

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 04-60573-CIV-MORENO/GARBER

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

MUTUAL BENEFITS CORP., et al.,

Defendants.

**MBKK'S DISTRIBUTION PROPOSAL REGARDING
UNION PLANTERS BANK ESCROW ACCOUNT**

Mutual Benefits Japan Company, Ltd. ("MBKK"), through its undersigned counsel, submits its Distribution Proposal pursuant to this Court's Order of February 22, 2005 Requiring Union Planters Bank To Disperse Funds, and states:

I. GENERAL PROCEDURAL ISSUES.

MBKK has reviewed carefully the "Distribution Issues" raised in pages 12 and 13 of the Receiver's Supplemental Brief on Purchaser Escrow Accounts. MBKK believes that **procedurally**, the Receiver is correctly presently assessing the issues related to safeguards necessary to assure the right dollars go to the right parties. Candidly, from a practical standpoint, MBKK does not know enough about the accounts and potential distribution mechanics to currently say with certainty that one procedure is or might be better than another, as to the issues raised by the Receiver, i.e. how the verification process should work.

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To be sure, however, MBKK believes that notwithstanding the Receiver previously objecting to the pre-closing purchasers receiving the money out of the escrow accounts, that the Receiver takes his responsibilities seriously and would discharge same in a fair and even manner as to these matters. Thus, at the present time, MBKK does not think it can suitably substitute its judgment on how to resolve these procedural distribution issues over the on hands experience and knowledge of the Receiver. MBKK submits that it would support a plan that calls for the Receiver to make an initial statement of proposed distribution procedures, and which then provides the parties in interest with an expedited time to comment on same, in order to advance and approve the plan as promulgated by the Receiver and potentially modified by good and practical suggestions.

II. SETOFF AND SUBSTANTIVE ISSUES.

Substantively, MBKK does have a concern about the mechanics of **setoff** as it affects distribution. In two limited sentences in his last brief, the Receiver has charged that MBKK has received commissions, and with citation to one Oregon case, made the conclusory statement that commissions received are subject to disgorgement and set off. If the Receiver wishes to take the position that MBKK (or any other party) should disgorge any amount of funds, then the Receiver should be required to file an adversary complaint alleging facts with specificity, as well as a legally sufficient cause of action that would give rise to a claim of disgorgement and set off. MBKK believes it should have an opportunity to answer or otherwise respond to such pleading and present its defense, in accordance with due process. While it is premature to engage in protracted legal argument here on the issue of setoff, because no claim for disgorgement against MBKK has yet been made, MBKK feels compelled to state that it has reviewed closely the Oregon case cited in the Receiver's last

brief, and the facts are clearly distinguishable from the case at bar.

In order to allay any concerns that MBKK is trying to create unnecessary work or to delay distribution, which would be contrary to its own interest, MBKK stipulates that its undersigned counsel would accept Rule 4(d) service of process on any such adversary complaint, and forthwith work with Receiver's counsel to structure an expedited pre-trial compliance and schedule on all motion, discovery and potential trial issues related to the appropriate adversary proceeding.

Hypothetically, MBKK adds that should the Receiver believe it is entitled to a setoff of \$X off of the \$15 million of MBKK's escrowed money sitting in the Union Planters Escrow Account, that it would be unfair to hold back MBKK's entire and uncontested distribution, pending resolution of such adversary proceeding. Further, there is no reason to hold back any other party's distribution that is not subject to legitimate challenge.

Finally, the procedure described above on substantive challenges by the Receiver as to a party's right to receive funds should be applicable across the board, not just to MBKK on the disgorgement/setoff issue, but on any substantive legal claim where the Receiver wishes to either deny any party's right to its payment out of the escrow account. This is fundamental due process and should be part of the plan suggested by MBKK in Section I of this memorandum.

III. ADMINISTRATOR AND COST OF ADMINISTRATION.

MBKK proposes that one of the local bankruptcy panel trustees or individuals often appointed receiver in complex matters be appointed as Administrator, since such person will in all likelihood have experience dealing with a large mass of claims, plus have the staff and accounting systems in place to handle the engagement. MBKK proposes (in alphabetical

order), James Feltman, Louis Freeman or Alan Goldberg.

As to cost, MBKK acknowledges the rule of SEC v. Elliott, 953 F. 2d 1560, 1576 (11th Cir. 1992) holding that if actions are taken to benefit certain property, a fee surcharge as to that property is appropriate. The cost of administration should be assessed either (i) pro rata for the size of each affected claim, or (ii) if practical, on a claimant by claimant basis for the work actually performed per claimant.

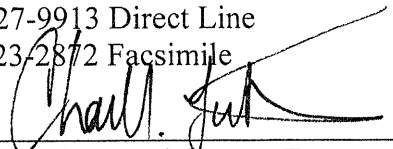
WHEREFORE, MBKK respectfully requests the Court consider and adopt its proposals as stated herein in establishing a plan for distribution funds out of the Union Planters Bank Escrow Account.

Dated: March 15, 2005.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by U.S. Mail to all parties on the attached Service List this 15th day of March, 2005.

By: _____


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