**

This is to certify that on January 30, 2008, I electronically filed this RECEIVER'S MOTION FOR APPROVAL REVISED APPROVED CLAIMS SCHEDULE 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

Michael D. Watson

John Gerald Westrick

This 30<sup>th</sup> day of January, 2008.

By: /s/ J. David Dantzler, Jr.  
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