

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ROBERT STINSON, JR., et al.,

Defendants/Relief Defendants.

CIVIL ACTION NO.  
10-CV-03130 (BMS)

HON. BERLE M. SCHILLER

**RECEIVER'S REPLY IN SUPPORT OF RECEIVER'S AND COUNSEL'S FINAL  
FEE PETITION**

The Receiver, Kamian Schwartzman ("Receiver"), by and through his counsel, Pietragallo Gordon Alfano Bosick & Raspanti, LLP, hereby submits this reply in support of his and his counsel's Final Fee Applications.

**BACKGROUND AND DISCUSSION**

As the Securities and Exchange Commission has repeatedly acknowledged before this Court, the Receiver and his counsel have performed a considerable amount of professional work, much of which remains uncompensated. The reason is straightforward – the Receiver stepped into an estate with virtually no assets<sup>1</sup>.

Life's Good and its affiliated entities were operated by Stinson as a pure Ponzi scheme in which incoming funds were immediately stolen for one of three purposes:

- 1) To illegally enrich Stinson and his family;
- 2) To pay the expenses of his operation, thereby maintaining a business façade that enabled his continued fraud; and

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<sup>1</sup> See, e.g., Docket No. 268 at pp. 2 and 5, where the Commission acknowledges, among things, the paucity of assets in the Estate.

3) To pay distributions to certain investors.

As Stinson acquired no real assets for his “businesses,” the Receiver was significantly disadvantaged when he assumed this Estate. Additionally, the books and records of Life’s Good were in shambles. The Federal Bureau of Investigation had seized roughly 100 boxes of records from Stinson’s principal place of business. Dozens of other file boxes were seized by the Receiver at Stinson’s former residence, other offices, and even an undisclosed storage bin. Like Stinson’s “businesses,” these records were in disarray. Organizing, reviewing and analyzing them required the expenditure of hundreds of hours by the Receiver and his counsel. Only through this process was the Receiver able to marshal assets through dozens of actions against individuals across the country who improperly received funds from Stinson. Accordingly, while the Commission correctly notes these efforts and other recovery actions yielded approximately \$1.6 million in assets, the Commission minimizes the fact that the estate incurred professional fees of approximately \$800,000.00 in doing so.

At this inflection point, the Receiver made a strategic decision. He could have petitioned the Court to close the Estate with a balance that would have covered all incurred fees while allowing for a distribution. Instead, at the urging of investors and with the Commission’s support, the Receiver pursued the only viable third party claim in the Estate, against Morningstar, Inc., in order to achieve a substantial recovery for investors. To facilitate this recovery action, the Receiver deferred the submission of fee petitions for a number of years in order to maintain a prudent litigation reserve in the Estate. Although the Receiver and his counsel realized that there was a risk of non-recovery in such a challenging and novel case and

that this risk entailed that they may not be made whole<sup>2</sup>, the Receiver and his counsel were never told by the Commission that the balance of the litigation reserve would be distributed to investors. Rather, the Commission's position throughout the Morningstar litigation was the exact opposite – namely, in the event of a non-recovery in the Morningstar case, the Receiver and his counsel would be paid the balance of the Estate<sup>3</sup>.

### THE RECEIVER'S ALTERNATIVE PROPOSAL

Nevertheless, to satisfy the Commission's recent position that there should a distribution to the investors, the Receiver proposes that the Court distribute \$128,250.00 of the approximately \$423,000.00 in remaining net assets to investors on a tier payment system. See, e.g. Doe v. Calmut City, Ill., No. 87 C 3594, 1993 WL 512788, at \*1 (N.D. Ill. Dec. 9, 1993) (summary of settlement distribution formula in civil rights action in which each class member was rated by class counsel into one of six categories and settlement amount was fixed for each category). The Receiver's proposal is summarized as follows:

| Net Loss          | Number of Investors | Amount Distributed to Each Investor |
|-------------------|---------------------|-------------------------------------|
| \$0-\$49,999      | 136                 | \$350                               |
| \$50,000-\$99,000 | 74                  | \$550                               |
| \$100,000         | 47                  | \$850                               |
|                   | <b>257</b>          |                                     |

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<sup>2</sup> Notably, the Receiver's counsel was not retained pursuant to a contingent fee agreement; thus, there was no financial incentive for assuming the risk of non-payment, simply a desire by the Receiver and his counsel to achieve a recovery for the investors.

<sup>3</sup> Even under those circumstances, the Receiver and his counsel collectively would have been paid less than 50% of their incurred fees.

Under the Commission's proposal (Alternative A), the averages would be:

| Net Loss          | Number of Investors | Amount Distributed to Each Investor |
|-------------------|---------------------|-------------------------------------|
| \$0-\$49,999      | 136                 | \$279.62                            |
| \$50,000-\$99,000 | 74                  | \$834.08                            |
| \$100,000         | 47                  | \$2378.95                           |
|                   | <b>257</b>          |                                     |

The Receiver's proposal favors smaller investors and provides for a higher average payment for more investors, with 136 of the investors, on average, receiving 25% more than under the Commission's Alternative A proposal. For example, under the Commission's proposal, 18% of the investors (those who invested \$100,000 or greater) would receive 53% of the funds disbursed while in the Receiver's proposal, those same investors would receive 31% of the funds invested. The smaller investors (those who invested less than \$100,000) would receive 69% of the funds. A comparison of the two proposals is attached as Exhibit A.

Finally, if the court were to accept the Receiver's proposal, the Receiver and his counsel would still absorb a substantial non-recovery, as their total fees recovered would be approximately 44% of all fees reviewed and accepted by the SEC.<sup>4</sup> See Exhibit B.

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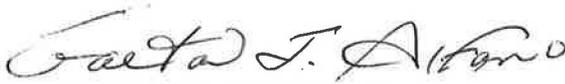
<sup>4</sup> This calculation excludes \$154,788.25 in fees voluntarily written off by the Receiver and his counsel over the course of this representation.

WHEREFORE, the Receiver respectfully requests that the Court enter an Order granting payment of professional fees and making a distribution to investors in accordance with the Receiver's Alternative Proposal, as described above.

Respectfully submitted,

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Dated: December 16, 2014  
2859754v1

## **Exhibit “A”**

**SEC Alternative A**

| <b>Range of Net Loss</b> | <b>Number of Investors</b> | <b>%</b> | <b>\$</b>    | <b>%</b> | <b>Average per Investor</b> |
|--------------------------|----------------------------|----------|--------------|----------|-----------------------------|
|                          |                            |          |              |          | <i>Avg</i>                  |
| \$0-\$49,999             | 136                        | 52.9%    | \$38,027.82  | 18.0%    | \$279.62                    |
| \$50,000-\$99,999        | 74                         | 28.8%    | \$61,721.97  | 29.2%    | \$834.08                    |
| \$100,000                | 47                         | 18.3%    | \$111,810.44 | 52.9%    | \$2,378.95                  |
|                          | 257                        |          | \$211,560.23 |          |                             |

**Receiver's Proposal**

| <b>Range of Net Loss</b> | <b>Number of Investors</b> | <b>%</b> | <b>\$</b>    | <b>%</b> | <b>Average per Investor</b> |
|--------------------------|----------------------------|----------|--------------|----------|-----------------------------|
| \$0-\$49,999             | 136                        | 52.9%    | \$47,600.00  | 37.1%    | \$350.00                    |
| \$50,000-\$99,999        | 74                         | 28.8%    | \$40,700.00  | 31.7%    | \$550.00                    |
| \$100,000                | 47                         | 18.3%    | \$39,950.00  | 31.2%    | \$850.00                    |
|                          | 257                        |          | \$128,250.00 |          |                             |

**Exhibit “B”**

**Life's Good Fund**  
**Fee Summary**  
**November 30, 2014**

|                       |  |                 |
|-----------------------|--|-----------------|
|                       |  |                 |
| Worked                |  | \$ 2,496,780.23 |
| Voluntary Write-Downs |  | \$ (154,788.25) |

|              |  |                        |
|--------------|--|------------------------|
| <b>Total</b> |  | <b>\$ 2,341,991.98</b> |
|--------------|--|------------------------|

|           |  |                 |
|-----------|--|-----------------|
| Billed    |  | \$ 2,341,991.98 |
| Collected |  | \$ (742,447.18) |

|                            |  |                        |
|----------------------------|--|------------------------|
| <b>Accounts Receivable</b> |  | <b>\$ 1,599,544.80</b> |
|----------------------------|--|------------------------|

|                 |  |                      |
|-----------------|--|----------------------|
| Cash Available  |  | \$ 423,000.00        |
| Less: Investors |  | \$ (128,250.00)      |
|                 |  | <b>\$ 294,750.00</b> |

**% if Receiver's Current Proposal is Approved**

|  |  |        |
|--|--|--------|
| Collection % based upon amounts reviewed and approved by the SEC |  | 44.29% |
|--|--|--------|