

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

SECURITIES AND EXCHANGE COMMISSION, §

Plaintiff, §

vs. §

Civil Action No.
3:07-CV-1188-D

AMERIFIRST FUNDING, INC. aka AMERI-FIRST §
FUNDING, INC. aka AMERI FIRST FUNDING, §
INC., AMERIFIRST ACCEPTANCE CORP., §
JEFFREY C. BRUTEYN, DENNIS W. BOWDEN, §

Defendants, §

and, §

AMERICAN EAGLE ACCEPTANCE CORP., §
HESS FINANCIAL CORP., INTERFINANCIAL §
HOLDINGS CORP., HESS INTERNATIONAL §
PROPERTIES, LLC, HESS INTERNATIONAL §
INVESTMENTS, S.A., UNITED FINANCIAL §
MARKETS, INC. AND GERALD KINGSTON, §

Relief Defendants. §

**RECEIVER’S MOTION TO MAKE FIFTH INTERIM PARTIAL DISTRIBUTION OF
ESTATE FUNDS TO CREDITORS, AND BRIEF IN SUPPORT**

William D. Brown (“Receiver”), the court-appointed temporary receiver for the defendants and relief defendants in this matter, files this Motion to Make Fifth Interim Partial Distribution of Estate Funds to Creditors (the “Partial Distribution”), and Brief in Support, as follows:

I.

1. William D. Brown was appointed temporary receiver for the defendants and relief defendants on July 2, 2007.

2. Pursuant to the Court's July 2, 2007 Freeze Order and August 2, 2007 Supplemental Freeze Order, the Receiver has seized and has in his possession cash and other non-liquid assets in the amount of \$3,526,017 as of May 23, 2011.

3. On March 13, 2008, the Court granted Receiver's Second Amended Motion to Make First Interim Partial Distribution of Estate Funds to Creditors, allowing the Receiver to return nearly \$25 million to defrauded investors whose investments had been verified ("Verified Investors") pursuant to the "Plan A" calculation presented by the Receiver (the "First Distribution") [Dkt. No. 283].

4. On August 5, 2008, the Court granted Receiver's Motion to Make Second Interim Partial Distribution of Estate Funds to Creditors, allowing the Receiver to return an additional \$3.387 million to the Verified Investors pursuant to the "Plan A" calculation presented by the Receiver in connection with the First Distribution [Dkt. No. 340].

5. On November 30, 2009, the Court granted Receiver's Motion to Make Third Interim Partial Distribution of Estate Funds to Creditors, allowing the Receiver to return an additional \$800,000 to the Verified Investors pursuant to the "Plan A" calculation presented by the Receiver in connection with the First Distribution [Dkt. No. 429].

6. The Receiver has also made a Supplemental Second Interim Partial Distribution to Creditor pursuant to the Court's Order on March 17, 2009, in the amount of \$104,905 to Linda Graham, sole survivor and beneficiary of the Vesta Henderson Living Trust [Docket No. 377], and a Supplemental Partial Distribution of Estate Funds to Florida Receiver, pursuant to the Court's Order on January 8, 2010, in the amount of \$283,186.05 to Gerard A. McHale, Jr., the court-appointed Florida Receiver in the matter styled *State of Florida v. Amerifirst Funding, Inc., et al*, Cause No. 07-CA-6692 in the 20th Judicial District Court for Lee County, Florida [Docket

No. 431]. The Court also entered an Order on June 2, 2010 approving Supplemental Partial Distribution of Estate Funds of Janis Hearn, in the amount of \$102,640.00 [Docket No. 449].

7. On September 17, 2010, the Court granted Receiver's Motion to Make Fourth Interim Partial Distribution of Estate Funds to Creditors, allowing the Receiver to return an additional \$500,000 to the Verified Investors pursuant to the "Plan A" calculation presented by the Receiver in connection with the First Distribution [Dkt. No. 463].

8. The Receiver provided certain information to the law firm Goodman & Nekvasil so that it could pursue claims on behalf of 230 Amerifirst Funding, Inc. investors who purchased their investments through broker Gerald Kingston. Goodman & Nekvasil thereafter brought claims on behalf of those 230 investors against Kingston's employer for negligent supervision. This resulted in a confidential settlement (the "Settlement") which netted recoveries for the 230 investors. It is the Receiver's understanding that similar claims were not available to the remaining investors because their brokers did not have the type of relationship Kingston enjoyed with his employer. The actual net amount received by each of the 230 investors pursuant to the Settlement varied according to their individual circumstances.

9. The goal of the Plan of Distribution previously approved by the court [Dkt. 283] was to treat all Verified Investors equally. However, this Settlement places the 230 investors receiving Settlement payments in a position superior to the remaining investors. One way to eliminate this inequity would be to exclude the 230 investors who settled with Kingston's employer from future distributions from the Receivership Estate until the remaining investors have achieved the same percentage of recovery as the 230 investors described above (the "Alternate Plan"). The Receiver has prepared a distribution analysis which would facilitate the equalization of payments to all Verified Investors via the Alternate Plan.

10. On the other hand, should the Court decide the above Settlement is in fact extraordinary and outside the purview of the Receivership Estate, future distributions can be determined under the original Plan of Distribution which would ignore the Settlement.

11. By this Motion, Receiver seeks to distribute an additional \$500,000 to Verified Investors using, with the Court's instruction, the Alternate Plan set forth above or the "Plan A" calculation previously approved by the Court on March 13, 2008. With this distribution, the Verified Investors will have had \$34,608,905 returned, representing 59% of the Net Verified Balance Owed of \$58,790,491.

12. Adequate funds will be retained in the Receivership Estate to fund current operations. The Receiver hopes to recommend additional distributions in the future.

II.

For the reasons stated herein, the Receiver respectfully requests that he be permitted to make a fifth interim partial distribution of \$500,000 in line with the Alternate Plan set forth above or pursuant to the "Plan A" calculation previously approved by the Court, whichever the Court deems appropriate.

Respectfully submitted:

/s/ Suzanne C. Wellen

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**COUNSEL FOR RECEIVER
WILLIAM D. BROWN**

CERTIFICATE OF CONFERENCE

I hereby certify that on May 31 and June 13, 2011, I conferred with Mr. Toby Galloway, Counsel at the U.S. Securities & Exchange Commission, and the Commission is not opposed to the relief requested herein.

/s/ Suzanne C. Wellen

Suzanne C. Wellen

CERTIFICATE OF SERVICE

I hereby certify that on June 15, 2011, I electronically submitted the foregoing document with the clerk of the court for the U.S. District Court, Northern District of Texas, using the electronic case files system of the court. The electronic case files system sent a "Notice of Electronic Filing" to the following individuals who have consented in writing to accept this Notice as service of this document by Electronic means:

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I hereby further certify that on June 15, 2011, I served the following individuals with the foregoing pleading, as indicated:

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