

**OFFICE OF THE CLERK  
UNITED STATES DISTRICT COURT  
Northern District of California**

**CIVIL MINUTES**

**Date:** June 27, 2019

**Time:** 3:05 – 4:15 =  
1 Hour; 10 Minutes

**Judge:** EDWARD M. CHEN

**Case No.:** [16-cv-01386-EMC](#) **Case Name:** Securities and Exchange Commission v. Bivona

**Attorneys for Plaintiff:** John Yun, Patricia Schrage (Court Call)

**Attorneys for Interested Parties:** Elizabeth Pritzker, Avi Israeli, Wendy Smith (Court Call).

**Receiver:** Kathy Bazoian Phelps

**Deputy Clerk:** Angella Meuleman

**Court Reporter:** Katherine Sullivan

**PROCEEDINGS**

[481] Motion to Disallow Certain Claims – held.

[487] Receiver's Proposed Plan of Distribution - held.

**SUMMARY**

Parties stated appearances.

The Court heard comments from the parties regarding the proposed distribution plan submitted by the Receiver (Docket No. 487), and for the reasons stated on the record and herein, **ORDERS** as follows:

- (1) The Receiver's Motion to Disallow Certain Claims (Docket No. 481) is GRANTED;
- (2) The Stipulation to Fix the Amount of Progresso's Unsecured Creditor Claim (Docket No. 490) is GRANTED;
- (3) The claim for backend fees asserted by Joshua Cilano is DISALLOWED as it would be inequitable for Mr. Cilano to receive additional compensation for his role in Defendants'

scheme at the expense of the investors, even if Mr. Cilano was not personally culpable (Mr. Cilano may still recover on his personal investor claim);

- (4) The Receiver's request for authorization to consolidate the Solis Associates Fund into the Receivership Estate is GRANTED;
- (5) The Receiver's request for authorization to commence litigation against EAC and Ben Sabrin is GRANTED; the Receiver shall seek the Court's authorization to commence other litigation on a case-by-case basis by filing a brief submission addressing the purpose of that litigation, the amount at stake, and the prospect of recovery;
- (6) The SEC shall continue to hold the Anne Bivona disgorgement funds in a segregated account, and any recommendation it files as to an equitable distribution of those funds shall be subject to Court approval.

In addition, with respect to the potential tax liability, the Receiver reported that tax professionals have advised that: the liquidation and the distribution of shares by the receivership will be taxable events; the receivership, as a Qualified Settlement Fund, will be taxed at the ordinary income tax rate (estimated to be 42%) of the gain over the basis; and the receivership's status as a Qualified Settlement Fund will allow it to claim loss carryforward. The Receiver proposed selling securities, on an investment by investment basis, and that upon each liquidation an amount equal to 30% of the amount of the investors' gross investments be placed in the "Plan Fund," to occur to cover administrative and unsecured creditor claims. The Receiver also proposed an additional hold back to cover tax liability upon each liquidity event (the "Tax Holding Fund"). The parties present did not object to either the Plan Fund or Tax Holding Fund proposal. The court agreed.

The parties agreed that it would be proper for the Receiver to obtain a written legal opinion setting forth the potential tax liability under the distribution plan, and the advisability of filing tax returns for a Qualified Settlement Fund, before the plan is approved. Accordingly, the Court further **ORDERS:**

- (7) The Receiver will file an administrative motion with the Court to retain a tax professional to prepare said tax opinion with an estimate of the professional's fees;
- (8) Upon the Court's approval of the motion, the Receiver will endeavor to obtain the tax opinion share it with interested parties and the Court by 8/9/2019;
- (9) The parties will meet and confer and file a proposed final distribution plan by August 23, 2019, if possible.
- (10) A further case management conference is set for 10/17/2019 at 10:30am. Joint cmc statement due 10/10/2019.