

EXHIBIT B

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

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

STANLEY J. KOWALEWSKI and
SJK INVESTMENT MANAGEMENT, LLC,

Defendants.

CIVIL ACTION NO.
1:11-cv-0056-TCB

**[PROPOSED] ORDER APPROVING RECEIVER'S SUPPLEMENTAL
PLAN FOR ADMINISTRATION OF RECEIVER ESTATE AND
DISTRIBUTION OF PROCEEDS**

This matter comes before the court on the Receiver's Motion for Approval of Supplemental Plan for Administration of Receiver Estate and Distribution of Proceeds. The Court, having considered the Motion, the Memorandum of Law in Support, and the Supplemental Plan for Administration of Receiver Estate and Distribution of Proceeds (the "Supplemental Plan"), hereby **GRANTS** the Receiver's Motion, **APPROVES** the Supplemental Plan, and **ORDERS** as follows:

TREATMENT OF TRADE CREDITOR AND EMPLOYEE CLAIMS

1. Claims submitted to the Receiver by trade creditors and former employees against Stanley J. Kowalewski (“Kowalewski”), SJK Investment Management, LLC (“SJK”), and/or the SJK Special Opportunities Fund, LP (the “Special Opportunities Fund”) (SJK, the Special Opportunities Fund, and their assets are referred to collectively as the “Receiver Estate”) are approved or denied as requested by the Receiver in the amounts set forth in Exhibits A through C attached hereto.

2. Claimants with claims approved in an amount greater than zero dollars (\$0.00) shall not be entitled to payment of their entire claim. Rather, they shall be entitled to a one-time payment of a pro rata portion amount of their claim, which payment shall be calculated and disbursed in accordance with the provisions of this Order.

3. Each claim submitted against Stanley J. Kowalewski that has not been withdrawn is denied (*i.e.*, valued at \$0.00) without prejudice to the claimant from asserting its claim directly against Kowalewski outside of this receivership. (*See* Exhibit A).

4. Claims asserted by the following trade creditors have been withdrawn and, therefore, are not included on Exhibits A through C: Henson Farms Home

Owners Association; Trinity Pension Group, LLC; Unum Life Insurance Co. of America; and Bank of Oakridge. The Receiver Estate shall have no additional obligations to any of these trade creditors.

5. Claims asserted by the following former employees of SJK have been settled and, therefore, are not included in Exhibits A through C: Michael Fontenot (claim against SJK only); Michael Fulcher; Traci Kowalewski; Brandon Smith; Betsey Wood; and Matthew Zimmerman. These former employees' rights and obligations related to the Receiver Estate are set forth in their settlement agreements and, other than the provisions herein regarding the SJK 401(k) Plan, are not addressed in this Order.

6. Any claim submitted subsequent to the Receiver's filing of the Supplemental Plan, but which could have been submitted prior to the filing of the Supplemental Plan, is denied, the Receiver shall have no obligations with respect to any such claim, and the assets of the Receiver Estate shall not be available to pay or otherwise satisfy any such late submitted claim.

TAX CLAIMS AND ISSUES

7. All actions regarding the tax liability of the Receiver Estate that previously have been taken by the Receiver and the team of professionals working

with him (the “Receiver Team”), as summarized in the Supplemental Plan, are approved.

8. The Receiver shall have the continuing authority to address tax related issues, negotiate tax assessments, and pay taxes, interest, and penalties in the ordinary course of the receivership.

9. Consistent with the terms of the Court’s September 30, 2011 Consent Order on Receiver’s Motion for Turn-Over and Accounting and Termination of Receivership of Stanley J. Kowalewski [ECF No. 138], the Receiver shall have no obligations with respect to the filing of any past, present, or future tax returns on behalf of Kowalewski, and Kowalewski’s past, present, and future tax liabilities are not to be paid, in whole or in part, with the assets of the Receiver Estate.

10. Any tax assessment or claim against the Receiver Estate or seeking payment from the assets of the Receiver Estate that is made or filed by any federal, state, or local taxing authority subsequent to the Receiver’s filing of the Supplemental Plan, but which could have been made or filed on or before the filing of the Supplemental Plan, is denied, the Receiver shall have no obligations with respect to such assessment or claim, and the assets of the Receiver Estate shall not be available to pay or otherwise satisfy any such late filed (or asserted) claim or assessment.

DISTRIBUTIONS AND PRIORITY OF CLAIMS

A. Approved Claims Against SJK

11. Claims against SJK are approved in the amounts set forth in Exhibit

B.

12. The Court has reviewed the Supplemental Plan's provisions regarding distributions and priority of claims with respect to approved claims against SJK (Supplemental Plan, ¶¶ 60-70) and finds them to be fair and reasonable.

13. The only asset of the Receiver Estate from which approved claims against SJK, or a pro rata portion thereof, shall be paid, is the \$307,201 in cash (the "SJK Cash"), which is the amount that remains from \$317,774.70 in cash transferred from SJK to the Special Opportunities Fund in December 2011 and January 2012. (*See* Supplemental Plan, ¶¶ 61.) With the exception of the satisfaction of the secured claim submitted by Land Solutions, PC, which is addressed below, no other asset of the Receiver Estate, or the proceeds from the sale thereof, shall be used to satisfy approved claims against SJK.

14. Before the payment of any approved claims against SJK, the Receiver is authorized to pay from the SJK Cash all professional fees and expenses incurred in connection with: (1) the administration of claims against the Receiver Estate, including the resolution of any claim disputes and resolutions; (2) issues involving

the 401(k) Plan; (3) drafting this Supplemental Plan; and (4) disputed claims or other objections to this Plan that are raised subsequent to the filing of the Supplemental Plan. To the extent professional fees and expenses incurred in connection with these categories previously were paid by the Special Opportunities Fund, the Receiver is authorized to cause the Special Opportunities Fund to reimburse SJK for these fees and expenses.

15. After the payment of all fees and expenses incurred in connection with the categories of work described in Paragraph 14, above, the Receiver is authorized to use the remaining SJK Cash to pay approved claims against SJK, or a pro rata portion thereof, according to the following priorities:

- a. Tax Liabilities. The current outstanding tax assessments, which total \$7,379.23, will be paid in their entirety or in an amount agreed upon by the Receiver and the taxing authorities. In addition, the Receiver is authorized to reserve \$25,000 for the potential future tax liabilities of SJK. To the extent the reserve exceeds future tax liabilities, the remaining amounts shall be used to satisfy the general obligations of the Receiver Estate, including professional fees and expenses;
- b. Secured Claim. The only secured claim against SJK is the \$2,994.00 claim submitted by Land Solutions, which is secured by a lien filed on the parcel of real property owned by SJK. The Receiver will pay this claim in its entirety from the proceeds of the sale of the land against which the lien was filed;
- c. Unsecured Claims. All other approved claims against SJK are claims of general unsecured creditors and shall be paid with equal priority from the amount of the SJK Cash remaining after

payment of professional fees and tax liabilities, and the withholding of a tax reserve, as described above. Each such claim will be paid an amount equal to the percentage of the total amount of this group of claims represented by the individual approved claim multiplied by the amount available for distribution to this group of claims. This payment shall constitute full satisfaction of the claim.

B. Approved Claims Against the Special Opportunities Fund

16. Claims against the Special Opportunities Fund are approved in the amounts set forth in Exhibit C.

17. The Court has reviewed the Supplemental Plan's provisions regarding distributions and priority of claims with respect to approved claims against the Special Opportunities Fund (Supplemental Plan, ¶¶ 71-75) and finds them to be fair and reasonable.

18. In addition to the claimants whose claims are approved on Exhibit C, the Special Opportunities Fund is subject to substantial claims by the SJK Absolute Return Fund, Ltd. and the SJK Absolute Return Fund, LLC (together, the "Absolute Return Funds") and the Amended and Restated Hickory Springs Retirement Plan ("Hickory Springs"). The Receiver's analysis shows that the Absolute Return Funds and Hickory Springs transferred a total of \$16.7 million to the Special Opportunities Fund. Based on a current valuation of the Special Opportunities Fund of \$4.8 million, and assuming no additional recoveries or

losses by the Special Opportunities Fund, these entities will suffer an aggregate loss of \$11.9 million, or 71.3% of their assets that were transferred to the Special Opportunities Fund – i.e., they will recover only 28.7% of their claims against the Special Opportunities Fund.

19. All of the claims against the Special Opportunities Fund that are approved in Exhibit C are claims of general unsecured creditors. Taking into consideration the substantial losses experienced by the Absolute Return Funds and Hickory Springs, the Court has determined that these claimants are entitled to recover 28.7% of their approved claims. Therefore, the Receiver shall pay 28.7% of the amount of each approved claim on Exhibit C. Such payments shall constitute the full satisfaction of the Receiver Estate's obligation to these claimants.

20. Upon payment of 28.7% of each approved claim against the Special Opportunities Fund listed in Exhibit C, the Receiver shall be authorized to continue administering the remaining assets of the Special Opportunities Fund consistent with the terms of the Orders appointing the Receiver entered by this Court on February 2, 2011 [ECF No. 37] and March 8, 2011 [ECF No. 59], and the Receiver's Investor Distribution Plan [ECF No. 102-1], which was approved by this Court on July 21, 2011 [ECF No. 108]. Specifically, the Receiver shall be

authorized to make distributions from the assets of the Special Opportunities Fund to the Absolute Return Funds and Hickory Springs consistent with the provisions of the Receiver's Investor Distribution Plan.

C. Timing and Method of Payment

21. Within 30 days after the entry of this Order and any applicable appeals period, the Receiver shall make a single and final payment on all approved claims in Exhibits B and C in accordance with the terms of this Order.

22. Payment on all approved claims shall be made by check.

D. Effect of Payments, Limitation of Liability, and Uncashed Checks

23. Upon acceptance of payment from the Receiver, any and all asserted and unasserted claims, demands, rights, and causes of action of any nature that a claimant may have against the Receiver, any member of the Receiver Team, or the Receiver Estate will be discharged, released, extinguished, and satisfied. This discharge, release, extinguishment, and satisfaction shall not release or limit any claims against or obligations of Kowalewski or any other person or entity other than the Receiver, the members of the Receiver Team, and the Receiver Estate.

24. With the exception of willful misconduct, neither the Receiver nor any member of the Receiver Team shall have any liability to any person or entity for any action or omission in connection with or relating to the administration of

the Receiver Estate, including the formulation and implementation of the Supplemental Plan. In the event that a claim or cause of action is asserted against the Receiver or any member of the Receiver Team, the Receiver or Receiver Team member shall be entitled to a defense by counsel of his or her choice, payable as any other Administrative Expense herein, even if willful misconduct is alleged.

25. Any check issued on an approved claim that is not cashed within 120 days of the date of the check shall be deemed void, and the claim pursuant to which the check was issued shall be automatically deemed to have been satisfied. With respect to any such voided check, the intended recipient shall have no right or claim of any kind against the Receiver or the Receiver Estate, including any claim for the amount of the intended distribution or any future distribution.

E. No Entitlement to Share in Future Recoveries of the Receiver Estate

26. The Receiver has indicated that he may pursue additional recoveries on behalf of the Special Opportunities Fund. Moreover, the Absolute Return Funds currently are pursuing claims against their former auditor and any recoveries from these claims will be administered through the Special Opportunities Fund. None of the claimants whose claims are adjudicated by this Order shall have a right to share in any future recoveries obtained on behalf of or administered through the Receiver Estate. Rather, as set forth herein, the Receiver's one-time

payment of a pro rata amount of an approved claim shall constitute the full and final satisfaction of that claim.

SJK 401(k) Plan

27. All actions regarding the SJK 401(k) Plan that previously have been taken by the Receiver and the Receiver Team, as summarized in the Supplemental Plan, are approved.

28. The Receiver is authorized to effect the 100% redemption of the 401(k) Plan's remaining interest in the SJK Absolute Return Fund, LLC, which will result in the 401(k) Plan no longer being an investor in that fund or any other investment vehicle.

29. The Receiver is authorized to distribute the assets of the 401(k) Plan to its participants. Distributions shall be paid according to the instructions of each participant and each participant will bear all tax and other consequences resulting from the selected manner of distribution.

30. The Receiver is authorized to terminate the 401(k) Plan.

31. Upon completing the actions authorized herein with respect to the 401(k) Plan, the Receiver and the Receiver Team shall be fully discharged from any and all claims and causes of action which might be brought against them for

matters related to the 401(k) Plan, including, but not limited to, claims arising from or related to the Employee Retirement Income Security Act.

IT IS SO ORDERED this ____ day of _____ 2012.

TIMOTHY C. BATTEN, Judge
United States District Court
Northern District of Georgia

EXHIBIT A

Claim Determination Schedule

<u>Claimant</u>	<u>Approved Amount</u>
Caudill's Commercial & Electric Company, Inc.	\$0.00
JR Marketing, LLC	\$0.00
Frank Kiker, Jr.	\$0.00
Michael Fontenot	\$0.00
Lexis Financial Services	\$0.00
Koury Corporation	\$0.00
Tannenbaum Helpert Syracuse & Hirschtritt LLP	\$0.00
Land Solutions, PC (SJK Property)	\$0.00
Land Solutions, PC (ORMA Property)	\$0.00
Total Approved	\$0.00

EXHIBIT B

<u>Claimant</u>	<u>Approved Amount</u>
<i>Trade Creditor Claims</i>	
Advent Software, Inc.	\$34,350.00
Daniel Sroka, PC	\$0.00
Interlandi & Associates	\$0.00
The McClendon Cos./Jones Computer	\$2,774.29
Paul M. Stutts, CPA, PLLC	\$0.00
Xerox Corp.	\$4,680.40
Lexis Financial Services	\$25,224.52
Koury Corporation	\$46,883.83
Tannenbaum Helpern Syracuse & Hirschtritt LLP	\$51,493.13
Land Solutions, PC (Orma Property)	\$0.00
Land Solutions, PC (SJK Property)	\$2,994.00
 <i>SJK Employee Claims - Non-Core Operations</i>	
Willaim Bradley	\$16,731.00
Nevin Fulcher	\$21,255.77
Louis Lawson	\$18,475.00
Terrill Sandiford	\$30,386.53
Mark Troutman	\$34,384.62
 Total Approved	 \$289,633.09

EXHIBIT C

Special Opportunities Fund
Claim Determination Schedule

<u>Claimant</u>	<u>Approved Amount / Claim Disposition</u>
<i>Trade Creditor Claims</i>	
Greensboro News & Record	\$724.50
Highwood Property Limited Partnership	\$3,729.59
Land Solutions, PC (ORMA Property)	\$0.00
Land Solutions, PC (SJK Property)	\$0.00
<i>Prepaid Velocity Sports Training Services</i>	
Ryan Ashby	\$200.00
Kevin Burns	\$450.00
Robert Drawbaugh	\$555.00
Stephen Eger	\$600.00
Jeff Hedrick	\$200.00
Jay Jones and Cameron Jones	\$200.00
Zachary Palenchar	\$280.00
Sheila & Thomas Smith	\$140.00
Total Approved	\$7,079.09