

David L. Osias (California State Bar No. 091287)

E-mail: dosias@allenmatkins.com

Jeffrey R. Patterson (California State Bar No. 126148)

E-mail: jpatterson@allenmatkins.com

Loraine L. Pedowitz (California State Bar No. 120614)

E-mail: lpedowitz@allenmatkins.com

ALLEN MATKINS LECK GAMBLE & MALLORY LLP

501 West Broadway, Ninth Floor

San Diego, California 92101-3577

Telephone: (619) 233-1155

Facsimile: (619) 233-1158

Paul B. George (Oregon State Bar No. 99009)

E-mail: georp@foster.com

Carter M. Mann (Oregon State Bar No. 96089)

E-mail: mannc@foster.com

FOSTER PEPPER & SHEFELMAN LLP

101 S.W. Main Street, 15th Floor

Portland, Oregon 97204-3223

Telephone: (503) 221-0607

Facsimile: (503) 221-1510

Attorneys for Receiver Thomas F. Lennon

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

CAPITAL CONSULTANTS, LLC, f/k/a
CAPITAL CONSULTANTS, INC., JEFFREY
L. GRAYSON and BARCLAY GRAYSON,

Defendants.

Case No. CV 00-1290-KI

FIRST AMENDED PROPOSED
DISTRIBUTION PLAN

Date: November 22, 2002

Time: 9:00 a.m.

Dept: 9A

Judge: Hon. Garr M. King

I. INTRODUCTION

This First Amended Distribution Plan ("Plan"), when approved by the Court,¹ will determine how claims against the Receivership Estate are calculated, and how those claims are treated. Further information about the background of these Receivership Cases is contained in the Memorandum of Points and Authorities in Support of the Motion to Approve Receiver's Distribution Plan, the Declarations of Thomas F. Lennon, Gayle M. Case, and Christopher R. Barclay filed in support of the Distribution Plan and the Appendix of Exhibits.²

II. DEFINITIONS

Unless the context otherwise requires, the following terms have the following meanings when used in their capitalized forms in the Plan. Such meanings are equally applicable to both the singular and plural forms of the terms.

Administrative Claims. Claims arising from post Receivership Date activities such as services rendered by the Receiver and for the Receiver by attorneys and accountants, goods and services provided by vendors such as equipment lessors post Receivership Date, and litigation claimants who prevail on any claim that they were damaged by the post Receivership Date conduct of the Receiver.

Allowed Claim. Any Claim for which (a) a proof of claim or request for payment was timely and properly filed; (b) a proof of claim or request for payment was deemed timely and properly filed by the Court; or (c) such Claim has been allowed or deemed allowed pursuant to the entry of a Final Order of the Court; and in any such case, as to which no objection to the allowance thereof has been brought by the Receiver, or as to which any objection has been determined by a Final Order of the Court. Unless otherwise specified herein or by order of the

¹ Capitalized terms are sometimes used before they are defined. Consult the Definitions section.

² In the event of any conflict or inconsistency between the terms of the Distribution Plan as described in any of the supporting documents and the terms set out in the Distribution Plan, the Distribution Plan controls.

Court, "Allowed Claim," shall not, for purposes of computation of Distributions under the Plan, include any of those items disallowed in the Order Granting Omnibus Objection to Claims.

Borrower Excess Claims. Claims asserted by CCL borrowers or guarantors against CCL in excess of the outstanding balance of the loans as of the Portfolio Sale cut off date, September 15, 2001, as more particularly described in the Overbid Contract attached to the Order Approving Receiver's Sale of Certain Private Investment Assets at Auction and Payment of Break-up Fee, entered January 24, 2002.

BOW Allowed Secured Claim. The secured claim held by Bank of the West, as defined by the Settlement Agreement with Bank of the West approved by the Court on September 28, 2001, in the amount of \$1,560,227.46, of which approximately \$445,000 remains unpaid as of August 1, 2002.

CCL. Capital Consultants, LLC, fka Capital Consultants, Inc.

CCL Business Assets. Those assets owned by CCL as of the Receivership Date, including its interest in the Capital Center Limited Partnership, certain notes receivable, and miscellaneous furniture and equipment.

Claim. A claim against CCL including, (a) any right to payment from CCL whether or not such right is reduced to judgment, liquidated, unliquidated, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured; or (b) any right to an equitable remedy for breach of performance if such performance gives rise to a right of payment from CCL whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

Client Claim. A claim held by a CCL client whose funds were invested in the Private Investment Portfolio, as calculated on a Money-in/Money-out basis and which has become an Allowed Claim.

Court. United States District Court for the District of Oregon.

Distribution Plan or Plan. This Distribution Plan once approved by the Court.

Estate or Receivership Estate. All assets including all claims, causes of action, or rights of recovery held by the Receiver, CCL, or any trust, partnership, joint venture, or other entity controlled by CCL or the Receiver.

Final Order. An order, judgment or decree (or any revision, modification, and/or amendment thereof) of the Court which has not been reversed, set aside or stayed and as to which the time to appeal, to petition for certiorari or for rehearing, or to move for relief, to amend or alter, or to make additional findings of fact has expired and as to which no appeal, petition for certiorari or rehearing, or other proceedings for relief, to amend or alter, or make additional findings of fact shall then be pending.

Grayson Assets. Those assets recovered and to be recovered from Jeffrey Grayson and Barclay Grayson, including \$500,000 in cash and assets recovered from Barclay Grayson pursuant to a settlement agreement approved by the Court on March 28, 2002, and \$720,000 recovered to date from Jeffrey Grayson from proceeds from his Carmel house, his interest in the proceeds of the sale of Capital Center and other assets.

Money-in/Money-out. As defined in Article III, E.

Non-client Claim Fund. A \$2.5 million fund out of which all claims other than Administrative Claims and Client Claims will be paid. The Non-client Claim Fund will be funded, after payment of Administrative Claims, from the same ~~revenue~~sources used to pay Administrative Claims, excluding Settlement Proceeds.

Post Receivership Management Fees. Amounts billed by the Receiver to Clients for the management of the Private Investment Portfolio after the Receivership Date.

Pre Receivership Management Fees. Amounts billed by CCL to Clients for the management of their investments before the Receivership Date.

Private Investment Liquidation Proceeds. The proceeds obtained by the Receiver from the disposition of the assets comprising the Private Investment Portfolio.

Private Investment Portfolio. All CCL's non-public investment vehicles, including unsecured loans and loans secured by real estate and non-real estate collateral, real estate ownership, and unregistered stock or membership interests as of the Receivership Date.

Reallocated Post Receivership Management Fee. The Post Receivership Management Fees divided by the value of the Private Investment Liquidation Proceeds, multiplied by the distribution to be made on each Client Claim.

Receiver. Thomas F. Lennon, or any successor appointed by the Court.

Receivership Action or Receivership Cases. That certain litigation, pending in the Court, known as *Securities and Exchange Commission v. Capital Consultants, LLC, f/k/a Capital Consultants, Inc., Jeffrey L. Grayson, and Barclay Grayson*, Case No. CV 00 –1290-KI, and the companion case known as *Elaine Chao, Secretary of the Department of Labor v. Capital Consultants, LLC, f/k/a Capital Consultants, Inc., Jeffrey L. Grayson, and Barclay Grayson*, Case No. CV 00 –1290-KI the Honorable Garr M. King, District Judge, presiding.

Receivership Date. September 21, 2000, the date on which the Receiver was appointed.

Receivership Recoveries. Those amounts recovered by the Receiver from the pursuit of fraudulent transfer or preference claims, disallowed or assigned proofs of claim, or other amounts not resulting from the Related Litigation and Mediation or the Private Investment Liquidation Proceeds.

Related Litigation and Mediation. Those claims and lawsuits referred to mediation by order of the Court entered January 16, 2001, and those lawsuits initiated by the Receiver for recovery of damages from CCL's service providers.

Residual Assets. Any Receivership assets other than Settlement Proceeds and Private Investment Portfolio Proceeds that remain after the payment of Administrative Claims and operational expenses of the Receivership Estate.

Settlement Proceeds. Those amounts recovered by settlement or judgment enforcement from the defendants and potential defendants in the Related Litigation and Mediation after deduction of actual attorneys' fees and costs incurred by CCL clients solely in relation to the

creation of the Settlement Funds, and allowed by the Court pursuant to the same application procedure used for the Administrative Claims of the Receiver and his professionals.

Third Party Recoveries. Recoveries, other than Settlement Proceeds, obtained by or for the benefit of CCL Clients, from sources other than the Receivership Estate, including ~~on~~ claims asserted against third parties, for damages incurred in connection with the Clients' investments with CCL.

Trade Claims. Claims asserted by vendors and service providers for goods and services rendered to CCL prior to the Receivership Date, including unsecured loans or other advances made to CCL.

III. TREATMENT OF CLAIMS

A. Administrative Claims

With the exception noted below, administrative claimants with Allowed Claims will be paid in full first from the following sources in order of priority: Grayson Assets, Receivership Recoveries, Post Receivership Management Fees, CCL Business Assets, Settlement Proceeds. Fees and Expenses incurred by the Receiver in connection with his participation in the Related Litigation and Mediation, subject to Court approval for reasonableness, will be paid first from the Settlement Proceeds.

B. BOW Allowed Secured Claim

Payments to BOW, including past and future payments totaling \$1,560,227.46 will be paid from the Non-client Claim Fund.

C. Trade Claims

Trade Claims that are determined to be Allowed Claims, together with Borrower Excess Claims, if any, determined to be Allowed Claims, will be paid pro rata, after payment in full of the BOW Allowed Secured Claim, from the Non-client Claim Fund.

D. Borrower Excess Claims

Borrower Excess Claims that are determined to be Allowed Claims, together with allowed Trade Claims, will be paid pro rata, after payment in full of the BOW Allowed Secured Claim, from the Non-client Claim Fund.

E. Client Claims

With the exception noted below, Client Claims will be paid pro rata from the Private Investment Liquidation Proceeds, the Settlement Proceeds, and Residual Assets. Distributions will be made on Allowed Client Claims on a Money-in/Money-out basis calculated as follows:

The total of the cost value of the client's Private Investment Portfolio investments as of January 1, 1996, if any, together with all funds and non-cash assets paid by the client to CCL for the funding of any asset in the Private Investment Portfolio or the payment of Pre Receivership Management Fees from January 1, 1996 through September 21, 2000 ("Money-in"), *less* all principal paydowns, interest payments, or other payments in funds, securities or other property credited to the client's account as a result of its investment in the Private Investment Portfolio from January 1, 1996 through September 21, 2000 ("Money-out"). In addition, to the extent the client obtains or has obtained any Third Party Recoveries, 50% of those amounts shall also be treated as Money-out and deducted from the total Money-in.

As a condition to the receipt of an initial distribution and as a condition to any subsequent distributions, and in order to permit the Receiver to monitor Third Party Recoveries and adjust the amount of a Client's Claim, within 30 days of approval of a Distribution Plan by the Court, and each 6-month period thereafter until the date the Receivership Case is otherwise ready to close, each CCL investor creditor must submit all CCL client's shall provide to the Receiver, with a copy to the Department of Labor; a sworn statement setting forth:

- a) Amount, identity and coverage information for applicable insurance;
- b) Name, address and services provided by third party advisors to the client during the five years prior to the Receivership Date;
- c) Steps taken to investigate, demand and recover losses from insurers or third party advisors.

Exception: If a CCL client can present written evidence that (1) it instructed CCL to invest in specific investments; (2) CCL complied with those instructions; and (3) CCL did not have and did not exercise any discretion in moving that client's money between investments, that client will have an option to receive a distribution from the proceeds of only those specific investments, based on a traced/asset value, using its Receivership Date principal balance in those investments as its Claim amount. If the client chooses to receive a distribution based on the traced/asset value, the client will not receive any distribution from the Settlement Proceeds. The client must make the election within 30 days after a Final Order is entered by the Court approving the Distribution Plan.

IV. DISTRIBUTIONS

F. Interim Distributions

The Receiver shall make first interim distributions under the Plan as soon as is practicable, but in all events, no later than 60 days after a Final Order is entered by the Court approving the Distribution Plan. Subsequent interim distributions shall be made, subject to the discretion of the Receiver, when material amounts are available to distribute.

G. Reserves

In making interim distributions, the Receiver shall reserve for the following contingencies:

1. Disputed claim amounts. In making interim distributions, the Receiver shall set appropriate reserves to allow a pro rata distribution to be made on the full amount of a disputed claim until the allowed amount of such claim is finally determined.

2. Third Party Recoveries: The Receiver shall establish a reserve of 15% of the estimated dividend of each Client Claim until the final distributions are made in order to make adjustments to the final distribution in the event the client obtains any Third Party Recoveries. As each investor creditor demonstrates that it has exhausted its potential claims for Third-Party Recoveries, the Receiver will release that creditor's percentage interest in the holdback account. At the close of the case, the Receiver will disburse the remainder of the holdback account according to the unpaid dividends as finally calculated on that date.

3. Administrative Claims and Operating Costs: The Receiver shall also estimate the administrative and operational expenses associated with fully administering the Receivership Estate and set appropriate reserves to cover those expenses.

H. Adjustments to Distributions

For each Allowed Client Claim, the Receiver shall calculate the Reallocated Post Receivership Management Fee for that Client, subtract from that amount the actual Post Receivership Management Fees paid by the Client, and deduct any amounts owed or credit any amounts overpaid, in making the distribution.

In addition, the Receiver shall adjust the distributions to those Clients that received Interim Distributions of Real Estate as provided for in the Order Granting Receiver's Motion Under Summary Procedures Order to Approve Process for Interim Distribution of Certain Receivership Real Estate Assets entered October 12, 2001.

I. Final Distributions

At such time as all Receivership Assets have been fully administered, all Claims have been resolved by Final Order of the Court, and after approval of a final report and accounting, the Receiver shall make a final distribution.

J. Distribution of Unclaimed Property

Any distribution of cash under the Plan which is unclaimed after six (6) months following the date of distribution shall be forfeited, and such distribution together with all interest earned thereon and shall become part of the Residual Assets.

V. RETENTION OF JURISDICTION

The Court shall have and retain exclusive jurisdiction of matters arising out of, and related to the Receivership Action and the Distribution Plan, and the Related Litigation and Mediation for, among other things, the following purposes:

1. To consider any modification of this Plan.
2. To hear and determine pursuant to the Summary Procedure Order all objections or other disputes with respect to Claims.
3. To protect the property of the Receivership Estate from adverse Claims or interference inconsistent with the Plan.
4. To consider any modifications of the Plan, to cure any defect or omission, or reconcile any inconsistency in the Plan or any order of the Court.
5. To issue such orders in aid of execution of the Plan as may be necessary and appropriate.
6. To hear and determine all applications for compensation and reimbursement of expenses of professionals.
7. To hear and determine all litigation, causes of action and all controversies, suits and disputes that may arise in connection with the interpretation, implementation or enforcement of this Plan.
8. To recover all assets of the Receivership Estate, wherever located.
9. To enter a Final Decree closing the Receivership Action and discharging the Receiver.

VI. MISCELLANEOUS PROVISIONS

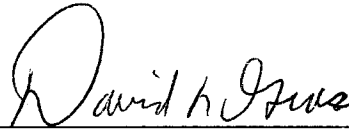
The Plan supersedes all prior discussions, understandings, agreements, and documents pertaining or relating to any subject matter of the Plan. The headings used in the Plan are inserted for convenience only and neither constitute a portion of the Plan nor in any manner shall affect the provisions or interpretation(s) of the Plan. All notices, requests and demands to or

upon the Receiver to be effective shall be in writing (including, without limitation, by telex or facsimile transmission) addressed as follows:

Thomas F. Lennon
United States District Court Receiver
Capital Consultants, LLC
2300 SW First Avenue, Suite 100
Portland, OR 97201

with a copy to:
David L. Osias, Esq.
Allen Matkins Leck Gamble & Mallory LLP
501 West Broadway, Ninth Floor
San Diego, California 92101-3577

Dated: ~~August~~ November 1, 2002



David L. Osias
California State Bar No. 091287
(619) 233-1155
Attorney for Receiver Thomas F. Lennon