



**I.**

Dennis Bowden's objections to the Receiver's proposed distribution plan<sup>1</sup> are unfounded.

To start, the goal of the Receiver's proposed Plan for First Interim Partial Distribution to Investors ("Plan A") is to treat all investors as equally as reasonably possible, no matter with which receivership entity their money was invested. The reason for this is simple: it is undisputed that the funds from the various receivership entities *were* commingled. In fact, contrary to Bowden's assertions in his Objection, the Receiver has identified countless instances in which Amerifirst Acceptance and Amerifirst Funding daily operating funds were actually and constructively commingled, both with each other, and together with investor monies. For example, all of the costs associated with operating Amerifirst Acceptance (a holding company) were remitted and reported by Amerifirst Funding, and Amerifirst Funding's "operating account" evidences transactions involving customer car payments, investor deposits, transfers of money to InterFinancial Acceptance (to pay investors monthly interest), payments for personal expenses of Dennis Bowden, and employee loans and advances. Moreover, it is undisputed that approximately \$6 million of funds that flowed through Hess Financial were "commissions" taken on the sale of the illegal securities by the Amerifirst entities.

Bowden accurately states first in his Objection that, as of July 2, 2007, Amerifirst Acceptance had investor funds "sitting in accounts" and that Amerifirst Funding<sup>2</sup> also had funds.

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<sup>1</sup> Bowden filed his objection to the Receiver's First Amended Motion to Make First Interim Partial Distribution of Estate Funds to Creditors on February 6, 2008. On that same date, Receiver filed a Second Amended Motion to Make First Interim Partial Distribution of Estate Funds to Creditors (the "Second Amended Motion"). For purposes of this Reply, Receiver will assume that Bowden intended to object to the both distribution plan options set forth in the Second Amended Motion.

<sup>2</sup> Bowden repeatedly refers to "Bowden assets" in his filing, but he fails to identify the "assets" to which he refers.

Never has the Receiver denied those facts. What Bowden fails to point out, however, is Amerifirst was not some “well-oiled” machine; in fact, nothing could be further from the truth considering the entities’ transaction data was incomplete and inaccurate (at best) and the journal entries had little, if any, supporting documentation. Bowden also fails to disclose that he and Bruteyn were planning to purchase even more high-risk sub-prime car notes with the investor funds in those accounts; perhaps that was to be the topic at Amerifirst Acceptance’s “first board meeting” which was to have occurred on July 3, 2007.<sup>3</sup> Fortunately for the defrauded investors, this Court acted promptly on July 2nd when presented with evidence developed by the Commission, and Bowden and Bruteyn’s plan never came to fruition.

Next, ignoring his and Bruteyn’s own financial reporting deficiencies (*i.e.*, including accrued interest on the notes receivable balance, and not filing business tax returns for years), Bowden takes issue with the Receiver’s tax plan for the Estate. Specifically, Bowden objects to the Receiver’s charge of Estate operating expenses against the assets of Amerifirst Acceptance, rather than, for example, Hess Financial or Amerifirst Funding. What Bowden fails to recognize is that because the Receiver has treated all of the entities’ funds as one collective account (due to the above-noted commingling), he was able to select the appropriate entity against which to charge the expenses for taxing purposes. This plan, of course, ultimately greatly benefited the Estate and preserved funds for the investors.

Finally, and ironically, Bowden suggests that the Receiver should calculate a partial distribution plan *by entity* rather than including all of the Receivership funds and expenses in one

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Bowden also fails to mention that several of his and Bruteyn’s “investment” choices worked to the detriment of the investors (*i.e.*, the airplane not certified to fly, the \$300,000 handed over to Randy Bacon in connection with Carousel Court Apartments, and the purchase of the Shelby Avenue condominium).

<sup>3</sup> Amerifirst Acceptance was formed in February of 2006.

“account” for distribution purposes. In support of this suggestion, Bowden expresses concern for “investors involved for nearly a decade with [Amerifirst Funding] [who] will now receive essentially nothing back on their investment.” (Objection at ¶ 7). Many of these long-term investors Bowden refers to, however, invested with entities that are no longer in existence (Ameri-First Financial, Ameri-First Securities, and Ameri-First Acceptance). Furthermore, and as a practical matter, even identifying what funds rightfully belong or belonged to which entity would be impossible due to defendants/relief defendants’ poor record-keeping and fund commingling. And, any attempt by the Receiver to perform this type of accounting (if one could be performed at all) would take a significant amount of time and would surely deplete most if not all of the Estate Funds, resulting in little to no distribution of funds to the investors. Likewise wasteful would be requiring the Receiver to review 8 months of work in order parse out expenses dedicated to each of various entities given that every action was taken for the benefit of the Estate as a whole.

Thus, for the reasons stated herein and in his Second Amended Motion, the Receiver respectfully requests that he be permitted to make a first interim partial distribution in line with the proposed Plan A, or alternatively, in line with Plan B should the Court deem Plan B to be more equitable.

Respectfully submitted:

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 7, 2008, 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 certify that I have served the foregoing document by mailing a copy to the following individuals:

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