

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, :

v. :

Civil Action No. 1:19-CV-08454

TODAYS GROWTH CONSULTANT INC. :
(dba THE INCOME STORE) :

and :

KENNETH D. COURTRIGHT, III, :

Defendants. :

**RECEIVER’S UNOPPOSED MOTION TO AMEND
COURT-APPROVED MONETARY DISTRIBUTION PLAN**

Melanie E. Damian, the court-appointed receiver (“Receiver”) of Today’s Growth Consultant, Inc. d/b/a/ the Income Store (“TGC”), moves this Court for an order approving the Receiver’s proposed amendment to the Court-approved Monetary Distribution Plan [ECF No. 254] to include certain late claims. In support of this Unopposed Motion, the Receiver states as follows:

BACKGROUND

On March 13, 2023, the Receiver proposed a Monetary Distribution Plan [ECF No. 254], which the Court approved on May 23, 2023 [ECF No. 273]. The Receiver’s Motion to approve the Monetary Distribution Plan included an allowed claims/distribution register (attached as Exhibit A) listing all allowed claims and their corresponding proposed distributions. *See* ECF No. 254-1. The Court incorporated that Exhibit A into its approval Order. *See* ECF No. 273. On July 5, 2023, the Receiver filed a Motion to Amend the Court-approved Monetary Distribution Plan [ECF No. 283] to allow certain late filed claims, including an allowed claims/distribution register

(attached as Exhibit A-2) listing all allowed claims and their corresponding proposed distributions. *See* ECF No. 283-1. The Court incorporated that Exhibit A-2 into its approval Order. *See* ECF No. 295.

The Monetary Distribution Plan is comprised of a *pro rata* initial monetary distribution (the “Initial Distribution”) which was made on December 5, 2023 and a final monetary distribution to be made at the conclusion of all pending third-party recovery actions.

Pursuant to the Monetary Distribution Plan, the Receiver sent the Initial Distribution to all claimants holding an allowed claim against the Estate. Upon hearing about the Initial Distribution through various claimant message boards, certain potential claimants reached out to the Receiver and expressed a failure to receive or understand the prior notice of the Claims Process [ECF Nos. 53 (Motion) and 108 (Approval Minute Entry) and 112 and 113 (Legal Notice)] carried out in late 2020 and early 2021. Certain claimants expressed a failure to receive or understand the Receiver’s determination letters sent in February and March of 2021 and requested reconsideration of their allowed claim amounts.

Those potential claimants who had not previously filed claims or needed to amend their allowed claim amounts, requested permission to file late claims or late requests for reconsideration (collectively, the “Late Claims”). The Receiver allowed the filing of Late Claims through February 5, 2024, two months after the disbursement of the Initial Distribution. The Receiver’s team reviewed all Late Claims and the Receiver tentatively approved those Claims using the same process and parameters used to approve claims in the Court-approved Claims Process and sent claimants a final determination letter allowing certain Late Claims subject to Court approval. As such, contingent on this Court’s approval, the Receiver has approved 15 Late Claims. Of those 15 Late claims, 11 are new claims totaling \$1,590,337.46, and 4 are amended claims totaling

\$690,244.00. *See Exhibit A*, attached hereto listing the Late Claims, including the allowed claim amounts and the proposed initial distributions. The proposed initial distribution for the Late Claims totals \$206,164.90 (\$158,079.55 for late-filed claims and \$48,085.35 for late-amended claims). *See Exhibit A*.¹

The Receiver now seeks Court approval to accept these Late Claims and to allow the corresponding claimants to participate in the initial Monetary Distribution. Given the additional recoveries since the Receiver filed her initial Motion to approve the Monetary Distribution Plan in March of 2023, the Receiver will be able to provide the same percentage distribution (9.94% of net loss) to these late-filing claimants received by the other allowed claimants. *See Exhibit A* to the Monetary Distribution Plan, ECF NO. 254-1. The Receiver does not seek to change any other terms of the approved Monetary Distribution Plan. The Receiver believes it is in the best interest of the Estate and in furtherance of the equitable principles underlying the Receivership to be as inclusive as possible in administering the Claims Process and Monetary Distribution Plan and, therefore, requests this Court to allow the Late Claims.

REQUEST TO AMEND THE APPROVED DISTRIBUTION LIST

Accordingly, the Receiver requests that the Court approve the proposed amendment of the Monetary Distribution Plan's allowed claims/distributions register (Exhibit A [ECF No. 254-1]) listing allowed claims and their corresponding distributions to add the Late Claims as provided in Exhibit A hereto. Moreover, the Receiver requests authorization to send the Initial Distribution

¹ For the late-amended claims, where claimants already received a partial initial distribution, the initial distribution amount shown in Exhibit A is only the additional initial distribution amount owed to bring the recoveries by those claimants up to 9.94% of their amended allowed claim amounts.

totaling \$206,164.90 to the 15 claimants holding allowed Late Claims as reflected on the Late Claims register, attached hereto as Exhibit A.

The Seventh Circuit applies the “excusable neglect” standard for determining whether a claimant should be allowed to file a late claim to a receivership estate. *See CFTC v. Lake Shore Asset Mgmt.*, 646 F.3d 401, 404 (7th Cir. 2014) (analyzing the movant’s efforts to receive notice coupled with the prejudice to other claimants from a lesser distribution and the delay in payment due to approval of movant’s late claim). The Seventh Circuit citing a U.S. Supreme Court decision defines “excusable neglect” as “an equitable standard, one that requires the court to take ‘account of all relevant circumstances surrounding the party’s omission . . . includ[ing] . . . the danger of prejudice to the debtor, the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith.’” *Id.* at 404-405 (citing and quoting *Pioneer Investment Services Co. v. Brunswick Associates Limited Partnership*, 507 U.S. 380, 395 113 S. Ct. 1489, 123 L. Ed. 2d 74 (1993)).

Here, the Receiver sent email notice of the Claims Process to all potential claimants. Some late claimants attest that they did not receive the email perhaps due to spam filters or expired email addresses. Those claimants, immediately upon learning of the initial distribution requested the opportunity to participate in the Claims Process. And when permitted to submit a claim, they all promptly completed the claim forms and provided supporting documentation. In addition, other late claimants believed they had filed a claim against the Estate by emailing the Receiver, but the Receiver’s office did not receive their claims perhaps due to user error in submitting a claim by email. Finally, four claimants did not understand that their claims were not allowed or fully allowed. So, upon receipt of the notice of their initial distribution, they contacted the Receiver’s

office to verify their final determination amount only to learn that they did not hold an allowed claim as expected. The Receiver allowed them to provide supporting documentation and establish the appropriate allowed claim amount and amended her final determinations of their allowed claim amounts.

Thus, all claimants who filed the Late Claims displayed good faith in attempting to participate in the Claims Process. Moreover, allowing the Late Claims will not prejudice other claimants in any way. Indeed, claimants will receive the same percentage recovery in the Initial Distribution previously approved by the Court. Accordingly, applying the excusable neglect standard, this Court should approve the Late Claims and allow those claimants to participate in the Monetary Distribution Plan.

CERTIFICATION OF CONFERRAL

The Receiver hereby certifies that she has conferred with counsel for the SEC and with Defendant Courtright regarding the amended Monetary Distribution Plan proposed herein. Counsel for the SEC has no objection to the relief requested in this unopposed Motion. Defendant Courtright has no objection to the relief requested in this unopposed Motion.

CONCLUSION

WHEREFORE, the Receiver, respectfully requests that this Court enter an order (1) approving and authorizing the Receiver to amend the Monetary Distribution Plan to include the Late Claims approved by the Receiver and to authorize a distribution to all allowed claimants listed on Exhibit A hereto, and (2) granting such other relief as this Court deems just and appropriate.

Respectfully submitted this 13th day of March 2024.

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*Counsel for Melanie E. Damian,
Court-Appointed Receiver*

*Counsel for Melanie E. Damian,
Court-Appointed Receiver*

General Admission to N.D. Ill.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via electronic transmission via this Court's CM/ECF filing system on March 13, 2024 on all counsel or parties who have appeared in the above-styled action.

/s/Kenneth Dante Murena
Kenneth Dante Murena, Esq.
*Counsel for Melanie E. Damian,
Court-Appointed Receiver
General Admission to N.D. Ill.*

Exhibit A

| Income Store Late Claims | | |
|---------------------------------|-----------------------------|------------------------------------|
| Claim No. | Allowed Claim Amount | Initial Distribution Amount |
| 240 | \$56,499.00 | \$2,808.15 |
| 281 | \$180,000.00 | \$12,077.60 |
| 288 | \$198,000.00 | 13866.8 |
| 294 | \$255,745.00 | \$19,332.80 |
| 499 | \$10,351.23 | \$1,028.91 |
| 500 | \$400,000.00 | \$39,760.00 |
| 501 | \$256,250.00 | \$25,471.25 |
| 502 | \$70,000.00 | \$6,958.00 |
| 503 | \$98,000.00 | \$9,741.20 |
| 504 | \$54,088.00 | \$5,376.35 |
| 505 | \$196,870.00 | \$19,568.88 |
| 506 | \$97,500.00 | \$9,691.50 |
| 507 | \$88,775.00 | \$8,824.24 |
| 508 | \$50,498.23 | \$5,019.52 |
| 509 | \$268,005.00 | \$26,639.70 |
| | | |
| | \$2,280,581.46 | \$206,164.90 |

*For the late-amended allowed claims (Claim Nos. 240, 281, 288, 294), where claimants already received a partial initial distribution, the initial distribution amount shown in Exhibit A is only the additional initial distribution amount owed to bring the recoveries by those claimants up to 9.94% of their amended allowed claim amounts.