

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
(Miami Division)**

SECURITIES & EXCHANGE COMMISSION,

Plaintiff,

Case No.: 10-22078-CV-MORENO/Brown

vs.

ESTATE OF KENNETH WAYNE MCLEOD,
F & S ASSET MANAGEMENT GROUP, INC. and
FEDERAL EMPLOYEE BENEFITS GROUP, INC.,

Defendants.

**RECEIVER'S MOTION FOR CLARIFICATION AS TO STATUS OF RECEIVERSHIP
FOLLOWING ENTRY OF COURT'S FINAL ORDER OF DISMISSAL AND ORDER
DENYING ALL PENDING MOTIONS AS MOOT [D.E. 91]**

Michael I. Goldberg (the "Receiver"), in his capacity as receiver of Defendants, F&S Asset Management, Inc. and Federal Employee Benefits Group, Inc. (collectively, the "Receivership Entities"), through undersigned counsel, hereby files this Motion For Clarification as to Status of Receivership Following Entry of Court's Final Order of Dismissal and Order Denying All Pending Motions as Moot. [D.E. 91]. In support of this Motion, the Receiver states as follows:

1. The United States Securities and Exchange Commission ("SEC") initiated this proceeding on June 24, 2010. In its complaint, the SEC alleged that the Receivership Entities, along with Kenneth Wayne McLeod ("McLeod") perpetrated a Ponzi scheme defrauding approximately \$35 million from nearly 300 victims. The SEC also sought the appointment of a receiver over the Receivership Entities. On even date, the Court entered an Order ("Receivership Order") appointing Michael I. Goldberg as receiver for the Receivership Entities. [D.E. 11].

2. Pursuant to his duties as prescribed in the Receivership Order, the Receiver has taken possession of property, assets and estates of the Receivership Entities and has initiated a claims process through which the Receiver shall administer and distribute those assets to creditors following payment of administrative expenses. The Receiver is currently holding the sum of approximately \$1.3 million in trust for these purposes.

3. On February 20, 2013, the Receiver filed his Third Report Concerning the Condition of the F&S Asset Management Group, Inc. and Federal Employee Benefits Group, Inc. (the "Third Status Report"). [D.E. 88]. As set forth in the Third Status Report, there were 139 claims filed against the estate totaling approximately \$44 million. Of the claims filed, the Receiver had discrepancies with a majority of the claims but has worked with the claimants to resolve nearly all disputes. Indeed, within the next 3 weeks, the Receiver intends to resolve those claims and present the Court with a plan for the distribution of funds being held in the Receiver's trust account.

4. On February 21, 2013, the SEC filed its status report with the Court explaining that although the SEC still had claims for disgorgement and prejudgment interest against the Defendants, its litigation counsel would be seeking the Commission's authorization to resolve the monetary claims without the need for further litigation. [D.E. 89]. The SEC acknowledged that following the formalization of such resolution, the only "remaining actions in the case would be the Receiver's marshaling the final assets of defendants and making a distribution to investors as discussed in the Third Status Report." Id.

5. On April 8, 2013, the SEC filed Plaintiff's Notice of Dismissal of Certain Claims for Relief dismissing its claims for prejudgment interest and disgorgement against all three defendants, as well as its claim for a civil penalty against the Receivership Entities. [D.E. 90]. The SEC's dismissal resolved all claims in the case between the Plaintiff (SEC) and the Defendants.

6. Following the SEC's notice of dismissal, the Court responded by entering its Final Order of Dismissal and Order Denying All Pending Motions as Moot seemingly adjudging the entire cause dismissed with prejudice and ordering that all pending motions are similarly dismissed as moot. [D.E. 91].

7. As stated above, the Receiver is holding a significant amount of funds in his trust account pending the confirmation of the Receiver's forthcoming plan of distribution. The Receiver hereby seeks to confirm that in ordering the cause dismissed, the Court did not intend to dismiss the Receiver or to conclude the receivership portion of this case. Accordingly, the Receiver requests the Court enter an order confirming that the receivership remains active so the Receiver may finalize the claims process and distribute funds according to a Court approved plan of distribution. The Receiver estimates that the distribution to creditors will be completed within the next 3-4 months.

WHEREFORE, the Receiver respectfully requests this Court enter an Order confirming that the receivership remains active despite the Court's April 15, 2013 Order of Dismissal and Order Denying All Pending Motions as Moot (D.E. 91) and that the Receiver may proceed to fulfill his duties as Receiver as set forth in the Receivership Order.

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Respectfully submitted,

AKERMAN SENTERFITT
Court Appointed Receiver
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Telephone: (954) 463-2700
Facsimile: (954) 463-2224

By: Michael I. Goldberg
Michael I. Goldberg, Receiver
Florida Bar No.: 886602

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of April 2013, I electronically filed the foregoing Motion with the Clerk of the Court by using the CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record and other interested parties identified on the attached Service List in the manner specified, either via transmission of Notice of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronic notices.

By: Michael I. Goldberg
Michael I. Goldberg, Receiver
Florida Bar No.: 886602

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SERVICE LIST

1:10-cv-22078-FAM

Notice has been electronically mailed to:

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Securities & Exchange Commission v. Estate of Kenneth Wayne McLeod
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Notice has been sent by Certified Mail RRR to:

Internal Revenue Service Center
Attention: Service Center Director
Ogden, Utah 84201

Internal Revenue Service
Attention: SPECIAL PROCEDURES INSOLVENCY UNIT
P.O. Box 21126
Philadelphia, PA 19114

Department of Treasury
Office of the General Counsel
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

U.S. Department of Justice
Office of the Attorney General
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Washington, D.C. 20530-0001

Notice has been posted on the Receiver's website at:
www.febginfo.com