

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

<hr/>		:
SECURITIES AND EXCHANGE COMMISSION,		:
		:
Plaintiff		:
		:
v.		:
		:
ROBERT STINSON, JR., et al.,		:
		:
Defendants		:
and Relief Defendants.		:
<hr/>		:

Civil Action No.  
10-CV-03130 (BMS)

**SUPPLEMENTAL MEMORANDUM ADDRESSING  
THE RECEIVER’S PROPOSED DISTRIBUTION METHODOLOGY**

Plaintiff Securities and Exchange Commission (“SEC”) respectfully submits this supplemental memorandum to address the new distribution proposal submitted by the Receiver and his counsel (collectively referenced herein as the “Receiver”) to the Court on December 16, 2014.

The Court should reject the Receiver’s eleventh hour proposal because it ignores applicable law and suggests an inequitable distribution. The Receiver asks the Court to distribute funds to Stinson’s victims using a tiered payment system rather than a *pro rata* system. In cases such as this -- a multiple victim investment fraud where “investor funds [were diverted] to perpetrate a Ponzi scheme,” *see* Docket No. 196 at 7 -- courts around the country have overwhelmingly favored *pro rata* distribution plans. *See Cunningham v. Brown*, 265 U.S. 1, 13 (1924) (stating that equity demands that all of the victims of Charles Ponzi be treated as one class and share equally in recovered funds); *SEC v. Infinity Group Company*, Civ. Act. No. 06-4158, 226 Fed. Appx. 217, 218, 2007 U.S. App. LEXIS 8068 (3d Cir. 2007) (observing that, since *Cunningham*, the Courts of Appeals repeatedly have recognized that *pro rata* distribution

to victims of the fraud is appropriate, and rejecting an investor's claim to be treated differently) (non-precedential); SEC v. Walsh, 712 F.3d 735, 751-53 (2d Cir. 2013) (affirming the District Court's choice of *pro rata* distribution and rejection of investor claims for preferential treatment); SEC v. Wealth Management, 628 F.3d 323, 333-34 (7th Cir. 2010) (affirming *pro rata* distribution because it ensures that aggrieved investors with substantively similar claims receive proportionately equal distributions in a situation in which they will not be made whole); SEC v. Credit Bancorp, Ltd., 290 F.3d 80, 88 (2d Cir. 2002) (finding that the District Court had equitable authority to treat all the fraud victims alike, in proportion to their investments, and to order *pro rata* distribution; rejecting a request for preferential treatment).

The sole case cited for support by the Receiver is clearly distinguishable. Doe v. Calumet City, Civ. Act. No. 87 C 3594, 1993 WL 512788 (N.D. Ill. Dec. 9, 1993) involved the distribution of damages to victims of civil rights violations. Unlike the victims of Stinson's investment fraud, the victims in Doe were not equally situated. Some victims had endured more intrusive illegal searches and thus had been more greatly harmed. *See id* at \*1. Accordingly, separating the victims into different tiers, and compensating them in accordance with their disparate harm, made sense in that case.

Ultimately, and contrary to the cited precedent, the Receiver's plan is simply inequitable and arbitrary. Indeed, the Receiver admits that the plan "favors smaller investors . . . ." Docket No. 330 at 4. For example, under the Receiver's plan a victim who lost \$5,000 receives a 5.59% recovery, a victim who lost \$10,000 receives a 2.80% recovery; a victim who lost \$49,999 receives a .56% recovery; a victim who lost \$50,000 (one dollar more) receives a 1.67% recovery; a victim who lost \$98,000 receives a .85% recovery; and a victim who lost \$500,000 receives only a .48% recovery.

In contrast, the SEC's proposed *pro rata* distribution, reflected in Exhibit A of the SEC's Supplemental Memorandum (Docket 329), treats equally situated investors similarly, in accordance with precedent and equity.<sup>1</sup>

For these reasons, and because it represents an equitable compromise of the competing interests currently before the Court, the SEC respectfully requests that the Court order the distribution of half of the net Estate to defrauded investors in accordance with the SEC's *pro rata* distribution proposal, thereby rejecting the Receiver's proposed distribution.

Dated: December 19, 2014

Respectfully submitted,

s/ Catherine E. Pappas  
Catherine E. Pappas (PA #56544)  
David L. Axelrod

**Attorneys for Plaintiff:**  
SECURITIES AND EXCHANGE COMMISSION  
One Penn Center  
1617 JFK Blvd, Suite 520  
Philadelphia, PA 19103  
(215) 597-3100

---

<sup>1</sup> Exhibit B to Docket No. 329 also reflects *pro rata* distribution. The SEC's calculations in Exhibit A and Exhibit B exclude investors who would receive a check of \$20 or less as *de minimis* in view of, among other things, the cost of each distribution.

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-3130-BMS  
CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

The foregoing document(s) has been filed electronically and is available for viewing and downloading from the ECF system. I do hereby certify that on December 19, 2014, I caused a true and correct copy of the foregoing document(s) to be served on the following and in the manner indicated below:

<p>Robert S. Stinson, Jr., Register #02584-015 First Commonwealth Service Company IA Capital Fund, LLC Keystone State Capital, Corporation Life's Good, Inc. Life's Good Capital Growth Fund, LLC Life's Good High Yield Mortgage Fund, LLC Life's Good STABL Mortgage Fund, LLC FCI GILMER FEDERAL CORRECTIONAL INSTITUTION P.O. BOX 6000 GLENVILLE, WV 26351 (via first class mail)</p>	<p>Christine A. Stinson (via electronic mail) Castinson7@gmail.com</p>
<p>Michael G. Stinson (via electronic mail) michaelgstinson@msn.com</p>	<p>Laura Marable 13-3438 Makamae Street Pahoa, HI 96778-8412 (via electronic mail and first class mail) tigerlily_6648@yahoo.com</p> <p>Gaetan J. Alfano, Esq. (via electronic mail) gja@pietragallo.com</p>
<p>Felicia Sarner, Esq. Stuart Patchen, Esq. (via electronic mail) Felicia_Sarner@fd.org Stuart_Patchen@fd.org Criminal Counsel for Robert S. Stinson, Jr.</p>	<p>Kamian Schwartzman, Receiver (via electronic mail) kamian.schwartzman@lifegoodfundsreceivership.com</p>

<p>Ellen C. Brotman, Esq. Montgomery McCracken 123 South Broad Street Philadelphia, PA 19109 Counsel for Susan L. Stinson <i>(via electronic service)</i></p>	<p>Jeffrey A. Dailey, Esq. Natalie Lesser, Esq. Akin Gump Strauss Hauer &amp; Feld, LLP Two Commerce Square 2001 Market Street, Suite 4100 Philadelphia, PA 19103-7013 Counsel for Morningstar, Inc. <i>(via electronic service)</i></p>
---	--

s/Catherine E. Pappas

# **EXHIBIT A**

Not Reported in F.Supp., 1993 WL 512788 (N.D.Ill.)  
(Cite as: 1993 WL 512788 (N.D.Ill.))

**H**

Only the Westlaw citation is currently available.

United States District Court, N.D. Illinois, Eastern Division.

Jane DOE, et al., Plaintiffs,

v.

CALUMET CITY, ILLINOIS, et al., Defendants.

No. 87 C 3594.

Dec. 9, 1993.

MEMORANDUM ORDER

SHADUR, Senior District Judge.

\*1 This Court has received a self-prepared letter from class member Angelique Ramona Scott, complaining of her failure to have received a settlement payment as a result of this Court's approval of the Consent Decree in this action (an approval that was followed by distributions to class members in accordance with the formula established by the Consent Decree). This Court is not of course in a position to act on the basis of any such ex parte communication. Accordingly it is transmitting copies of this memorandum order and of Ms. Scott's letter to class counsel and to counsel for defendants (as well as sending a copy of this order to Ms. Scott herself). As and when the issue may then be brought on for hearing and consideration in an appropriate fashion, this Court will entertain the matter.

NOTICE OF HEARING ON SETTLEMENT OF CLASS ACTION

TO: All women who had been arrested on a misdemeanor or ordinance violation charge in Calumet City, Illinois between April 16, 1982 and March 31, 1988

A proposed settlement of the "Calumet City strip search case" has been submitted to the Court for approval.

This document describes the proposed settlement and gives instructions about what you must do if you believe that the proposed settlement should not be approved.

I. INTRODUCTION

The plaintiffs in this action are all women who were arrested on misdemeanor or ordinance violation charge in Calumet City, Illinois between April 16, 1982 and March 31, 1988. The defendant are the City of Calumet City and its former police chief James Shutowski.

On October 1, 1987, the Court ordered that the case may proceed as a class action. Thereafter, on December 14, 1990, the Court granted plaintiffs' motion for summary judgment and entered a finding of liability against Calumet City. Following the Court's ruling, class counsel has provided the class with the best notice practicable and the parties have exchanged information about each individual damages claim.

II. THE PROPOSED SETTLEMENT

Counsel for the parties have agreed to a settlement of all claims at issue in this case. With respect to the claims asserted on behalf of the class, the plaintiff class will waive its right to individual damage trials, defendant Calumet City will waive its right to appeal from the district court's finding of liability and defendant Calumet City will pay the sum of six million thirteen thousand dollars in full satisfaction of all claims for damages, expenses, and attorneys' fees. Attorneys' fees and expenses will be paid from this common fund, in an amount to be set by the Court and not to exceed 30% of the total. The remainder of the fund will be paid to the class.

III. THE DISTRIBUTION FORMULA

On September 9, 1993, the Court gave preliminary approval to the following distribution formula:

1. Each class member has been rated by class counsel

Not Reported in F.Supp., 1993 WL 512788 (N.D.Ill.)  
(Cite as: 1993 WL 512788 (N.D.Ill.))

into one of six categories, based primarily on the intrusiveness of the alleged search.

2. The amount to be paid to each category will depend on the total number of class members in each category, as

<i>Category</i>	<i>Points</i>
1	15
2	25
3	45
4	65
5	80
6 (low)	100
6 (mid)	110
6 (high)	120

b. The award for each category will be determined by dividing the total of the settlement fund (less whatever amount is awarded for attorneys' fees and costs) by the

<i>Category</i>	<i>Probable Award</i>
1	\$3000
2	5000
3	9000
4	13000
5	16000
6 (low)	20000
6 (mid)	22000
6 (high)	24000

3. Class counsel has used the aggravating and mitigating factors conventionally used by attorneys in assessing cases to subdivide category 6 into "low," "medium," and "high."

4. A special category has been established for claims asserted for class members who are no longer living. This category has been assigned 50 points. It is expected

follows:

a. Each category has received a point rating, as set out below:

total number of points. The final award for each category will be approximately as follows:

that the estate of each deceased class member will receive approximately ten thousand dollars.

5. Class counsel has notified each class member of her rating and provided each class member with an opportunity to discuss in person the rating.

6. A class member who disagrees with class counsel's

Not Reported in F.Supp., 1993 WL 512788 (N.D.Ill.)

(Cite as: 1993 WL 512788 (N.D.Ill.))

rating may, after discussing the disagreement with class counsel, seek review of her category with the Court. Any such "request for review" shall be filed with and received by the Clerk of the Court, 219 South Dearborn Street, 20th floor, Chicago, Illinois 60604, a "request for review" in the form set out in Exhibit "A" to this agreement. At least one week in advance of the hearing to be held on the fairness of this settlement. Any such "requests for review" shall be available to counsel for inspection but otherwise maintained under seal and restricted from public inspection. The Court shall provide each class member who files such a request for review an opportunity to be heard on her objections. Any class member who, after hearing before the district judge, does not obtain an increase in her total number of points shall have her point rating diminished by five points.

\*2 7. After all challenges have been resolved, a final distribution will be made by the computations described in paragraph 1(b) above.

NOW, THEREFORE, TAKE NOTICE:

1. A hearing will be held before this Court in Courtroom 2303, United States Courthouse, 219 South Dearborn Street, Chicago, Illinois 60604, on October 22, 1993, at 1:30 p.m., or as soon thereafter as counsel can be heard. The hearing shall be for the purpose of determining whether the terms of the proposed consent decree are fair, reasonable, and adequate, and whether the proposed consent decree should be approved by the Court. This hearing may be adjourned from time to time without further written notice to the class.

2. any class member who wishes to be heard either in support or in opposition to the proposed settlement must file her written objection or comment with the Clerk of the United States District Court for the Northern District of Illinois, 219 South Dearborn Street, Chicago, Illinois 60604 on or before October 15, 1993. The written objection or comment must be received in the Clerk's office on or before October 15, 1993. Written objections or

comments will be considered whether or not the class member attends the hearing.

The foregoing references to the lawsuit and the settlement agreement are only summaries. The settlement agreement and all other papers filed in this action may be examined and copied in the Office of the Clerk, 219 South Dearborn Street, 20th Floor, Chicago, Illinois between the hours of 9:00 a.m. and 4:30 p.m. Monday through Friday. Do not call either the Office of the Clerk or Judge Shadur for information about the case.

H. Stuart Cunningham

Clerk, United States District Court

N.D.Ill., 1993.

Doe v. Calumet City, Ill.

Not Reported in F.Supp., 1993 WL 512788 (N.D.Ill.)

END OF DOCUMENT