

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

IN RE: BULLIONDIRECT, INC. a/k/a BD, BDI AND B DIRECT, INC., DEBTOR.	§ § § § § § §	CHAPTER 11 CASE NO. 15-10940-tmd
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MOTION BY TRUSTEE FOR ORDER APPROVING DISTRIBUTIONS TO GENERAL UNSECURED CREDITORS AND DISPOSITION OF UNCLAIMED FUNDS

This Motion requests relief that may be adverse to your interests.

A hearing will be held on this Motion on December 12, 2018 at 1:30 p.m. local Austin time before the Honorable Tony M. Davis, United States Bankruptcy Judge, at the Homer J. Thornberry Federal Judicial Bldg., 903 San Jacinto Blvd., Courtroom No. 1, 3rd Floor, Austin, Texas.

If no timely response is filed with the Clerk of the Court by December 5, 2018, the relief requested herein may be granted without a hearing being held.

A timely filed response is necessary for a hearing to be held.

Gregory S. Milligan, as Trustee (the “Trustee”) of the BullionDirect, Inc. Litigation Trust (the “Trust”), hereby files this *Motion for an Order Approving Distributions to General Unsecured Creditors and Disposition of Unclaimed Funds*, which seeks an order from the Court approving distributions by the Trust to general unsecured creditors and disposition of funds that are distributed via check but not claimed through subsequent presentment of such checks by the creditors receiving such checks. In support thereof, the Trustee would respectfully show as follows:

I. BACKGROUND

1. This bankruptcy case (the “Case”) was filed on July 20, 2015 (the “Petition Date”). At the time of the bankruptcy filing, the balance sheet of Debtor BullionDirect, Inc. (“BDI”) reflected approximately \$25 million owed to more than 5,000 customers, yet BDI had assets on hand worth less than \$1 million. In January 2018, the founder and President of BDI, Charles H. McAllister, was charged by the United States Department of Justice with felony wire fraud and money laundering in a separate criminal case in the United States District Court for the Western District of Texas. McAllister is also defendant in a civil case brought by the United States Commodity Futures Trading Commission, which is also pending in the United States District Court for the Western District of Texas.

2. Meanwhile, in this Case, the Bankruptcy Court confirmed a chapter 11 plan (the “Plan”) in July 2016 that transferred the remaining assets of BDI to the BullionDirect, Inc. Litigation Trust (the “Trust”) and appointed the Trustee to manage this Trust.¹ The Trustee has been collecting and selling the Trust’s tangible assets, such as precious metals and promissory notes. The Trustee also investigated the Trust’s intangible assets, including litigation claims against individuals and companies involved with BDI, and monetized those assets through settlement where appropriate.²

3. The Trust now has cash of almost \$700,000.³ The Trustee believes that distributions to holders of allowed general unsecured claims of all cash in excess of the required administrative expense reserve should commence pursuant to the Plan and the agreement

¹ See Order Confirming the Debtor’s Chapter 11 Plan of Reorganization, entered July 26, 2016, Docket No. 209 (the “Confirmation Order”).

² See Investigation Report, filed January 26, 2018, Docket No. 285.

³ See Chapter 11 Post-Confirmation Report for the Quarter Ending September 30, 2018, filed October 17, 2018, Docket No. 310.

governing the Trust after claims are properly reconciled. An objection to various claims is pending that will result in the proper reconciliation of these claims. *See First Omnibus Objection to Claims by Trustee (Wrong Amount, Not Secured, No Priority, Duplicate, Late-Filed, and/or Unliquidated Claims)*, filed July 16, 2018, Docket No. 292 (the “Omnibus Claim Objection”). Once the Omnibus Claim Objection and any future disputes over claims are resolved, the Trustee will make distributions as proposed in this Motion.

II. JURISDICTION & AUTHORITY

4. This Court has jurisdiction over the Case and the Motion. 28 U.S.C. §§ 1334. *See also* Plan, art. IX & Confirmation Order, ¶ 8 (retaining jurisdiction over various matters). Venue is proper in this District. 28 U.S.C. §§ 1408 & 1409. The bases for the relief requested herein are the terms of the Plan and the Confirmation Order, §§ 105(a) and 363 of title 11 of the United States Code (the “Bankruptcy Code”), and Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”). This is a core proceeding. 28 U.S.C. § 157(b)(2). The Court has constitutional authority to enter a final order under *Stern v. Marshall*, 564 U.S. 462 (2011) and its progeny.

III. REQUEST FOR RELIEF AND RELATED AUTHORITY

5. In this Motion, the Trustee respectfully requests that the Court enter a proposed order in substantially the form attached hereto (the “Proposed Order”) that (a) approves the method for calculating distributions to general unsecured creditors and the Allowed General Unsecured Claims, defined below, upon which such distributions will be calculated, (b) authorizes such distributions to be made in accordance with the Plan and other controlling documents, (c) authorizes the Trustee not to mail distributions to claimants where prior mailings to such claimants have been returned as undeliverable, and (d) authorizes the Trustee to deposit unclaimed distributions into the registry of the Court.

a) Distribution Calculation

6. The Plan governs distributions and provides:

Allowed General Unsecured Claims will be paid after Class 4 claims have been paid in full from funds available for distribution from the [Trust], on a pro rata basis. Payments or distributions from the [Trust] will occur only if the [] Trustee determines that funds are available for distribution after reserving funds needed for administration of the [Trust].

Plan, art. VI(a).⁴ All Class 4 claims and higher priority claims have either been paid or are subject to disallowance under the Omnibus Claim Objection.

7. Under the Plan, “unsecured claims” are “any unsecured debt, demand, or claim to the extent as determined and allowed by the Court in accordance with the Bankruptcy Code.”

Plan, art. I, § 19.

8. Under § 502(a) the Bankruptcy Code, claims are “allowed” if they are filed under § 501 of the Bankruptcy Code and not subject to an Objection. 11 U.S.C. § 502(a). In turn, in a chapter 11 case such as this, under § 1111(a) of the Bankruptcy Code, claims scheduled by BDI as undisputed, non-contingent, and liquidated are deemed to be filed under § 501 of the Bankruptcy Code. *Id.* § 1111(a).

9. Accordingly, after resolution of the Omnibus Claim Objection, “Allowed General Unsecured Claims” will consist of the following claims:

- 1) claims listed by BDI on its *Amended Schedule F*, filed in this bankruptcy case on September 18, 2015, Docket No. 249 (“Amended Schedule F”), for which proofs-of-claim were not timely filed;
- 2) claims asserted by timely filed proofs-of-claim not subject to any objection; and
- 3) claims adjusted by order of the Court resolving the Omnibus Claim Objection and any other objections.

⁴ All undefined capitalized terms herein should be ascribed the same definitions provided in the Plan.

10. *Exhibit A* to the Proposed Order, which as attached to the end of the Proposed Order, is a list reflecting all Allowed General Unsecured Claims, including scheduled claims and claims asserted through a proof-of-claim.⁵

11. The Trustee intends to make distributions to Allowed General Unsecured Claims in accordance with the Proposed Order and the Plan on a pro-rata basis. The Trustee will do this after setting aside funds necessary to pay remaining anticipated Trust expenses and after paying any remaining unpaid Class 4 claims and higher priority. (The Trustee has either paid all such higher priority claims or obtained an order from the Court disallowing or reclassifying such claims.)

12. The Proposed Order authorizes such distributions. This relief is proper under the Plan and the Confirmation Order, as explained above. Further, this relief is proper under § 105(a) of the Bankruptcy Code, which permits the Court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of” the Bankruptcy Code, and proper under § 363 of the Bankruptcy Code, which authorizes the Trustee to use property of the estate (or here, the Trust) as authorized by the Court “after notice and a hearing.” 11 U.S.C. §§ 105(a) & 363(b).

13. Expected *pro rata* distributions are 2.5-3.5 cents per dollar of Allowed General Unsecured Claims to holders of such claims.

14. In accordance with § 8.5 of the Plan, no “*de minimis* distributions of less than \$5.00 shall be made” by the Trust. *Plan*, § 8.5. The Trustee will calculate this cut-off once the

⁵ Amended Schedule F as filed by the Debtor listed the same claimants multiple times, both in different subcategories and repeatedly in the same sub-category. The Trustee has attempted to accurately reconcile this extensive list of more than 7,500 separate entries to only reflect one total unsecured claim per creditor.

final distribution amount is determined. At this time, the Trustee only estimates sending checks to approximately half of the claimants listed on the Proposed Order due to this cut-off.

b) Distribution Mailing Addresses

15. The Trustee will mail checks in accordance with paragraph 7 of the Confirmation Order, which states:

All notices, requests, and distributions to a holder of a Claim or Interest be sent to the last known address of the holder or its attorney of record. Any holder of a Claim or Interest may designate another address for the purposes of this paragraph by providing the [] Trustee with written notice of such address in accordance with the [Trust] Agreement.

Confirmation Order, ¶ 7.

16. The Bullion Direct Inc. Litigation Trust Agreement (the “Trust Agreement”) further provides that “Holders of Allowed Claims may change their address for payment by mailing a written, authenticated notice of a change of their address to the Trustee so that it is received by the Trustee at least thirty (30) days prior to any subsequent distribution.” *See* Trust Agreement at § 2(g)(ii), Docket No. 193, filed June 30, 2016. The Trustee intends to follow this provision of the Trust Agreement as well. Claimants have had ample time and notice, including further notice provided here in this Motion, to update their addresses in an authenticated writing submitted to the Trustee through both physical mail and electronic mail (as noted on the Trust’s website at <https://www.bulliondirecttrust.com/>).⁶

c) Returned Notices of Distribution Motion

17. The Plan is silent as to the treatment of distribution checks that are mailed but returned by the post office as undeliverable. Notice of this Motion is being mailed to all claimants expected to receive distributions now, prior to distributions being made. *See Order*

⁶ The Trustee proposes treating electronically mailed address-change notices received by the Trust as “authenticated” if sent from the electronic mail address for the creditor in question that was either used by BDI for service to such creditor in this Case or listed by a creditor in a proof of claim filed in this Case.

Approving Form and Manner of Notice for Motion for Approval of Distributions to General Unsecured Creditors and Disposition of Unclaimed Funds, which was entered in this Case on November 8, 2017, Docket No. 317.

18. The Trustee expects that a number of such notices will be returned as undeliverable by the postal service. In such instances, the Trustee would like authority to not mail distribution checks to such claimants unless such claimants have submitted an authenticated change-of-address request in writing prior to the entry of an order granting this Motion (which will occur with at least 21 days' prior notice).⁷ Instead, such funds may be disbursed to other creditors as provided above.

d) Disposition of Uncashed Distribution Checks

19. The Plan is also silent as to the treatment of distributions checks that are delivered but never cashed or otherwise presented to the depository institution holding the account of the Trust upon which such distribution checks will be drawn. All distribution checks will become stale ninety days after their issuance. After such time, and when permitted and prudent in the Trustee's judgment under the Trust's applicable financial institution deposit agreement, the Trustee proposes depositing such funds into the registry of the Court for future payment to claimants who request such moneys. The Trustee does not believe that a second round of distributions of unclaimed funds to other creditors would be cost-effective at that point because the amounts of unclaimed funds are anticipated to be small. The Trustee believes that depositing such funds into the registry of the Court for the benefit of claimants at that time is preferable to

⁷ The Trustee would like to reserve discretion to extend this deadline for accepting change-address-notices in case it is possible to accommodate late change-of-address requests without delaying distributions. While the Trustee would extend this deadline in a uniform manner, applicable to all creditors, the Trustee would like sole and absolute discretion to permit such uniform extension and the Trustee would like to make this uniform extension without the costs of additional notice. Creditors should not delay sending change-of-address notices at this late point in the Case.

maintaining the Trust for this purpose after the Trust has administered substantially all of its other assets. The Trustee also believes that depositing such funds into the registry of the Court is a better option than escheating such funds to the applicable state authority or authorities.

IV. CONCLUSION

WHEREFORE, the Trustee respectfully requests that the Court enter an order in substantially the same form as the Proposed Order submitted herewith and granting such other and further relief as this Court deems just and proper under the circumstances.

Respectfully submitted this 8th day of November 2018.

/s/ Jesse T. Moore
Jesse T. Moore
State Bar No. 24056001
Dykema Gossett, PLLC
111 Congress Ave., Suite 1800
Austin, Texas 78701
Phone: 512-703-6325
Fax: 512-703-6399
Email: jmoore@dykema.com

*Counsel to Gregory S. Milligan, Trustee for the
BullionDirect, Inc. Litigation Trust*

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of this Motion on November 8, 2018 via the Court's electronic case filing system to all parties receiving notice through such system as listed at the end of this document.

In addition, I will be filing a separate certificate of service attesting to additional service in accordance with the *Order Approving Form and Manner of Notice for Motion for Approval of Distributions to General Unsecured Creditors and Disposition of Unclaimed Funds*, which was entered in this Case on November 8, 2018, Docket No. 317.

/s/ Jesse T. Moore
Jesse T. Moore

Electronic Case Filing Service List:

Steven B. Bass on behalf of Creditor United States of America
Steven.Bass@usdoj.gov, lori.wilson@usdoj.gov

Duane J. Brescia on behalf of Interested Party C. Jack Murph
duane.brescia@strasburger.com,
donna.krupa@strasburger.com;Kathryn.Alexander@strasburger.com;bkrtycynotices@strasburger.com

Duane J. Brescia on behalf of Interested Party Cheryl L. Huseman
duane.brescia@strasburger.com,
donna.krupa@strasburger.com;Kathryn.Alexander@strasburger.com;bkrtycynotices@strasburger.com

Kay D. Brock on behalf of Creditor Travis County
bkecf@traviscountytexas.gov, kay.brock@traviscountytexas.gov
Richard T. Chapman on behalf of Creditor Janak Law Firm
rchapman@andersonsmith.com, roxanne@andersonsmith.com; Jamie@andersonsmith.com

Richard T. Chapman on behalf of Creditor Julius De Roma
rchapman@andersonsmith.com, roxanne@andersonsmith.com; Jamie@andersonsmith.com

Richard T. Chapman on behalf of Creditor Linda Strande
rchapman@andersonsmith.com, roxanne@andersonsmith.com; Jamie@andersonsmith.com

Brent A. Devere on behalf of Creditor David Ray
bdevere512@aol.com

Kirstin K Dutcher on behalf of Creditor Chris Smelick
kkd@lawsonlaski.com, heo@lawsonlaski.com

Kirstin K Dutcher on behalf of Creditor Robert Smelick
kkd@lawsonlaski.com, heo@lawsonlaski.com

Jeffrey R. Erler on behalf of Creditor Diamond State Depository, LLC
jeff.erler@cottonteam.com, Melissa.harrocks@cottonteam.com

Jeffrey R. Erler on behalf of Creditor Dillon Gage Inc. of Dallas
jeff.erler@cottonteam.com, Melissa.harrocks@cottonteam.com

Lisa C. Fancher on behalf of Creditor Kirk Davis Mahon
lfancher@fbhg.law

Laura Marie Fontaine on behalf of Creditor Diamond State Depository, LLC
Laura@HedrickKring.com,

Mckenzie@HedrickKring.com;Lori@HedrickKring.com;Britt@HedrickKring.com

Laura Marie Fontaine on behalf of Creditor Dillon Gage Inc. of Dallas
Laura@HedrickKring.com, Mckenzie@HedrickKring.com; Lori@HedrickKring.com;
Britt@HedrickKring.com

James V. Hoeffner on behalf of Creditor Louis S McCann
jhoeffner@gdhm.com, bcummings@gdhm.com

Joseph D. Martinec on behalf of Debtor BullionDirect, Inc.
martinec@mwwmlaw.com, white@mwwmlaw.com

Jesse Tyner Moore on behalf of Creditor Official Committee of Unsecured Creditors of
BullionDirect, Inc.
jmoore@dykema.com

Jesse Tyner Moore on behalf of Trustee Gregory S. Milligan, Trustee of the BullionDirect, Inc.
Litigation Trust
jmoore@dykema.com

William T. Peckham on behalf of Creditor Clinton C. Price
wpeckham@peckhamlawaustin.com, calexander@peckhamlawaustin.com

Michael J. Pledger on behalf of Creditor Christopher Lombardo
pledgerlaw@aol.com

Douglas J. Powell on behalf of Creditor David Emery
notices@swbell.net, dpowell@dougpowelllaw.com;ayana@dougpowelllaw.com

Peter C. Ruggero on behalf of Creditor Kazu Suzuki
peter@ruggrolaw.com

Stephen Matthew Schultz on behalf of Creditor Peter Lettang
stephen@tslf.com

Martin Warren Seidler on behalf of Creditor Gerard Barrack
marty@seidlerlaw.com, ecfseidlerlaw1@yahoo.com

United States Trustee - AU12
ustpreion07.au.ecf@usdoj.gov