

Harry McCafferty
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Venice, FL 34292

U.S. DISTRICT COURT
N.D. OF N.Y.
FILED

MAR 16 2018

LAWRENCE K. BAERMAN, CLERK
ALBANY

March 13, 2018

Honorable Christian F. Hummel
United States Magistrate Judge
United States District Court for the Northern District of New York
James T. Foley – U.S. Courthouse
445 Broadway
Albany, New York 12207-2924

Re: Case No. 1:10-CV-457 (GLS/CFH)

Your Honor:

Accompanying this letter, please find an Objection to the Relief being requested by the Receiver, William J. Brown, for an Order to disallow Paper Claims. Phillips Lyle LLP, as counsel for the Receiver, will move before the Court on April 19, 2018.

Efforts are being made to resolve the matter in question with the Receiver before April 19, 2018. If unsuccessful, it requested that the Court temporarily deny the request for Relief so as to provide additional incentives to reach an agreement.

Respectfully submitted,



Harry McCafferty

**NOTICE OF OBJECTION TO THE RELIEF REQUESTED BY THE RECEIVER IN
THE MOTION TO DISALLOW PAPER CLAIMS**

INTRODUCTION

PLEASE TAKE NOTICE that the individual with Claim #5738A objects to the relief being requested of the court in the pending Motion For An Order Disallowing Paper Claims ("Motion") which is to be moved in the United States District Court for the Northern District of New York on April 19, 2018. If necessary, the investor with Claim #5738A will challenge the Plan Distribution Order which excludes SAI Trust 03 from the Receivership. The significance of this Objection is the preservation of Claim # 5738A for \$38,610.75 and the retention of the ability to challenge the Plan Distribution Order and/or its implementation as it relates to Claim #5738A. The individual with claim #5738A has no over-riding objective, such as stymieing the work of the Receiver, and would be willing to rescind his Objection if the Motion did not directly adversely affect him.

The informational flow in this Objection includes (1) BASIS FOR OBJECTION, (2) ADDITIONAL CONSIDERATIONS and (3) SUMMARY. While sections (2) may not be a necessary part of the Objection to the relief sought in the "Motion", it has been included to assure the court that this Objection is not frivolous and it has merit.

BASIS FOR OBJECTION

The NOTICE OF MOTION is an essential element of our civil justice system, ensuring both fair and effective application of law. The NOTICE OF MOTION OF WILLIAM J. BROWN, AS RECEIVER, FOR AN ORDER DISALLOWING PAPER CLAIMS to which I am responding is an excellent example. As an effected party, I have been notified by first class mail and given the opportunity to object. Unfortunately that was not the case when the Plan of Distribution Motion was

moved before the court. When the Plan of Distribution Motion went before the court, it was no longer an administrative document but one that contained a small paragraph to exclude SAI Trust 03 from the Receivership. It adversely affected a limited number of people, specifically, those who invested in SAI Trust 03.

While the posting of a Notice of Motion on a website for an administrative document may suffice, that is not the case when individuals are directly impacted in a negative way. Formal first class mail notification is essential for fair and effective application of law. The shortcut of not providing this SAI Trust 03 investor (Claim #5738A) with a Notice of Motion for the Distribution Plan Motion circumvented his right to object and puts his claim at risk.

This same paragraph to excludes SAI Trust 03 from the Receivership is void of specificity and would never be accepted by the court if it were a stand alone motion. To simple state that SAI Trust 03 was "foreclosed on and liquidated before the commencement of the Receivership" without any factual confirmation, such as date of court action, provides a sound basis for challenge. The inclusion and use of this unsubstantiated statement as a "BASIS FOR RELIEF" (paragraph 20 of the "Motion") is also challenged based upon its void of specificity and supports the investor's Basis of Objection to the "Motion".

Accordingly with this Objection, it is requested that the court not grant the relief requested in the Motion to disallow paper claims. It is unfortunate that the investor with Claim #5738A must take this action, but it is necessary to prevent the disallowing of his claim without further notice or opportunity to be heard.

ADDITIONAL CONSIDERATIONS

There are ample reasons to argue that the exclusion of SAI Trust 03 from the Receivership was done in error. In addition to the legal and procedural argument presented above, the implementation of the

below that Claim #5738A will mostly be the only remaining SAI claim on April 19, 2018 and that payment at the applicable payout rate for this \$38,610.75 claim will have a negligible dollar impact on any single claimant within the total claims population.

An examination of Exhibit A, B, & C which accompanied the motion to disallow paper claims reveals only three remaining SAI Trust claimants: #4776A (\$10,000.00), #5738A (\$38,610.75) and #6599A-6602A (?). An assessment of the three remaining SAI Trust claimants and the likelihood that their claims will be active on April 19, 2018 is as follows: Claimant #4776A is most likely a small investor where the requirement to provide a written objection would cause the claimant to elect not to comply. Claimant #5738 has provided this written objection. Claimant #6599A- 6602A appears to be a final administrative conglomeration. The best guess is that they are not viable claims and as such have been consolidated with little likelihood of a written objection. This would leave Claim #5738A as the only remaining SAI claim.

SUMMARY

Considering the totality of the legal and procedural challenges, the harmful impact from the McGinn Smith deception, and the negligible dollar impact to any single claimant within the total claims population from a payment at the applicable payout rate for a claim of \$38,610.75, it is requested that the Relief sought in the Motion to disallow paper claims be temporarily denied. It is hoped that a process can be found to enable the payment of this claim. Subsequently, the individual with Claim #5738A would be willing to rescind this Objection.

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The Honorable Christine F. Hummel

United States Magistrate Judge

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