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U.S. DISTRICT COURT
N.D. OF N.Y.
FILED
MAR 08 2017
LAWRENCE K. BAERMAN, CLERK
ALBANY

March 6, 2017

Subject: US District Court of the Northern District of New York in Utica, NY (Case No. 1:10-cv-00457-GLS-CFH)

I am writing to ask for your assistance in the matter of the distribution of available funds held by the Receiver, Phillips Lytle LLP, in the above-mentioned case concerning the McGinn Smith Investment firm.

This issue has been ongoing for almost seven years and does not seem to have an ending. I know that if there is a distribution it will be considerably less than my initial investment and that my only other recourse is claiming a capital loss with my tax return. Since I can only claim \$3000 a year it will take a long time to recover any additional funds.

Below I have outlined information provided on the Receiver's Website along with some notations/comments of mine.

1. **March 30, 2015:** (almost two years ago) – Judge Sharpe granted the disgorgement of profits and interest in excess of \$99 million to be returned to defrauded investors.
2. **December 18, 2015:** The Amounts collected by the Receiver for distribution are over \$21.8 million.
3. **December 30, 2015:** Motion filed by the Receiver requesting approval for the Plan of Distribution for the benefit of Investors of monies recovered and to be recovered.

Note: Difference between 1 and 2 above of \$76 Million. Also, note the time delay from the Judge granting distribution to the date of the motion being filed by the Receiver. I am also wondering that there has been no update in the accumulated amount in the Receiver's Account since the end of 2015. How much interest could \$21.8 million make in a year, and where is that interest? Also, there has been no update of any amounts collected from the additional \$76 million of assets noted above.

4. **October 31, 2016:** (ten months after motion filed) – **Plan of Distribution approved.** It states, “The Receiver will **SOON** post to the website an **outline** of the process toward making monetary distributions to the investors and the **timeline** for doing so.”
5. **December 23, 2016:** Courts decision now FINAL. “Consequently, each investor will receive by mid-January 2017....” Questionnaire and tax forms.
6. **January 25, 2017:** Describing the completion of the questionnaire and W-9. Plus, “Distributions will be made in groups on a rolling basis to holders of allowed claims as properly completed Investor Questionnaires and W-9 forms are returned”.
7. **February 6, 2017:** Forms in process and to be received during that week.

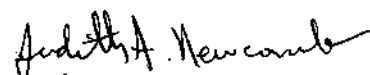
Note the time delay of a year from motion to FINAL approval of the Plan. Further, the Receiver never posted an outline of the process of distribution or a timeline for doing so as stated in the October 31 posting. It said questionnaires and W-9's would be sent by mid-January and were not sent until February 6. My forms were completed and sent back and should have been received by the Receiver on February 13. I have not received any indication that my claim was not “allowed” or the forms not properly completed or not received. I would have expected to receive something by now, i.e., March 6, since the distributions are to occur on a rolling basis. (I guess they are rolling up hill).

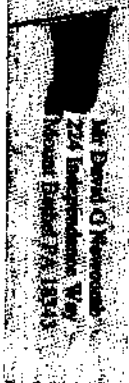
I sent an email to the Receiver on February 21 for my claim (claim# 5898 A) asking for an update on its status. I sent a follow-up email on March 3. I have had no response as yet to either email.

I have been amazed over the past 7 years (William Brown was appointed Receiver April 20, 2010) at how complex the “legal process” is. I am just now realizing that there may be an advantage to this complexity; the longer it takes the more the lawyer fees and expenses are, which, of course, are paid for out of the collected funds.

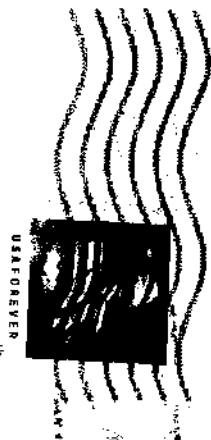
Isn't there anything that can be done to speed up this process, or at least require that the Receiver communicate the outline of the process and the timeline as committed to in the posting of October 31, 2016.

Thank you,

 
David G. and Judith A. Newcomb



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on order Gary L. Shapiro

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