

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 20-CV-81205-RAR

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

COMPLETE BUSINESS SOLUTIONS
GROUP, INC. d/b/a PAR FUNDING, et al.,

Defendants.

**RECEIVER’S REPLY TO PARKER PLAINTIFFS’ OBJECTION
TO RECEIVER’S MOTION TO (1) APPROVE PROPOSED PLAN OF
DISTRIBUTION AND (2) AUTHORIZE FIRST INTERIM DISTRIBUTION**

Ryan K. Stumphauzer, Esq., Court-Appointed Receiver (“Receiver”) of the Receivership Entities, files this Reply to the Parker Plaintiffs’ Objection [ECF No. 2032] (the “Objection”) to the Receiver’s Motion to (1) Approve Proposed Plan of Distribution and (2) Authorize First Interim Distribution [ECF No. 2014] (the “Distribution Motion”).

INTRODUCTION

The Parker Plaintiffs are pursuing recoveries on two fronts. They first seek distributions from the Receiver as victim-investors wronged by CBSG’s Ponzi scheme. Simultaneously, they are pursuing recovery outside the Receivership Estate directly against Eckert Seamans for damages associated with those investments. Thus, the Parker Plaintiffs could potentially obtain a recovery far beyond other, similarly-situated investors. To ensure equal treatment among investors, the Receiver seeks to withhold an interim distribution to the Parker Plaintiffs until such time that they resolve their claims against Eckert Seamans. With insufficient assets within the Receivership

Estate to satisfy claims from all claimants, it is appropriate to reserve these amounts from the interim distribution to the Parker Plaintiffs to ensure they do not recover unfairly as compared to other investors.

ARGUMENT

I. The Parker Plaintiffs’ potential recovery against Eckert Seamans permits the Receiver to reserve their first interim distribution.

To ensure equal treatment for CBSG’s victims, the Receiver is proposing to withhold an interim distribution to the Parker Plaintiffs while they pursue claims from a collateral source. Courts have broad discretion to reduce distributions to claimants who recover from a collateral source. *See CCWB Asset Invs., LLC v. Milligan*, 112 F.4th 171, 177 (4th Cir. 2024). Limiting distributions to victims with a collateral recovery source prevents them from receiving a “disproportionately higher recovery on their investment as compared to other victims.” *SEC v. Merrill*, CV-RDB-18-2844, 2022 WL 17582418, at *3 (D. Md. Nov. 18, 2022). Courts regularly approve proposed distribution plans that provide for an offset of amounts victims recover from collateral sources. *See, e.g., SEC v. Capital Consultants, LLC*, 397 F.3d 733, 738-41 (9th Cir. 2005); *SEC v. Wang*, 944 F.2d 80, 87-88 (2d Cir. 1991). To that end, collateral recovery offsets are “reasonable solutions to allocating the limited recoveries.” *Official Comm. of Unsecured Creditors of WorldCom, Inc. v. SEC*, 467 F.3d 73, 84 (2d Cir. 2006) (explaining that “[w]hen funds are limited, hard choices must be made”).

The Receiver has proposed allocating proposed distributions to the Parker Plaintiffs, based on their Allowed Claim Amounts, but withholding any interim distribution at the current time. This is sensible and fair. *See SEC v. Homeland Commc’ns Corp.*, No. 07-cv-80802, 2010 WL 2035326, at *2 (S.D. Fla. May 24, 2010) (distribution scheme must be fair). The Parker Plaintiffs, along with other investors, suffered harm from CBSG’s Ponzi scheme. Unlike other victimized

investors, however, the Parker Plaintiffs are seeking to remedy their harms through direct claims they are pursuing against Eckert Seamans. The Receiver proposes to withhold interim distributions to the Parker Plaintiffs to prevent a potential double recovery should they recover on their claims outside of the Receivership.

The fact that the Receiver has considered collateral sources of recovery in crafting his Distribution Plan should come as no surprise. Not only are collateral sources properly considered in distribution plans, but the Court required all claimants to identify collateral recovery sources when they submitted claims to the Receiver. [ECF No. 1467-1; ECF No. 1471]. The claim form all claimants were required to complete required them to identify “any other party who you claim may be liable to you for repayment of your claim,” as follows:

<p>2e. Identify any other party who you claim may be liable to you for repayment of your claim:</p> <hr/> <hr/> <hr/> <hr/>
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[ECF No. 1467-1]. Given that there are insufficient assets within the Receivership Estate to satisfy all claims, equity obligates the Receiver to consider that some victims may recover from collateral sources. *Cunningham v. Brown*, 265 U.S. 1, 13 (1924) (“equality is equity”).

Withholding the Parker Plaintiffs’ initial distributions, at this point, also furthers the Court’s directive to “marshal[] and preserv[e] all assets” of the Receivership Estate. [ECF No. 141]. Reserving these initial distributions will avoid the potential for later litigation. If the Parker Plaintiffs receive an interim distribution and then later recover against Eckert Seamans, it would potentially stand as a double recovery. In that circumstance, equity may compel the Receiver to pursue a clawback of any initial distribution payments the Parker Plaintiffs received, given that the Parker Plaintiffs would be benefitting disproportionately as compared to other investors.

Pursuing those claims would require the Receiver to incur additional administrative estate expenses and further delay the winding-up of the Receivership Estate. Thus, withholding the interim distribution avoids that potential and furthers the Receiver's obligation to preserve the Receivership Estate. *See also SEC v. Capital Cove Bancorp, LLC*, SACV-15-980-JLS, 2016 WL 6078324 at * 5 (C.D. Cal. June 29, 2016) (describing the goal of the Receiver and his professionals as preserving the receivership estate "as best they can for the benefit of the investors").

II. The Receiver's proposed distribution properly considers investors as a whole rather than just the Parker Plaintiffs.

In objecting to the Receiver's Distribution Plan, the Parker Plaintiffs mistake the scope of the Court's analysis. The fairness of a receivership distribution plan is not based on whether they are purportedly inequitable to certain individual investors. Rather, courts must consider *all* investor-victims when crafting an equitable remedy, rather than one objecting subset. *See SEC v. Parish*, No. 2:07-cv-00919, 2010 WL 5394736, at *9 (D.S.C. Feb. 10, 2010) (rejecting the objections of a minority of investors that obstruct a fair result to the majority of investors). A plan of distribution is not inequitable simply because certain investors believe it is inequitable to their own, individual interests. *See SEC v. McGinn, Smith & Co.*, 1:10-cv-457, 2016 WL 6459795, at *4 (N.D.N.Y. Oct. 31, 2016) (approving distribution with collateral source offset because majority of investors would receive smaller distribution without the offset).

To this end, the Parker Plaintiffs' claims of inequity are misguided. In *McGinn, Smith & Co.*, certain investors objected to a receiver's plan that reduced distributions to victim-investors who recovered from collateral sources. 2016 WL 6459795, at *4. The Court rejected the objections, allowing reduced distributions to victim-investors who recover on their claims against third parties. *Id.* (allowing dollar-for-dollar reduction based on collateral source recoveries). In weighing the proposed distributions, the Court emphasized the need to "equalize recovery among

investors.” *Id.* The collateral offset provision “ensures that no one investor recovers a disproportionate percentage of their allowed claim after considering all sources of recovery.” *Id.* The same rationale applies here. The Receiver’s proposed distributions treat the Parker Plaintiffs equally with other victim-investors. By allocating distribution payments to the Parker Plaintiffs’ claims, but withholding the actual distribution until resolution of their claims against Eckert Seamans, the Distribution Plan ensures that the Parker Plaintiffs do not recover a “disproportionate percentage” compared to other victims. *Id.* This is fair and equitable and guarantees that the Parker Plaintiffs will not secure a double recovery.

CONCLUSION

The Parker Plaintiffs are pursuing recovery both inside and outside of the Receivership Estate. While the Receiver agrees that the Parker Plaintiffs are entitled to a recovery for their losses, they are not entitled to a disproportionate recovery at the expense of other victim-investors. Thus, the Receiver’s proposed Distribution Plan withholds distribution payments to the Parker Plaintiffs until resolution of their claims against Eckert Seamans. Withholding these interim distributions temporarily, until it is determined whether the Parker Plaintiffs will recover from a collateral source, is necessary to equalize recovery among investors. The Court should overrule the Parker Plaintiffs’ objection and approve the Receiver’s proposed Distribution Plan.

Dated: September 23, 2024

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 23, 2024, I electronically filed the foregoing document with the clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ Timothy A. Kolaya
TIMOTHY A. KOLAYA