

Mark R. Gaylord (#5073)
Melanie J. Vartabedian (#10148)
Tesia N. Stanley (#13367)
Jeffrey D. Enquist (#14634)
Scott S. Humphreys (*admitted pro hac vice*)
BALLARD SPAHR LLP
One Utah Center, Suite 800
201 South Main Street
Salt Lake City, Utah 84111-2221
Telephone: (801) 531-3000
Facsimile: (801) 531-3001
gaylord@ballardspahr.com
vartabedianm@ballardspahr.com
stanleyt@ballardspahr.com
enquistj@ballardspahr.com
humphreyss@ballardspahr.com

*Attorneys for Court-appointed Receiver,
Diane A. Thompson*

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

**AMERICAN PENSION SERVICES, INC.,
a Utah Corporation and CURTIS L.
DeYOUNG, an individual,**

Defendants.

**RECEIVER'S MOTION FOR
ESTABLISHMENT OF CLAIMS BAR
DATE AND APPROVING BAR ORDER**

Case No.: 2:14-cv-00309-RJS-DBP

**Judge Robert J. Shelby
Magistrate Judge Dustin B. Pead**

Diane A. Thompson, as Court-appointed receiver (“Receiver”) of American Pension Services, Inc. and any related entities owned, controlled, or under common control of American Pension Services, Inc. (collectively “APS”), by and through her counsel of record, hereby moves

the Court for an order establishing November 30, 2016 as the deadline for submitting completed Claim Forms to the Receiver (the “Bar Date”) and for an order barring those that fail to submit a Claim Form by the Bar Date from asserting any future claim against APS or the APS Receivership Estate (this “Motion”).

RELIEF SOUGHT AND GROUNDS FOR MOTION

By this Motion, the Receiver seeks to establish a Bar Date for claims against the APS Receivership Estate. The Receiver also seeks an order barring any claims against the APS Receivership Estate following the expiration of the Bar Date. A Bar Date is necessary to properly establish any claims against the APS Receivership and finalize a plan of distribution.

INTRODUCTION

On April 24, 2014, the Securities and Exchange Commission (“SEC”) filed suit against APS and Curtis L. DeYoung, alleging, among other claims, that DeYoung, as president and CEO of APS, misappropriated over \$24 million of APS account owner funds from APS’s master trust account. (Complaint (Dkt. 1), ¶ 1). That same day, the Receiver was appointed and tasked to promote the orderly and efficient administration of the Receivership Estate. (Order Appointing Receiver, Freezing Assets, and Other Relief (Dkt. 9) (“Receivership Order”). The Receivership Order grants the Receiver the “general powers and duties” to “resist and defend all suits, actions, claims and demands which may now be pending or which may be brought by or asserted against the Receivership Estate[.]” (Dkt. 9, ¶ 7.J). Furthermore, the Receivership Order required the Receiver to file a list of all known creditors with the Court and update that list on a quarterly basis, which the Receiver has done. (Dkt. 9, ¶ 11; *see, e.g.*, Ninth Quarterly Status Report of Receiver, Exhibit E (Dkt. 796-5)).

On February 27, 2015, this Court approved the Receiver's Amended Modified Plan of Liquidation ("Liquidation Plan"). (Dkt. 458). The Liquidation Plan includes a claims procedure for APS creditors, which requires all creditors to submit a Claims Form to the Receiver setting forth the date the claims arose, the nature and amount of the claim, whether the claim is secure, and when the creditors contends the claim became due and owing. (Dkt. 458-1, p. 53). A Claims Form was approved as part of the Liquidation Plan. (Dkt. 458-1, p. 53, App'x. H). The Liquidation Plan, including the Claims Form, has been posted on the Receivership website (www.apsreceiver.com) since February 28, 2015. However, the Liquidation Plan did not include a Bar Date for claims against the APS Receivership.

A Bar Date is necessary to effectively notify potential creditors of the need to submit a proper Claims Form and to allow the Receiver to appropriately identify and consider creditor claims while developing her plan of distribution. The Receiver has identified and accounted for APS account owners' loss allocation under the Liquidation Plan, and therefore, APS account owners are not required to submit a Claims Form.

STATEMENT OF FACTS

1. On April 24, 2014, the Securities and Exchange Commission ("SEC") filed suit against APS and Curtis L. DeYoung, alleging, among other claims, that DeYoung, as president and CEO of APS, misappropriated over \$24 million of APS account owner funds from APS's master trust account. (Dkt. 1, ¶ 1).

2. Also on April 24, 2014, the Receiver was appointed and tasked to promote the orderly and efficient administration of the Receivership Estate. (Order Appointing Receiver, Freezing Assets, and Other Relief (Dkt. 9) ("Receivership Order").

3. The Receivership Order grants the Receiver the “general powers and duties” to “resist and defend all suits, actions, claims and demands which may now be pending or which may be brought by or asserted against the Receivership Estate[.]” (Dkt. 9, ¶ 7.J).

4. The Receivership Order required the Receiver to file a list of all known creditors with the Court and update that list on a quarterly basis, which the Receiver has done. (Dkt. 9, ¶ 11; *see, e.g.*, Ninth Quarterly Status Report of Receiver, Exhibit E (Dkt. 796-5)).

5. On February 27, 2015, this Court approved the Receiver’s Amended Modified Plan of Liquidation (“Liquidation Plan”). (Dkt. 458).

6. The Liquidation Plan includes a claims procedure for APS creditors, which requires all creditors to submit a Claims Form to the Receiver setting forth the date the claims arose, the nature and amount of the claim, whether the claim is secure, and when the creditors contends the claim became due and owing. (Dkt. 458-1, p. 53).

7. A Claims Form was approved as part of the Liquidation Plan. (Dkt. 458-1, p. 53, App’x. H).

8. The Liquidation Plan, including the Claims Form, has been posted on the Receivership website since February 28, 2015.

9. The Liquidation Plan was sent by regular mail and by e-mail to all APS account owners and all known creditors of APS at the time the Liquidation Plan was approved.

10. The Liquidation Plan did not include a Bar Date for claims against the APS Receivership.

11. A Bar Date is necessary to appropriately identify and consider all creditor claims for inclusion in the Receiver’s plan of distribution.

ARGUMENT

This Court has the “authority to administer a claims proceeding through the Receiver and to require creditors to assert their claims or demands.” *United States v. Gibas*, No. 2:06-cv-100-BSJ, 2007 WL 1448649, at *3 (D. Utah May 11, 2007). Additionally, federal district courts presiding over federal equity receivership, including SEC receiverships, may look for guidance from bankruptcy law. *See Quilling v. Trade Partners, Inc.*, No. 1:03-cv-236, 2007 WL 107669, at *1 (W.D. Mich. Jan. 9, 2007). “A bar date serves the important purpose of enabling the parties . . . to identify with reasonable promptness the identity of those making claims against the . . . estate, and the general amount of the claims.” *In re Victory Mem’l Hosp.*, 435 B.R. 1, 4 (Bankr. E.D.N.Y. 2010) (internal quotation marks omitted). A Bar Date “is akin to a statute of limitations, and must be strictly observed.” *Id.* This rule contributes to one of the main purposes of bankruptcy and receivership law, which is to “secur[e], within a limited time, the prompt and effectual administration and settlement” of an estate. *In re Smidth & Co.*, 413 B.R. 161, 165 (Bankr. D. Del. 2009) (citations omitted). Absent a Bar Date, a receivership case “could not be administered to a conclusion.” *In re Waterman S.S. Corp.*, 59 B.R. 724, 726 (Bankr. S.D.N.Y. 1986). The setting of a Bar Date is “a finality concept firmly embedded in our legal system generally.” *In re Eagle-Picher Indus., Inc.*, 137 B.R. 679, 682 (Bankr. S.D. Ohio 1992).

A Bar Date must be set in order for the Receiver to identify and appropriately consider all creditor claims for inclusion in her plan of distribution. Establishing a Bar Date for creditor claims and a bar order for claims not submitted by the Bar Date is in the best interest of the Receivership and will move this matter toward closure by allowing the Receiver to consider all

claims while developing her plan of distribution. *See SEC v. Tanner*, No. Civ.A. 05-4057SAC, 2006 WL 897642, at *1 (D. Kan. Mar. 26, 2006).

The Receiver requests that the Bar Date of November 30, 2016 be approved by the Court. The Receiver further requests a bar order estopping all creditors from asserting a claim after the expiration of the Bar Date. The Bar Date of November 30, 2016 is reasonable and will provide “a full, fair and informed opportunity to [creditors] who have not already filed a claim, without adding undue delay to the proceedings.” *Id.* The Liquidation Plan was approved by this Court on February 27, 2015. (Dkt. 458). The Liquidation Plan was posted to the Receivership website (www.apsreceiver.com) and was then mailed and e-mailed to all APS account owners and known creditors of APS at that time. Over that eighteen month period, the Receiver has received approximately sixteen (16) Claim Forms from potential creditors asserting a claim against the Receivership Estate. (Dkt. 796-5). Furthermore, the Receiver has identified additional parties that may be potential creditors of the Receivership Estate based on judgments obtained or agreed to against the Receivership Estate. To this point, the posting, mailing, and e-mailing of the Liquidation Plan has been effective to notify potential creditors. *Id.* Thus, establishing the Bar Date as November 30, 2016 is reasonable.

Upon approval of the Bar Date, the Receiver proposes to post the Bar Date and copy of the previously approved Claims Form to the Receivership website, as well as mail and e-mail all known creditors and potential creditors that APS is aware of notice of the Bar Date. Such notification is appropriate given the circumstances of the APS Receivership. *Id.* (approving notice of a claims bar date by posting to a receivership website and by e-mailing to potential creditors investors). Although the Receiver proposes to post the notice to the website, such

posting will make clear that APS account owners need not file a Claims Form for any amounts associated with their loss allocation under the Liquidation Plan, as those claims and amounts have already been identified by the Receiver.

An order barring and estopping creditors from asserting a claim after the Bar Date is also appropriate. The order barring and estopping creditors after the Bar Date will allow sufficient time for the Receiver to consider the Claim Form and any supporting documentation, and to the extent the Receiver has an objection, notify the creditor. This process was previously approved by the Court in the Liquidation Plan. (Dkt. 458-1, p. 53). Furthermore, the order barring claims after the Bar Date will allow sufficient time for the Receiver or creditor to request Magistrate Judge Pead to determine the amount of any disputed claim by submitting the Claim Form, any supporting documentation, and any objections and responses to objections to the Court. (Dkt. 458-1). Therefore, the Receiver requests an order barring claims submitted after the Bar Date.

CONCLUSION

An order approving a Bar Date and barring creditors from asserting claims following the Bar Date is appropriate. The requested Bar Date is reasonable. Thus, the Receiver requests that this Court enter an order establishing November 30, 2016 as the Bar Date and enter an order barring any creditor claims submitted after the Bar Date. The Receiver also requests the Court approve notification to known creditors and potential creditors known by APS by mailing a copy of the notice, as well as posting a copy to the Receivership website.

DATED this 14th day of October 2016.

/s/ Jeffrey D. Enquist

Mark R. Gaylord, Esq.

Melanie J. Vartabedian, Esq.

Tesia N. Stanley, Esq.

Jeffrey D. Enquist, Esq.

Scott S. Humphreys, Esq. (*admitted pro hac vice*)

BALLARD SPAHR LLP

*Attorneys for Court-appointed Receiver, Diane A.
Thompson*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct of copy of the foregoing **RECEIVER'S MOTION FOR ESTABLISHMENT OF CLAIMS BAR DATE AND APPROVING BAR ORDER** was served to the following this 14th day of October 2016, in the manner set forth below:

[XX] Through the CM/ECF System for the U.S. District Court

[] Hand Delivery

[] U.S. Mail, postage prepaid

[] E-mail: olivera@sec.gov; #slro-docket@sec.gov; ahardenbrook@swlaw.com; docket_slc@swlaw.com; jpollard@swlaw.com; miller@millertoone.com; mahoney@millertoone.com; miller@ecf.inforuptcy.com; miller.blaked@gmail.com; moric@sec.gov; howe@millertoone.com; danny_quintana@yahoo.com; dleta@swlaw.com; wsmart@swlaw.com; dsbyers@hollandhart.com; bknoble@hollandhart.com; gdoctorman@parsonsbehle.com; ecf@parsonsbehle.com; ghofmann@cohnekinghorn.com; dhaney@cohnekinghorn.com; jthorsen@cohnekinghorn.com; jsteed@kmclaw.com; mglauser@kmclaw.com; jchandler@djplaw.com; cfrandsen@djplaw.com; judsonpitts@hotmail.com; judson@wimmerpitts.com; justin@hsblegal.com; krw@scmlaw.com; ec@scmlaw.com; intakeclerk@scmlaw.com; markjgregersen@hotmail.com; saltlakedocketclerk@ballardspahr.com; feindtp@sec.gov; pmoxley@djplaw.com; cwatters@djplaw.com; jadamson@kunzlerlaw.com; robert_hunt@fd.org; geri_wynhof@fd.org; utx_ecf@fd.org; steve@skclawfirm.com; jen@skclawfirm.com; sara@actionlawutah.com; tburns@djplaw.com; rpahnke@djplaw.com; speck@djplaw.com; utfedcourt@djplaw.com; rwing@rqn.com; mpugsley@rqn.com; jparrish@rqn.com; bwride@rqn.com; EDonohue@hinshawlaw.com; ben@BBG-Law.com; colemere@wronalawfirm.com; armand@hwmlawfirm.com; jerrym@mooneylaw.com

Cheryl M. Mori, Esq.
Paul N. Feindt, Esq.
Amy J. Oliver, Esq.
SECURITIES & EXCHANGE COMMISSION
351 S. West Temple, Suite 6.100
Salt Lake City, UT 84101

Paul T. Moxley, Esq.
Thomas J. Burns, Esq.
Z. Ryan Pahnke, Esq.
Joshua D. Chandler, Esq.
DURHAM JONES & PINEGAR
111 East Broadway, Suite 900
Salt Lake City, UT 84111

Judson T. Pitts, Esq.
WIMMER & PITTS, P.C.
11651 S. Harvest Rain Ave.
South Jordan, UT 84095

George B. Hofmann, IV, Esq.
PARSONS KINGHORN HARRIS
111 E. Broadway 11th Fl.
Salt Lake City, UT 84111

David E. Leta, Esq.
Andrew V. Hardenbrook, Esq.
SNELL & WILMER L.L.P.
15 West South Temple, Suite 1200
Salt Lake City, UT 84101

Kim R. Wilson, Esq.
SNOW, CHRISTENSEN & MARTINEAU
10 Exchange Place, Eleventh Floor
Post Office Box 45000
Salt Lake City, UT 84145-5000

Mark J. Gregersen, pro se
10 West Broadway, Suite 505
Salt Lake City, UT 84101

Stephen K. Christiansen, Esq.
311 South State Street, Suite 250
Salt Lake City, UT 84111

Blake D. Miller, Esq.
Craig H. Howe, Esq.
MILLER TOONE, P.C.
165 South Regent Street
Salt Lake City, UT 84111

Gary E. Doctorman, Esq.
PARSONS BEHLE & LATIMER
201 S. Main Street, Suite 1800
Salt Lake City, UT 84111

R. Jeremy Adamson, Esq.
KUNZLER LAW GROUP, P.C.
50 West Broadway, 10th Floor
Salt Lake City, UT 84101

Jeffrey D. Steed, Esq.
KIRTON & MCCONKIE
50 East South Temple, 4th Floor
P.O. Box 45120
Salt Lake City, UT 84145-0120

Sara E. Bouley, Esq.
ACTION LAW LLC
2825 E. Cottonwood Pkwy., Suite 500
Salt Lake City, UT 84121

Danny Quintana, Esq.
DANNY QUINTANA PLLC
3341 South 700 East
Salt Lake City, UT 84101

Doyle S. Byers, Esq.
HOLLAND & HART LLP
222 S. Main Street, Suite 2200
Salt Lake City, UT 84101

Justin R. Baer, Esq.
HIRSCHI STEELE & BAER, PLLC
136 East South Temple, Suite 1650
Salt Lake City, UT 84111

Robert G. Wing, Esq.
Mark W. Pugsley, Esq.
Jared N. Parrish, Esq.
Brent D. Wride, Esq.
RAY QUINNEY & NEBEKER P.C.
36 South State Street, Suite 1400
P.O. Box 45385
Salt Lake City, UT 84145-0385

Edward F. Donohue, Esq.
HINSHAW & CULBERTSON LLP
One California Street, 18th Floor
San Francisco, CA 94111

Robert K. Hunt, Esq.
OFFICE OF THE FEDERAL PUBLIC DEFENDER
DISTRICT OF UTAH
46 West Broadway, Suite 110
Salt Lake City, UT 84101

Benjamin B. Grindstaff, Esq.
BENJAMIN B. GRINDSTAFF, PLLC
5383 South 900 East, Suite 103
Salt Lake City, UT 84117

Jeffrey T. Colemere, Esq.
WRONA GORDON & DUBOIS, P.C.
11650 South State Street, Suite 103
Draper, UT 84020

Armand J. Howell, Esq.
HALLIDAY, WATKINS & MANN, P.C.
376 East 400 South, Suite 300
Salt Lake City, UT 84111

Jerome H. Mooney, Esq.
WESTON, GARROU & MOONEY
12121 Wilshire Blvd., 525
Los Angeles, CA 90025

/s/ Jeffrey D. Enquist

Mark R. Gaylord (#5073)
Melanie J. Vartabedian (#10148)
Tesia N. Stanley (#13367)
Jeffrey D. Enquist (#14634)
Scott S. Humphreys (*admitted pro hac vice*)
BALLARD SPAHR LLP
One Utah Center, Suite 800
201 South Main Street
Salt Lake City, Utah 84111-2221
Telephone: (801) 531-3000
Facsimile: (801) 531-3001
gaylord@ballardspahr.com
vartabedianm@ballardspahr.com
stanleyt@ballardspahr.com
enquistj@ballardspahr.com
humphreyss@ballardspahr.com

*Attorneys for Court-appointed Receiver,
Diane A. Thompson*

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

**AMERICAN PENSION SERVICES, INC.,
a Utah Corporation and CURTIS L.
DeYOUNG, an individual,**

Defendants.

**ORDER APPROVING RECEIVER'S
MOTION FOR ESTABLISHMENT OF
CLAIMS BAR DATE AND BAR ORDER**

Case No.: 2:14-cv-00309-RJS-DBP

**Judge Robert J. Shelby
Magistrate Judge Dustin B. Pead**

Before the Court is the Receiver's Motion for Establishment of Claims Bar Date and Approving Bar Order. The Court finds the motion is well-taken and concludes that for good cause shown and for the reasons set forth in the moving papers, the establishment of a claims bar

date and entry of an order barring claims from being asserted against the Receivership Estate following the expiration of the claims bar date is fair and reasonable and necessary for the Receivership Estate to be administered to a conclusion.

For these reasons, the Motion is GRANTED. IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. The Bar Date for all creditor claims against the APS Receivership Estate shall be **November 30, 2016**.

2. Any creditor seeking to assert a claim against the APS Receivership Estate must submit a Claims Form to the Receiver. A copy of the Claims Form was previously approved by this Court on February 27, 2015 (Dkt. 458-2, Exhibit H). The Claims Form must be submitted by one of the following two processes:

a. A Claims Form and supporting documentation may be mailed to the Receiver, and **must** be postmarked by **November 30, 2016**. The Claims Form and supporting documentation must be mailed to:

American Pension Services, Inc. Creditor Claims
C/O Ballard Spahr LLP
Attn: Jeffrey Enquist
201 S. Main Street, Suite 800
Salt Lake City, UT 84111

b. A Claims Form and supporting documentation may be e-mailed to info@apsreceiver.com, with the **“Creditor Claim Form”** in the subject line. An e-mailed Claims Form **must** be received by **11:59 p.m. on November 30, 2016**.

3. A determination of any claim will be made under and subject to the procedures approved by the Court in the Liquidation Plan (Dkt. 458-1).

4. The following persons or entities are **not** required to file a Claims Form:
 - a. APS account holders for amounts of their loss allocation assessed under the Liquidation Plan, approved by this Court on February 27, 2015 (Dkt. 458, 458-1).
 - b. any person or entity who has previously filed a Claims Form and is listed on the “Summary of Known Creditors” attached to Receiver’s Quarterly Status Report (Dkt. 796-5).
5. Any potential creditor against the APS Receivership Estate who is required to file a Claims Form in accordance with this Order, but fails to do so on or before the Bar Date, shall not be permitted to assert a claim against the APS Receivership Estate, or participate in any distribution from the APS Receivership Estate.
6. The Receiver shall post this Order and a statement of the Bar Date on the APS Receivership website at www.apsreceiver.com.
7. As a result of posting notice of the Bar Date on the Receivership website, the failure to receive notice of the Bar Date by mail shall not excuse the failure to submit a Claims Form by the Bar Date.
8. The Receiver shall mail a copy of this Order to all known creditors and potential creditors that the Receiver is currently aware of by U.S. mail.
9. This Court shall retain jurisdiction to hear and determine any disputes arising from or related to the implementation, interpretation, or enforcement of this Order.

DATED this _____ day of _____ 20__.

Honorable Robert J. Shelby
United States District Court Judge