

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION :		
Plaintiff,	:	
	:	00 Civ 2685 (MGC)
v.	:	
	:	
ENTERPRISES SOLUTIONS, INC.	:	
HERBERT S. CANNON	:	
DR. JOHN A. SOLOMON,	:	
	:	
Defendants,	:	
And	:	
	:	
ROWEN HOUSE, LTD,	:	
MONTVILLE, LTD.,	:	
	:	
Relief Defendants.	:	

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**MOTION AND MEMORANDUM FOR ORDER APPROVING PROPOSED ELIGIBLE  
CLAIMANT LIST AND AUTHORIZING DISTRIBUTION**

Comes now the RECEIVER,<sup>1</sup> Phillip S. Stenger, by and through his attorneys, Stenger & Stenger, P.C., and through this “*Motion and Memorandum for Order Approving Proposed Eligible Claimant List and Authorizing Distribution*” (the “**DISTRIBUTION MOTION**”) to request that this COURT enter an order: (i) approving the “**PROPOSED ELIGIBLE CLAIMANT LIST**” attached as **Exhibit A** to this DISTRIBUTION MOTION;<sup>2</sup> and (ii) authorizing the RECEIVER to

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<sup>1</sup> All terms defined in this COURT’S “*Order Approving Plan of Distribution and Providing for Implementation Thereof*,” dated May 5, 2005 (the “**DISTRIBUTION PLAN APPROVAL ORDER**”), including the “**DISTRIBUTION PLAN**” attached as Exhibit B thereto, shall have the same meaning when used herein.

<sup>2</sup> As required by the DISTRIBUTION PLAN approved by the COURT, the PROPOSED ELIGIBLE CLAIMANT LIST includes a list of all ELIGIBLE CLAIMANTS, the APPROVED NET STOCK LOSS of each such ELIGIBLE CLAIMANT, the percentage of the aggregate APPROVED NET STOCK LOSS of all ELIGIBLE CLAIMANTS represented by each ELIGIBLE CLAIMANT’S APPROVED NET STOCK LOSS and the amount of the distribution to each ELIGIBLE CLAIMANT. DISTRIBUTION PLAN, p. 17, ¶II.(xiv). **Exhibit A** is incorporated by reference herein.

distribute the sum of \$875,000 from the FUND to the ELIGIBLE CLAIMANTS in the ratio of their APPROVED NET STOCK LOSSES.

In support of this DISTRIBUTION MOTION, the RECEIVER states as follows:

**I.  
BACKGROUND**

1. The general background of this matter is set forth in this COURT’S “*Opinion*” dated June 6, 2001 and in the DISTRIBUTION PLAN APPROVAL ORDER.

**II.  
THE DISTRIBUTION PLAN**

2. The DISTRIBUTION PLAN APPROVAL ORDER adopted the DISTRIBUTION PLAN to govern the determination of those entitled to participate in the distribution of the FUND and how that distribution was to be effected. A single DISTRIBUTION PLAN OBJECTION was filed to the DISTRIBUTION PLAN; that DISTRIBUTION PLAN OBJECTION was overruled by this COURT by its “*Order Overruling Objection to Distribution Plan*” dated March 29, 2006.

**DETERMINATION OF ELIGIBLE CLAIMANTS**

3. Extensive steps were taken by the RECEIVER to identify POTENTIALLY ELIGIBLE CLAIMANTS: see “*Motion and Memorandum Concerning Proposed Plan of Distribution*” dated February 11, 2005, pp. 3-5, ¶3. This COURT has held that “...the RECEIVER has pursued identifying potential claimants to the FUND with thoroughness; and the COURT finds that the RECEIVER’S actions have been diligent and reasonable.” DISTRIBUTION PLAN APPROVAL ORDER, p. 3, ¶3.

4. Pursuant to the DISTRIBUTION PLAN, and within twenty (20) days of the entry of the DISTRIBUTION PLAN APPROVAL ORDER, the RECEIVER mailed by United States First Class Mail, to those POTENTIALLY ELIGIBLE CLAIMANTS known to the RECEIVER, a CLAIMS PACKET

consisting of: (a) a DISTRIBUTION PLAN NOTICE, (b) a PROOF OF CLAIM FORM, and (c) a SUMMARIZING LETTER, all in the form approved by the COURT. In addition, within twenty (20) days of the entry of the DISTRIBUTION PLAN APPROVAL ORDER, the RECEIVER published the DISTRIBUTION PLAN NOTICE in *The Wall Street Journal*, and posted a copy of the DISTRIBUTION PLAN APPROVAL ORDER, with all Exhibits, on the RECEIVER'S ENTERPRISES website ([www.enterprisessolutions.com](http://www.enterprisessolutions.com)). See "*Notice of Filing of Receiver's Compliance Regarding Order Approving Plan of Distribution and Providing for Implementation Thereof*" dated May 27, 2005.

5. The RECEIVER has now completed the processing of all claims filed with him. One hundred twenty-nine (129) DETERMINATION NOTICES were issued by the RECEIVER pursuant to the DISTRIBUTION PLAN; only twelve (12) claimants sought reconsideration. Only one (1) claimant appealed the RECEIVER'S FINAL DETERMINATION NOTICE concerning its claim; the RECEIVER'S determination concerning that claim was affirmed by the COURT in its "*Order Affirming Receiver's Determination*" dated March 29, 2006.

6. **Exhibit A** reflects the results of this claims determination process.<sup>3</sup> As shown on **Exhibit A** — the "**PROPOSED ELIGIBLE CLAIMANT LIST**" — there are eighty-nine (89) ELIGIBLE CLAIMANTS, whose aggregate APPROVED NET STOCK LOSSES equal \$3,139,552.29.

### **III. APPROVAL OF ELIGIBLE CLAIMANT LIST AND AUTHORIZATION OF DISTRIBUTION**

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<sup>3</sup> **Exhibit A** is submitted in response to the requirement of ¶II.(xiv) of the DISTRIBUTION PLAN, p. 17, that "Within forty-five (45) calendar days following completion of processing of all POTENTIALLY ELIGIBLE CLAIMANT claims and DISTRIBUTION PLAN OBJECTIONS, including the resolution of any appeals arising therefrom, the RECEIVER shall prepare a list of all ELIGIBLE CLAIMANTS, the APPROVED NET STOCK LOSS of each such ELIGIBLE CLAIMANT, and the percentage of the aggregate APPROVED NET STOCK LOSSES of all ELIGIBLE CLAIMANTS represented by each ELIGIBLE CLAIMANT'S APPROVED NET STOCK LOSS..."

7. The DISTRIBUTION PLAN also directs the RECEIVER to petition the COURT for approval of the PROPOSED ELIGIBLE CLAIMANT LIST and further directs the RECEIVER to petition the COURT “for authority to distribute a specified amount from the FUND to the ELIGIBLE CLAIMANTS in the ratio of their APPROVED NET STOCK LOSSES.” DISTRIBUTION PLAN, ¶II.(xiv), pp. 17-18.

8. As of May 31, 2006, there was a balance of \$981,330.78 in the FUND. After payment of outstanding administrative fees and expenses through May 31, 2006 of \$29,659.82, as requested in the Receiver’s “*Motion and Brief For Payment of Costs, Fees and Expenses of the Receiver No. 3*” there will be a remainder of \$951,670.96. After allowing a reserve to take into account contingencies as well as final fees and expenses incurred in closing of the Receivership together with any federal, state or local taxes payable in connection with the Receivership and all necessary regulatory filings, the RECEIVER recommends that the sum of \$875,000 be distributed to ELIGIBLE CLAIMANTS as provided in the DISTRIBUTION PLAN.

9. Within ten (10) calendar days following the filing of this DISTRIBUTION MOTION, the RECEIVER will give notice of this DISTRIBUTION MOTION by posting a copy of the DISTRIBUTION MOTION (without exhibits) on the ENTERPRISES website, **[www.enterprisessolutions.com](http://www.enterprisessolutions.com)**, and by mailing a copy of the DISTRIBUTION MOTION (including exhibits) by U.S. First Class Mail to each ELIGIBLE CLAIMANT to the address shown on the RECEIVER’S records.

To facilitate the conduct of the proposed distribution and to reduce costs to the FUND, the RECEIVER respectfully requests that the FUND be transferred from Citibank to Fifth Third Bank, through which the RECEIVER has conducted several prior distributions.

**WHEREFORE**, the RECEIVER respectfully requests that the COURT enter the DISTRIBUTION APPROVAL ORDER:

- A) Approving the notice given by the RECEIVER concerning the filing of this DISTRIBUTION MOTION and finding that all requirements of due process and of this COURT'S orders have been complied with in connection with this proceeding and the proposed distribution of the FUND;
- B) Approving the claims administration process as conducted by the RECEIVER, finding that the RECEIVER has complied with all requirements of the DISTRIBUTION PLAN, approving and adopting the PROPOSED ELIGIBLE CLAIMANT LIST as the final "**ELIGIBLE CLAIMANT LIST**" and as a final and binding determination of the ELIGIBLE CLAIMANTS and their APPROVED NET STOCK LOSSES, and finding that no POTENTIALLY ELIGIBLE CLAIMANT who is not included on the ELIGIBLE CLAIMANT LIST as approved by this COURT, or who fails to cash his distribution check as set forth below, shall have any claim against the FUND or against the RECEIVER, the RECEIVER'S attorneys or accountants, or the officers, directors, employees, consultants or agents of any of them;
- C) Authorizing and directing the RECEIVER to transfer the FUND to Fifth Third Bank as set forth above and to distribute from the FUND the sum of \$875,000 to the ELIGIBLE CLAIMANTS in the amounts shown on the PROPOSED ELIGIBLE CLAIMANT LIST (**EXHIBIT A**);
- D) Providing that it shall be the obligation of each ELIGIBLE CLAIMANT to advise the RECEIVER of any change of address of such ELIGIBLE CLAIMANT and to ensure that such ELIGIBLE CLAIMANT'S contact information is properly reflected on the

RECEIVER'S records; and providing further that, in making such distributions, the RECEIVER shall be under no obligation to inquire or otherwise investigate to determine the proper contact information for any ELIGIBLE CLAIMANT for whom the contact information contained in the RECEIVER'S records proves inaccurate or incomplete, or whose distribution check is returned to the RECEIVER or is not cashed within the period set forth below;

- E) Providing that if there are ELIGIBLE CLAIMANTS to whom disgorgement proceeds are credited under the ELIGIBLE CLAIMANT LIST as approved by the COURT whose distribution checks are returned or have not been cashed with one-hundred-twenty (120) calendar days from the date of mailing of such checks (and in no event later than January 31, 2007), such checks shall be void and the right to receive such payments shall terminate and the amounts otherwise distributable to such ELIGIBLE CLAIMANTS shall be disposed of as set forth below; and providing further that the RECEIVER shall warn ELIGIBLE CLAIMANTS of this potential loss of rights and the need promptly to cash their checks by including copies of the letter attached as **Exhibit B** hereto, which is incorporated herein by reference (which letter the RECEIVER requests be approved by the COURT), in the mailing of the distribution checks;
- F) Approving the compensation request concurrently filed by the RECEIVER, and directing the RECEIVER to pay such compensation request;
- G) Authorizing and directing the RECEIVER, following the completion of such distribution, to pay all taxes and remaining costs of the administration; to make all necessary tax and governmental filings, if any; to file a final report with this


COURT; and to pay any balance remaining in the FUND (including amounts credited on the ELIGIBLE CLAIMANTS LIST as approved by the COURT to ELIGIBLE CLAIMANTS who cannot be located by the RECEIVER, or whose distribution checks are returned or which have not been cashed within the period set forth above) to the United States Treasury; and

- H) Exonerating the RECEIVER, his attorneys and accountants, and the officers, directors, employees, consultants or agents of any of them, from any liability in connection with the receivership.

Respectfully submitted,

STENGER & STENGER, P.C.  
Attorneys for the Receiver

July 3, 2006

By:   
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