

I. Claims That Include Death Benefits.

2. Most of Trade Partners, Inc.'s ("TPI") business was devoted to the selling of fractionalized interests in life insurance contracts. These are referred to as Viaticals or Life Settlement Contracts ("LSC") in the industry. Investors would make an investment in one of these products with the expectation that once the policy matured, the death benefits for their interest in the policy would be paid to them. Once the death benefits are paid, they represent the investor's return of principal and the return on their investment. The Receiver has received numerous claim forms from TPI's investors computing their claim on their expected return or death benefits.

3. In an effort to treat all of the Claims equitably, the Receiver believes that investors claims should be based on their out-of-pocket losses. Stated differently, each claim is analyzed to determine a claimant's actual cash investment less any cash that was returned to them from TPI. The Court has previously approved numerous claims computed strictly on out-of-pocket losses.

4. Accordingly, the Receiver objects to all claims listed below on the basis that they include amounts that represent expected but unpaid returns. In each instance, the claimant has filed a claim for death benefits. The Receiver requests that the Court reduce their claim to the amount labeled "Receiver's Proposed Claim" which represents the actual investment made/out-of-pocket loss for that claim.

<u>Claim No.</u>	<u>Name</u>	<u>Claim Amount</u>	<u>Receiver's Proposed Claim</u>
A-04108	CCWH, LLC	\$115,200.00	\$73,846.15
A-04337	Izolda Loktionova	\$20,082.17	\$14,142.37
A-04336	Alexey Kaboshkin	\$14,321.55	\$10,085.60
A-04334	Valeri Bondar	\$1,571.84	\$1,228.00
A-04605	Gary J. Zmudka	\$172.90	\$128.07
A-06984	Gary J. Zmudka	\$1,062.77	\$748.43
A-06985	Gary J. Zmudka	\$1,503.14	\$963.55

II. Claims That Failed to Deduct Interest Payments.

5. TPI also sold numerous other investments that provided a stream of payments to investors (the "Income Products"). These Income Products include Sojkara, Interglobal Waste Management ("TWM"), Monthly Income Program ("MIP"), investments in Limited Liability Corporations ("LLC"), and Inventory Loans. In each instance, investors would invest a fixed amount of money with the expectation of receiving monthly returns. Depending on the investment, the monthly return represented interest on their principal, return of principal, or a combination of the two.

6. The Receiver has taken the same approach to the Income Product claims that was taken with claims for LSCs. Each claim was analyzed on a cash in/cash out basis to determine the out-of-pocket loss. The Receiver believes that any monies returned to the claimant from TPI, whether they represent interest or return of principal, should be subtracted from the claimant's investment amount. In many instances, investors would roll over their investments from one Income Product to the next. In those situations, the Receiver has aggregated all of the cash payments to the investor from each of their Income Product investments and subtracted those amounts from their initial investment amounts to determine the proposed claim. The Receiver has already agreed to, and the Court has approved, numerous claims where the Net Claim Amount was computed by subtracting the aggregated returns.

7. Accordingly, the Receiver objects to the following claims on the basis that they have not properly subtracted the returns that they received and requests that the Court reduce their claims to the amount listed next to "Receiver's Proposed Claim":

1. **Claim No.:** A-06768
Name of Claimant: Dora Ivine Paris
Amount of Investment: \$56,800.00
Submitted Net Claim: \$44,906.94
Receiver's Proposed Claim: \$30,765.86
Type of Investment: MIP rollover to Sojkara
Reason for Objection: Claimant received \$14,141.08 from a previous investment in the MIP program and received \$11,893.06 from her investment in Sojkara. Claimant received a total amount back from TPI of \$26,034.14.

2. **Claim No.:** A-00223
Name of Claimant: Jack Joslyn
Amount of Investment: \$35,000.00
Submitted Net Claim: \$35,000.00
Receiver's Proposed Claim: \$25,024.98
Type of Investment: LLC 12 rollover to Sojkara
Reason for Objection: Claimant received \$8,146.69 from a previous investment in LLC 12 and received \$1,828.33 from his investment in Sojkara. Claimant received a total amount back from TPI of \$9,975.02.

3. **Claim No.:** A-00187¹
Name of Claimant: Evelyn F. McNair
Amount of Investment: \$60,000.00
Submitted Net Claim: \$91,512.99
Receiver's Proposed Claim: \$35,676.04
Type of Investment: LLC08 rollover to Sojkara rollover to Inventory Loan.
Reason for Objection: Claimant originally invested \$60,000.00 in LLC 08 and received back \$14,642.30. She rolled the investment into Sojkara-B and received back \$5,697.18. Finally, she rolled the investment into an Inventory Loan and received back \$3,984.48. Claimant received a total of \$24,323.96 back from TPI on this investment.

4. **Claim No.:** A-06315
Name of Claimant: Evelyn F. McNair
Amount of Investment: \$30,668.00
Receiver's Proposed Claim: \$28,551.60
Type of Investment: Sojkara - C rollover to Inventory Loan.

¹Claimant submitted one claim in the amount of \$91,512.99. The claim has been administratively split into two claims, A-00187 and A-06315.

Reason for Objection: Claimant originally invested \$30,668 in Sojkara-C. TPI credited her with accrued interest in the amount of \$1,077.73, but never paid her. Instead, TPI increased the amount of the rollover into the Inventory Loan investment to \$31,745.73. Claimant received \$2,116.40 from TPI on her Promissory investment. Accordingly, Claimant invested \$30,668 and received back \$2,116.40.

III. Other Objections

8. VIAC, LLC filed Claim No. A-04246 in the amount of \$146,192.31. In January 2001, TPI, through one of its subsidiaries, purchased the Hall of Fame Hotel (the "Hotel") from Claimant. It purchased the Hotel for \$3,200,000, of which LSCs with a death benefit amount of \$1,000,000.00 were given to Claimant. All but one of the policies have matured and the proceeds have been paid to Claimant. Claimant filed a claim for the remaining policy, GRE-P, with a death benefit amount of \$146,192.31. The Court has previously reduced and allowed claims for the purchase price of the LSC and not the death benefit amount. The instant case is different, however, in that Claimant sold real estate rather than paid cash to TPI. The Receiver has requested Claimant to produce documents evidencing the value of the Hotel to determine the value received by TPI's subsidiary. To date, Claimant has failed to produce any documents in this regard. TPI consistently used LSCs to purchase real estate and more often than not, gave LSCs with a death amount more than the property was worth. This transaction appears to be no different. Accordingly, the Receiver objects to the claim on the basis that it includes amounts for expected returns or death benefits. Since Claimant has not produced any supporting evidence of the value that it gave, the Receiver believes that the Net Claim Amount should be determined based on the fair market value of the LSC, at the time of the transaction. Based on the sale of the other interests in the GRE-P policy, the Receiver believes that the value of the LSC, and corresponding Net Claim Amount, should be \$91,370.19.

9. Brian and Lois Roth filed claims A-01838 and A-01842 in the amount of \$15,917.91 and \$8,000.00, respectfully. Claimants failed to provide any evidence that they sent money to TPI for the investment. The Receiver has requested additional documents from Claimants several times, but they have failed to respond. In addition, Claimants were Brokers for TPI and received commissions for the sale of LSCs. Accordingly, the Receiver objects to both of the claims for failure to provide evidence of the investment, that the investments represent unpaid commissions, and claims the right of setoff against the claims. The Receiver requests that Claim Nos. A-01838 and A-01842 be reduced to zero.

10. Eugene T. and Betty L. LaCroix filed claim Nos. A-03026, A-03027, and A-03028 in the amounts of \$5,000.00, 14,727.73, and \$16,666.66 respectively. The claims include death benefit amounts for the LSCs. Claimants agreed to reduce the Net Claim Amounts to the amount of the actual investment. However, Claimants have failed to provide any proof that they actually gave TPI money. Betty L. LaCroix was an employee of TPI and on numerous occasions received commissions for the sale of LSCs. The Receiver is unable to determine if the investments represent actual monies received by TPI or credit for unpaid commissions. Accordingly, the Receiver objects to the claims for failure to provide proof of the investment and claims an offset against any claim amount for commissions paid to Claimants. The Receiver requests that the claims be reduced to zero.

II.

ARGUMENT AND AUTHORITIES

11. “[The] primary purpose of equity receiverships is to promote orderly and efficient administration of the estate by the district court for the benefit of creditors.” *S.E.C. v. Hardy*, 803

F.2d 1034, 1038 (9th Cir. 1986) (citing *SEC v. Wencke (Wencke II)*, 783 F.2d 829, 837 n. 9 (9th Cir. 1986); *First Empire Bank-New York v. FDIC*, 572 F.2d 1361, 1368 (9th Cir. 1978)). The court is afforded broad deference in determining the case-specific procedures to be utilized for an orderly and efficient estate administration. *See, e.g., Commodity Futures Trading Com'n v. Topworth Intern., Ltd.*, 205 F.3d 1107, 1115 (9th Cir. 1999) (citing *S.E.C. v. Hardy*, 803 F.2d 1034, 1037-38 (9th Cir. 1986)). The procedures should be fashioned around the three general functions of a receivership: (1) marshaling of the assets subject to the receivership, (2) liquidating the assets for the benefit of the creditors and investors, and (3) remitting payment to the creditors and investors from the proceeds of the liquidation. *See, e.g., CFTC v. Chilcott Portfolio Mgmt., Inc.*, 725 F.2d 584, 586 (10th Cir. 1984) (discussing the appointment of a receiver to marshal assets, set up claim procedures, and eventually distribute any assets to the creditors and investors); *United States v. Vanguard Inv. Co., Inc.*, 694 F.Supp. 1219, 1228-29 (M.D.N.C. 1988) (discussing need to appoint receiver to perform the same under the direction of the court).

12. The procedures to be employed for the third function necessarily require the court to approve a procedure for the allowance, disallowance, and subordination of claims asserted in the receivership proceedings. *See id.*; *Transit Cas. Co. v. Selective Ins. Co. of Southeast*, 137 F.3d 540, 543 (8th Cir. 1998) (discussing claims allowed and disallowed by receiver during claims process); *Fishgold v. OnBank & Trust Co.*, 43 F.Supp. 2d 346, 348 (W.D.N.Y. 1999) (discussing resulting increase in trust corpus available to other creditors upon the disallowance of creditor's claim). Such a procedure is required to ensure, *inter alia*, not only that claims asserted in a receivership proceeding will only be paid after a review of the claim's validity of amount and enforceability, but also to bring finality to the administration of the estate. *See, e.g., S.E.C. v. Hardy*, 803 F.2d 1034,

1039-40 (9th Cir. 1986) (affirming trial court's enforcement of deadline to file claims as reasonable balance of creditors' rights and need for expeditious administration of a receivership proceeding).

13. Like other aspects of a receivership proceeding, the court is afforded wide discretion in fashioning the procedures to be employed for the allowance, disallowance, and subordination of claims. *See id.* at 1037-39. The court is even afforded discretion to employ summary procedures for this process, as opposed to plenary proceedings under the Federal Rules, so long as claimants, at a minimum, have fair notice and a reasonable opportunity to respond. *See McFarland v. Winnebago South, Inc.*, 863 F.Supp. 1025, 1034 (W.D. Mo. 1994) (citing *SEC v. Hardy*, 803 F.2d 1034, 1040 (9th Cir. 1986); *United States v. Arizona Fuels Corp.*, 739 F.2d 455, 458 (9th Cir. 1984)). Such procedures are not merely acceptable to the courts. Instead, they actually further the goal of providing an efficient resolution of the allowance, disallowance, and subordination of claims and likewise reduce litigation costs to the receivership. *See id.* at 1039.

14. Here, all of the notice and procedural safeguards discussed in the cases above have been met. A claim form, approved by the Court, was sent to all investors and reasonable time to complete and return the form was provided. This Motion provides the claimant a way to be heard regarding the merits of each claim in a cost efficient manner.

DATED this 27th day of June, 2006.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that on the 27th day of June, 2006, a true a correct copy of the above and foregoing has been served on the attorneys for the parties in this matter and the Receiver, Bruce S. Kramer, via electronic notice and on the following and all persons listed on the attached service list via first class mail, with full and proper postage prepaid thereon:

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