

FEB 24 2023 JC

At 3:48 P.M.
Velva L. Price, District Clerk

CAUSE NO. D-1-GN-22-001980

STACY R. SCHIFFMAN, *et al*,
Plaintiff,

v.

NELSON PARTNERS, LLC, NELSON
BROTHERS PROPERTY
MANAGEMENT INC. D/B/A NELSON
PARTNERS PROPERTY
MANAGEMENT, INC., NP EQUITY,
LLC, AND PATRICK NELSON,
Defendants,

§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

98th JUDICIAL DISTRICT

UNOPPOSED *K*

**ORDER APPROVING DISTRIBUTION PROCEDURES PURSUANT TO PLAN OF
LIQUIDATION SECTIONS 5(b) AND 10**

Before the Court is Gregory S. Milligan’s, the Court appointed Administrator of the Plan of Liquidation, Motion to Approve Order on Distribution Procedures Pursuant to Plan of Liquidation Sections 5(b) and 10 (the “**Motion**”).

On April 25, 2022, the Court entered an order preliminarily approving the Stipulation and Plan of Liquidation, dated April 19, 2022 (the “**Plan**”) and appointing Gregory S. Milligan as the Plan of Liquidation’s Administrator (the “**Administrator**”).

On July 21, 2022, the Court entered an order approving the Plan on a final basis and an Agreed Order on Administrator’s Powers, Authority, and Implementation Procedures Pursuant to Plan of Liquidation (the “**Administrator Order**”).

Pursuant to Plan Sections 5(b), 10 and Administrator Order Section 6, the Administrator shall apply to the Court prior to issuing any distributions, which application may propose distribution procedures. The Administrator filed the Motion requesting entry of this Order authorizing distributions and detailing the distribution procedures as set forth below.

The Motion is hereby GRANTED.

Accordingly, the Court ORDERS as follows:

1. Distributions. The Administrator is authorized to issue one or more distributions of funds to Investors on a Pro Rata basis (each a “**Distribution**”) pursuant to the terms and procedures of this Order (the “**Distribution Procedures**”). The Administrator may issue one or more Distributions under this Order as soon as reasonably practicable after the Distribution Record Date (defined below) in the exercise of his reasonable sole discretion.
2. Allowance of Claims. The Administrator can issue Distributions only to Allowed Investors based on their Allowed Claim as reflected on the spreadsheet labeled *Skyloft at UT DST Investment Schedule & Distribution List* provided by the Nelson Parties’ Counsel to the Intervenor’s Counsel on May 12, 2022, as the same may be amended only pursuant to these Distribution Procedures (the “**Investor Schedule**”). Specifically, in these Distribution Procedures:
 - a. “**Allowed Claim**” is defined as (i) the total amount the Investor Schedule reflects for each Allowed Investor’s *Purchase Amt*, indicating the Investor’s cash investment in the DST; or (ii) the total amount awarded to an Investor by agreement of the Administrator in his reasonable sole discretion or Final Order of the Court. Allowed Claim excludes all amounts, if any, for broker-dealer credits, broker-dealer fees, interest, dividends, rents, reimbursements, any other fees or credits, and all amounts listed on the Investor Schedule under the column heading *Credits*.
 - b. “**Allowed Investors**” are defined as (i) those persons and entities identified on the Investor Schedule under the column labeled *Investor Name*, and (ii) an individual or entity which is deemed to hold an Allowed Claim awarded by either the Administrator in his reasonable sole discretion or Final Order of the Court.
 - c. “**Claim**” means any asserted beneficial interest in the DST based on a paid investment in the DST.
 - d. “**Court**” means the 98th Judicial District Court of Travis County or any other court of competent jurisdiction that may be assigned a hearing in the Lawsuit.
 - e. “**Disputed Claim**” means any Claim (i) held by any person or entity that is not an Allowed Investor, but who timely served a Distribution Schedule Response requesting to be added as an Allowed Investor which request was not awarded by the Administrator in his reasonable sole discretion, (ii) is identified as “disputed” or “disallowed” by the Administrator on a Distribution Schedule, or (iii) that is subject to a timely served Distribution Schedule Response seeking to dispute or allow the Claim as an Allowed Claim. Disputed Claims shall not become Allowed Claims unless and until awarded by either the Administrator in his reasonable sole discretion or Final Order of the Court.

- f. “**Distribution Record Date**” means the record date for purposes of receiving Distributions under the Plan on account of Allowed Claims, which shall be the first business day that is fourteen (14) calendar days following the date the Administrator mails or emails the Distribution Schedule to the Allowed Investors.
- g. “**Distribution Schedule**” is defined in paragraph 3 below.
- h. “**Distribution Schedule Response**” is defined in paragraph 3 below.
- i. “**DST**” means NP Skyloft, DST.
- j. “**DST Trust Agreement**” means the *Trust Agreement of NP Skyloft, DST a Delaware Statutory Trust*, together with any supplements, amendments, or restatements and together with any other governance, formation, or operational documents regarding the DST.
- k. “**Final Order**” means an order or judgment of a court of competent jurisdiction that has been entered on the docket maintained by the clerk of such court and has not been reversed, vacated or stayed and as to which (a) the time to appeal, petition for certiorari, or move for a stay, new trial, reargument, or rehearing has expired and as to which no appeal, petition for certiorari or other proceedings for a stay, new trial, reargument or rehearing shall then be pending or (b) if an appeal, writ of certiorari, stay, new trial, reargument or rehearing thereof has been sought, (i) such order or judgment shall have been affirmed by the highest court to which such order was appealed, certiorari shall have been denied or a stay, new trial, reargument or rehearing shall have been denied or resulted in no modification of such order and (ii) the time to take any further appeal, petition for certiorari, or move for a stay, new trial, reargument or rehearing shall have expired; provided, however, that no order or judgment shall fail to be a “Final Order” solely because of the possibility that a motion for relief from the order has been or may be filed with respect to such order or judgment.
- l. “**Intervenors**” has the meaning given in the Plan.
- m. “**Intervenors’ Counsel**” has the meaning given in the Plan.
- n. “**Investor(s)**” means those persons and entities who own beneficial interest in the DST.
- o. “**Investor I.D.**” is defined in paragraph 3 below.
- p. “**Investor Schedule**” is defined in paragraph 2 above.
- q. “**Lawsuit**” means derivative action captioned *Stacy R. Schiffman, et al v. Nelson Partners, LLC, et al*, Cause No. D-1-GN-22-001980 pending in the Court.
- r. “**Liquidation Proceeds**” has the meaning given in the Plan.
- s. “**Nelson Parties**” has the meaning given in the Plan.
- t. “**Nelson Parties’ Counsel**” has the meaning given in the Plan.
- u. “**Plan Funds**” is defined in paragraph 5 below.
- v. “**PPM**” means the *Confidential Private Placement Memorandum NP Skyloft, DST dated January 9, 2019*, together with *the Supplement to Private Placement Memorandum NP Skyloft, DST dated March 2, 2019*, and all amendments, supplements, restatements, and related documents.

- w. “**Pro Rata**” means the proportion that the amount of an Allowed Claim bears to the aggregate amount of all Allowed Claims, which pursuant to the Investor Schedule totals \$74,622,774.31.
- x. “**Purchase Agreements**” means all agreements named *Purchase Agreement NP Skyloft, DST* together with all other documents or agreements of any kind governing any Investor’s purchase of any beneficial interest in or any other investment in the DST.
- y. “**Reserves**” is defined in paragraph 6 below.
- z. “**Total Distribution Amount**” is defined in paragraph 3 below.

3. Calculation of Distributions. After accounting and reserving for Reserves, the Administrator will calculate the amount of Plan Funds available for a potential Distribution (the “**Total Distribution Amount**”) and each Allowed Investor’s Pro Rata share of the Total Distribution Amount.

- a. Before issuing the first Distribution, the Administrator shall file with the Court and post on the website the Administrator maintains for Investors, <https://www.skyloftsettlement.com>, a schedule of the Total Distribution Amount, with a detail of the proposed amount to be distributed to each Allowed Investor (a “**Distribution Schedule**”); however, the Distribution Schedule will replace each Allowed Investor’s name with an anonymous unique number to protect their identity (an “**Investor I.D.**”). The Administrator will provide, but not file, a key to all Investor I.D.s to the Intervenor’s Counsel and the Nelson Parties’ Counsel. The Administrator is authorized, but not required, to include on the website and with service of the Distribution Schedule such additional information that he determines, in his reasonable sole discretion, will help Investors understand the distribution and claims allowance process.
- b. The Administrator will serve the Distribution Schedule on all Allowed Investors. The Administrator will provide each Allowed Investor: (i) their specific Investor I.D. to permit each to determine their Allowed Claim and their Pro Rata share of the Total Distribution Amount; and (ii) the mailing address to which the Administrator proposes to send their Distributions.
- c. Allowed Investors will have until the Distribution Record Date to serve any change of address on the Administrator and his counsel, such that it is received by the Administrator and his counsel on or before the Distribution Record Date.
- d. Allowed Investors, Intervenor’s Counsel, the Nelson Parties, and any person or entity holding standing to respond to any proposed Allowed Claim will have until the Distribution Record Date to serve any responses to the Distribution Schedule (“**Distribution Schedule Response**”) on the Administrator and his counsel, such that it is received by the Administrator and his counsel on or before the Distribution Record Date. A Distribution Schedule Response must specify the factual and legal basis of the response and attach supporting evidence.

- e. Any person or entity seeking to be added as an Allowed Investor must serve a Distribution Schedule Response that is received by the Administrator and his counsel on or before the Distribution Record Date, with the factual and legal basis to support naming them as an Allowed Investor and attach supporting evidence. The Administrator may, in his reasonable sole discretion, accept, rely on, award, amend and modify Allowed Claims and name or replace Allowed Investors based on Distribution Schedule Responses, without further order of the Court; however, the Administrator may, in his reasonable sole discretion, contest or seek an order from the Court adjudicating any Distribution Schedule Response.
 - f. The Administrator may, in his reasonable sole discretion, compromise, settle or resolve any Distribution Schedule Response or any Disputed Claim, without further order of the Court; however, the Administrator may, in his reasonable sole discretion, contest or seek an order from the Court adjudicating any response to any Distribution Schedule or any Disputed Claim.
 - g. If a timely Distribution Schedule Response challenges or requests the acknowledgment of any Claim, such Claim becomes a Disputed Claim and no distribution under the Plan shall be made on account of such Disputed Claim unless and until such Disputed Claim becomes an Allowed Claim.
 - h. To the extent that a Disputed Claim ultimately becomes an Allowed Claim, distributions (if any) shall be made to the holder of such Allowed Claim, in accordance with the provisions of the Plan and these Distribution Procedures, without any interest.
 - i. Unless otherwise provided in a Final Order of the Court, any Claim that is neither an Allowed Claim nor a Disputed Claim by the Distribution Record Date shall be deemed disallowed. The Investor or holder of Claim that is disallowed pursuant to this Section 3(i) shall not receive any distribution on account of such Claim and the Administrator shall not need to take any affirmative action for such Claim to be deemed disallowed.
4. Record Date for Distributions. The register for Allowed Claims shall be closed for purposes of the Plan and Distributions on the Distribution Record Date, and there shall be no further changes in the record of Allowed Investors or Allowed Claims for purposes of the Plan, *provided however*, the Administrator or Court may award, deny or otherwise adjudicate timely asserted changes of address, Distribution Schedule Responses, and Disputed Claims pursuant to these Distribution Procedures. The Administrator shall have no obligation to recognize any assertion of a Distribution Schedule Response or assertion of a Disputed Claim received after the Distribution Record Date. The Administrator may extend the Distribution Record Date for any person or entity in his reasonable sole discretion without further order of the Court.
 5. Sources of Distribution Funds. All Distributions shall be issued by the Administrator in the form of checks drawn on accounts operated by the Administrator funded with the Liquidation Proceeds on hand and any other funds

collected by the Administrator for the benefit of the Investors (together, the “**Plan Funds**”).

6. Reserves. Prior to issuing any Distribution the Administrator shall withhold and maintain reserves from the Plan Funds for (together, the “**Reserves**”):
 - a. Intervenors’ Attorneys’ Fees and Costs Reserve. Pursuant to Plan Section 13, the Administrator shall set aside any amounts requested for approval or unpaid amounts approved by the Court to be distributed to Intervenors’ Counsel as attorneys’ fees and costs.
 - b. Disputed Claims Reserve. The Administrator shall calculate and set aside any Pro Rata distributable amounts on account of Disputed Claims and shall distribute such amounts only as such Disputed Claim is resolved. The Administrator may, in his reasonable sole discretion, file a motion with the Court to estimate any Disputed Claims as necessary to determine the appropriate amounts for any such reserves.
 - c. Administration Reserve. The Administrator shall set aside such amounts the Administrator estimates, in his reasonable sole discretion, are reasonable or necessary to fund the Administrator’s incurred, current and potential future costs, fees and expenses, including the fees and expenses of the Administrator and his retained professionals.
 - d. Other Reserves. The Administrator may reserve and withhold from distribution, such other amounts from the Plan Funds he deems appropriate, in his reasonable sole discretion.
7. Delivery of Distributions. All Distributions under the Plan shall be made at the address of each Allowed Investor as set forth in the Schedule of Investors, unless the Administrator has been notified in writing of a change of address such that it is received by the Administrator and his counsel on or before the Distribution Record Date.
8. Unclaimed Property. If any distribution to an Allowed Investor is returned as undeliverable, no further distributions to such Allowed Investor shall be made unless and until the Administrator is notified of such holder’s then-current address, at which time all missed distributions shall be made to such Allowed Investor without interest; *provided, however*, that such distributions shall be deemed unclaimed property at the expiration of ninety (90) days after the date of the distribution in question. After such 90th day, and notwithstanding any applicable federal or state escheat, abandoned, or unclaimed property laws to the contrary (i) all unclaimed property in question shall revert as Plan Funds, and may be distributed Pro Rata to Allowed Claims in accordance with the terms of these Distribution Procedures, and (ii) the Allowed Claim of any holder with respect to such unclaimed property shall be discharged and forever barred. If, at the time the Plan terminates there is unclaimed property remaining in the Plan Funds, such property shall be addressed pursuant to further order of the Court.

9. Withholding and Reporting Requirements. Each Allowed Investor that is entitled to receive a distribution under the Plan shall have the sole and exclusive responsibility for the satisfaction and payment of any applicable tax obligations, including income, withholding and other tax obligations, on account of such distribution.
- a. The Administrator may withhold from amounts distributable any and all amounts, to be determined in the Administrator's reasonable sole discretion, required by any law, regulation, rule, ruling, directive or other government equivalent of the United States or of any political subdivision thereof. To the extent that amounts are so withheld and paid over to the appropriate governmental entity, such amounts shall be treated for all purposes of the Plan as having been paid to the person or entity in respect of whom such deduction and withholding was made.
 - b. The Administrator is authorized, but not required, to request and obtain from Allowed Investors or any other person or entity Forms W-8 and/or W-9 or such other forms or information the Administrator may reasonably request, and the Administrator may condition any distribution to any Allowed Investor or other distributee upon receipt of such forms or information.
10. No Distribution to Nelson Parties. The Administrator shall not issue any distribution to the Nelson Parties and their respective affiliates or immediate family members, as detailed in Plan Section 19.
11. Administrator Authority. The Administrator shall be empowered to effect all actions and execute all agreements, instruments and other documents necessary to perform his duties under the Plan, this Order or other order of the Court, or as deemed by the Administrator to be necessary and proper to implement the provisions of the Plan and these Distribution Procedures.
12. Notice. Any notice or communication to the Administrator or his counsel under these Distribution Procedures shall be served by first class U.S. Mail, postage prepaid, with a copy by email as follows:

Administrator:

Gregory S. Milligan, Administrator
HARNEY PARTNERS
8911 Capital of Texas Highway, Suite 2120
Austin, Texas 78759
With a copy by email: gmilligan@harneypartners.com

Counsel for Administrator:

Jason M. Rudd
Catherine A. Curtis
WICK PHILLIPS
3131 McKinney Ave, Suite 500

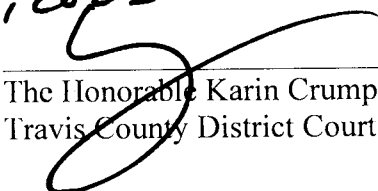
Dallas, Texas 75204
With a copy by email: jason.rudd@wickphillips.com
and catherine.curtis@wickphillips.com

The Administrator and his counsel may, but are not required to, waive U.S. Mail service of any notice timely received by email at the above email addresses.

13. Reliance. The Administrator is entitled to rely, in good faith, on the advice of his retained professionals and on information provided by Investors, the Nelson Parties and their counsel and the Intervenors and their counsel.
14. Order Controls. In the event of any conflict, dispute, or inconsistency between this Order and any DST Trust Agreement, PPM, Purchase Agreement or any other DST related document, the terms of this Order and these Distribution Procedures shall control.
15. Retention of Jurisdiction. This Order is without prejudice to the Court approving further distributions, distribution procedures, Administrator powers, authority, or relief. To the fullest extent permitted by law, the Court hereby retains exclusive jurisdiction over the Plan and these Distribution Procedures, including, without limitation, jurisdiction to resolve any and all controversies, suits and issues that may arise in connection therewith, including, without limitation, this Order, including without limitation, any action against the Administrator or any professional retained by the Administrator, in each case in its capacity as such.

SO ORDERED.

Dated: February 24, 2023


The Honorable Karin Crump
Travis County District Court Presiding

Submitted by:

WICK PHILLIPS GOULD & MARTIN, LLP

/s/ Jason M. Rudd

JASON M. RUDD

Texas Bar No. 24028786

CATHERINE A. CURTIS

Texas Bar No. 24095708

3131 McKinney Avenue, Suite 500

Dallas, TX 75204

Phone: (214) 692-6200

Fax: (214) 692-6255

Email: jason.rudd@wickphillips.com;

catherine.curtis@wickphillips.com

**COUNSEL FOR GREGORY S. MILLIGAN,
ADMINISTRATOR UNDER THE PLAN OF LIQUIDATION**

AGREED AS TO FORM:

MILLER LLOYD P.C.

/s/

JENNIFER A. LLOYD

Texas Bar No. 24013050

P.O. Box 302068

Austin, Texas 78703

500 West 5th Street, Suite 700

Austin, TX 78701

Phone: (512) 694 - 5578

Fax: (512) 532 - 6882

Email: jlloyd@millerlloyd.com

BROWNLIE HANSEN LLP

/s/

ROBERT W. BROWNLIE

California Bar No. 138793 *Admitted Pro Hac Vice*

10920 Via Frontera, Suite 550

San Diego, California 92127

Phone: 858.357.8001

Email: Robert.Brownlie@brownliehansen.com

**ATTORNEYS FOR PLAINTIFF JAMES V. PARZIALE,
TRUSTEE OF THE PARZIALE FAMILY TRUST,
derivatively on behalf of NP SKYLOFT DST**

GEORGE BROTHERS KINCAID & HORTON, L.L.P.

/s/

D. DOUGLAS BROTHERS
Texas Bar No. 03084500
114 West 7th Street, Ste. 1100
Austin, Texas 78701
Phone: (512) 495-1400
Fax: (512) 499-0094
Email: dbrothers@gbkh.com

**ATTORNEYS FOR PLAINTIFF SCHIFFMAN ET AL
individually and derivatively on behalf of NP SKYLOFT DST**

AND

MUNSCH HARDT KOPF & HARR, P.C.

/s/

Greg C. Noschese
Texas Bar No. 00797164
Courtney L. Sauer
Texas Bar No. 24066026
Aynsley K. Young
Texas Bar No. 24102674
Brandon M. Stendara
Texas Bar No. 24121148
500 N Akard ST, # 3800
Dallas, TX 75201
Phone: (214) 855-7500
Fax: (214) 855-7584
Email : gnoschese@munsch.com; csauer@munsch.com;
ayoung@munsch.com; bstendara@munsch.com

ATTORNEYS FOR DEFENDANTS