

COPY

1 Guttilla Murphy Anderson, P.C.  
Ariz. Firm No. 00133300  
2 **Patrick M. Murphy** (Ariz. No. 002964)  
4150 West Northern Avenue  
Phoenix, Arizona 85051  
3 Email: pmurphy@gamlaw.com  
Phone: (623) 937-2795  
4 Fax: (623) 937-6897

5 Attorneys for the Receiver

6 IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA

7 IN AND FOR THE COUNTY OF MARICOPA

8 ARIZONA CORPORATION )  
COMMISSION, )

9 Plaintiff, )

10 v. )

11 )  
12 TREND MANAGEMENT GROUP, )  
INC.: TREND CAPITAL, L.L.C., )

13 Defendants. )  
14

Cause No. CV 2006-016822

MOTION TO MODIFY ORDER  
APPROVING CLAIMS AND ORDER  
APPROVING FIRST INTERIM  
DISTRIBUTION

RE: PETITION NOS. 18 AND 32

(Assigned to Judge A. Craig Blakey, II)

Guttilla Murphy Anderson, P.C.  
4150 West Northern Ave.  
Phoenix, Arizona 85051  
(623) 937-2795

15 Peter S. Davis, as the court appointed Receiver, respectfully moves the Court for an  
16 order modifying the Court's *Amended Order Re: Petition No. 18; Order Approving Claim*  
17 *Amounts in Trend Receivership* and *Order Re: Petition No. 32*, both entered on June 9, 2008:

18 1. On November 20, 2006, this Court entered its *Order Appointing Receiver*  
19 ("Receivership Order"), which appointed Peter S. Davis as Receiver of Trend Management  
20 Group, Inc. and Trend Capital, L.L.C (collectively referred to hereafter as "Trend").  
21

1           2.       On March 14, 2008, the Receiver filed his claims report and thereafter on June  
2 9, 2008, the Court entered its *Amended Order Re: Petition No. 18; Order Approving Claim*  
3 *Amounts in Trend Receivership* ("Claims Order"), which approved 309 claims of Trend  
4 Investors and four claims of general creditors of Trend.

5           3.       On May 20, 2008, the Receiver filed his *Petition No. 32, Petition for Order*  
6 *Approving Interim Distribution of Trend Receivership Assets* ("Petition No. 32") requesting  
7 the Court's approval of an interim distribution of nearly \$4 million to the approved claimants.  
8 On June 9, 2008, the Court entered its *Order Re: Petition No. 32* ("Distribution Order")  
9 approving an interim distribution of \$11,691.61 to the Internal Revenue Service, and  
10 \$3,935,138.67 to the other approved claimants in the amounts set forth in Petition No. 32.

11           4.       No appeals were taken from the Claims Order or the Distribution Order and  
12 both have become final. The Receiver, however, has discovered information which requires  
13 the amendment of these orders as described more fully below. In addition, the Receiver has  
14 discovered that a number of claimants have died and therefore proposes to implement the  
15 procedures described below to make payment on those approved claims without requesting  
16 new orders from the Court in each case.

17 **James and Bettie Webster**

18           5.       James and Bettie Webster invested \$20,000 in Trend and received back a total  
19 of \$3,906.40 for a net investment of \$16,093.60. In the Receiver's claim report, he  
20 recommended approval of the claim in this amount and in the name of James and Bettie  
21 Webster. The Receiver has learned that Bettie Webster filed a Chapter 7 bankruptcy petition

Gutilla Murphy Anderson, P.C.  
4150 West Northern Ave.  
Phoenix, Arizona 85051  
(623) 937-2795

1 with the United States Bankruptcy Court for the District of Arizona. William Pierce was  
2 appointed Trustee and has made claim for the full amount of this investment. No  
3 recommendation was made by the Receiver with respect to the Trustee's claim. The Trustee  
4 argues that under the bankruptcy code, he is entitled to recover any community property  
5 assets even where only one member of the marital community has filed bankruptcy.  
6 However, the Receiver has been advised by the Websters that although they have lived  
7 together for nearly 50 years, they have never been married. The Websters have each  
8 provided the Trustee with signed declarations stating that they have never been married. The  
9 Trustee advises that although the schedules filed by Bettie Webster in her bankruptcy case  
10 indicate that she is single, the Trustee has in his possession tax returns for two years  
11 indicating that the Websters filed joint returns. James Webster asserts that he is the sole  
12 owner of the claim because the investment was made with his own funds and he only placed  
13 Bettie Webster's name on the investment in order to protect her in the event that he died.

14         6.       After reviewing the above facts, the Receiver believes that the account is a joint  
15 account of two unmarried persons. Therefore the Receiver recommends that the claim to this  
16 investment in Trend be split equally between James Webster and William Pierce as Trustee  
17 for the bankruptcy estate of Bettie Webster

18 **Richard and Stephanie (Napier) Mulcahy**

19         7.       An investment of \$142,777.33 (net amount) was made in Trend in the name of  
20 Stephanie Mulcahy and an investment of \$10,000 in the names of Richard and Stephanie  
21 Mulcahy. At the time of these investments, the Mulcahys were married but have since been

1 divorced pursuant to a Dissolution Judgment entered by the San Diego Superior Court on  
2 April 3, 2008. The Dissolution Judgment changes Stephanie Mulcahy's name to Stephanie  
3 Napier and awards Stephanie Napier all interest in the account in her name. By a separate  
4 assignment executed by Richard Mulcahy, all payments on the joint account are authorized to  
5 be paid jointly to Richard Mulcahy and Stephanie Napier and delivered to Stephanie Napier's  
6 attorney. Accordingly, the Claims Order and Distribution Order should be amended to  
7 substitute for the name Stephanie Mulcahy in each instance, the name Stephanie Napier.

8 **Stephanie L. Walters Revocable Trust**

9 8. The Court ordered in *Amended Order Re: Petition No. 18*, an approved claim  
10 for the Stephanie L. Walters Revocable Trust in the amount of \$10,000.00. The Receiver  
11 recommended an interim distribution to Stephanie Walters in the amounts of \$4,649.67.

12 9. Soon after the proposed distribution was approved by the Court, the Receiver  
13 discovered that he had miscalculated the interim distribution to Ms. Walters. Apparently, he  
14 mistakenly calculated the interim distribution based on the amount of Ms. Walter's requested  
15 claim amount rather than the amount approved by the Court. Accordingly, the Receiver  
16 seeks to amend *Order Re: Petition No. 32* to provide for the proper distribution amount to  
17 Ms. Walters of \$3,300.00. This distribution amount is 33% of the approved claim amount,  
18 the same distribution rate as approved for all other claimants.

19 **Deceased Claimants**

20 10. A number of claimants are elderly and the Receiver has already begun to  
21 receive notifications from relatives and others that some Trend investors and claimants have

1 died. In those cases it becomes necessary for the Receiver to determine the appropriate  
2 person to whom distributions should be made. To address these situations the Receiver has  
3 adopted the following procedures which he believes will generally eliminate the need to  
4 apply to the Court for a modification of the claims order or for other relief thus expediting the  
5 payment of claims and minimizing the expenses to the estate.

6 11. A.R.S. §14-1301 provides that the Arizona probate statutes apply not only to  
7 the distributions of the property of decedents who resided in Arizona at the time of their  
8 death, but also to distributions of "the property of nonresidents located in this state or  
9 property coming into the control of a fiduciary who is subject to the laws of this state."

10 12. In those cases where there is a judicial probate in place, the Receiver will make  
11 distributions to the duly appointed personal representative or executor of the deceased  
12 claimant's estate.

13 13. In cases where the probate has been concluded or there are insufficient assets to  
14 warrant a judicial probate, the Receiver will make distributions as provided in A.R.S. §14-  
15 3971(B), which provides in pertinent part as follows:

16 B. Thirty days after the death of a decedent, any person indebted to  
17 the decedent or having possession of tangible personal property or an  
18 instrument evidencing a debt, obligation, stock or chose in action belonging to  
19 the decedent shall make payment of the indebtedness or deliver the tangible  
20 personal property or an instrument evidencing a debt, obligation, stock or chose  
21 in action to a person claiming to be the successor of the decedent upon being  
presented an affidavit made by or on behalf of the successor and stating that all  
of the following are true:

1. Thirty days have elapsed since the death of the decedent.
2. Either:

1 (a) An application or petition for the appointment of a  
2 personal representative is not pending and a personal representative has  
3 not been appointed in any jurisdiction and the value of all personal  
4 property in the decedent's estate wherever located, less liens and  
5 encumbrances, does not exceed fifty thousand dollars as valued as of the  
6 date of death.

7 (b) The personal representative has been discharged or more  
8 than one year has elapsed since a closing statement has been filed and  
9 the value of all personal property in the decedent's estate, wherever  
10 located, less liens and encumbrances, does not exceed fifty thousand  
11 dollars<sup>1</sup> as valued as of the date of the affidavit.

12 3. The claiming successor is entitled to payment or delivery of the  
13 property.

14 14. By following this procedure, the Receiver avoids having to conduct an  
15 independent investigation and enjoys certain protection should the information contained in  
16 the affidavit turn out to not be accurate. A.R.S. § 14- 3972(A) provides that:

17 A. The person paying, delivering, transferring or issuing personal  
18 property or the evidence thereof pursuant to affidavit is discharged and released  
19 to the same extent as if he dealt with a personal representative of the decedent.  
20 He is not required to see to the application of the personal property or evidence  
21 thereof or to inquire into the truth of any statement in the affidavit. If any  
person to whom an affidavit is delivered refuses to pay, deliver, transfer or  
issue any personal property or evidence thereof it may be recovered or its  
payment, delivery, transfer or issuance compelled upon proof of their right in a  
proceeding brought for the purpose by or on behalf of the persons entitled  
thereto. Any person to whom payment, delivery, transfer or issuance is made is  
answerable and accountable therefore to any personal representative of the  
estate or to any other person having a superior right.

---

<sup>1</sup> The Receiver must rely on valuation of other assets by the decedents. With respect to the investment in Trend, all but 18 of the approved claims are estimated by the Receiver to have a value of less than \$50,000 (based on projected total distributions on approved claim amounts) and all but ten of the first interim distributions approved by the Court in its *Order Re: Petition No. 32*, are under \$50,000.

1           15.     Some states have similar summary procedures for the estates of decedents who  
2 resided in those states at the time of their death, but with maximum asset limits higher than  
3 those in Arizona.<sup>2</sup> Where those statutes have been complied with the Receiver will distribute  
4 in accordance with the laws of those states.

5           16.     In the Trend Capital New Account Information form used by Trend and its  
6 agents there were spaces on the form for use in identifying up to three persons designated as  
7 "Primary Beneficiary" and one person designated as "Contingent Beneficiary". The form  
8 does not elaborate on the purposes or roles of these persons. A change of Beneficiary Form  
9 found in Trend's records, however, clearly indicates that the beneficiary designation is  
10 intended to identify the person or persons to be paid "all proceeds of the Certificate of  
11 Participation" upon the account holder's death. In addition, it further appears from the  
12 circumstances and by the absence of any limiting language, that designations of beneficiaries  
13 in these spaces on the New Account Information form were intended to identify death  
14 beneficiaries entitled to any distributions on the investment account in the percentages  
15 indicated. Accordingly, if a beneficiary was designated by an investor in the New Account  
16 Information form in the records held by the Receiver and the investor is deceased at the time  
17 of the distribution from the receivership, the Receiver will make the distribution to the  
18 designated beneficiaries on the New Account Information form in the percentages indicated  
19 without investigating whether the deceased investor left a will or whether a personal

20 \_\_\_\_\_  
21 <sup>2</sup> Section 13100 of the California Probate Code provides a similar summary probate  
procedure by affidavit in cases where the gross value of the decedent's assets in California  
does not exceed \$100,000.

1 representative has been appointed for the investor's estate. One case investigated by the  
2 Receiver involves an investment by Harry Clark of \$10,000. Mr. Clark died on March 12,  
3 2008. In the New Account Information form signed by Mr. Clark, Nora Washington is  
4 designated as the 100% primary beneficiary. Accordingly the Receiver intends to distribute  
5 to Ms. Washington all distributions on Mr. Clark's approved claim.

6 **Summary of Procedures for Handling Distributions Where Claimant is Deceased**

7 17. Accordingly, the Receiver proposes that in each case in which the court  
8 approved claimant is deceased at the time of any distribution by the Receiver on the approved  
9 claim:

10 a. If the deceased claimant designated one or more beneficiaries in the New  
11 Account Information Form in the possession of the Receiver, the Receiver shall make  
12 the distribution to the beneficiary or beneficiaries designated on the New Account  
13 Information form in the percentages indicated upon receipt of an affidavit showing that  
14 the claimant is deceased, together with identification showing that the person seeking  
15 to receive the distribution on the approved claim is the designated beneficiary.

16 b. In all cases where no beneficiary is designated on the New Account  
17 Information Form, or where the Receiver is unable to locate the form in the records in  
18 his possession, the person asserting the right to receive the distribution on the  
19 approved claim will be required to produce one of the following:

20 (1) An affidavit, together with a copy of letters of appointment from  
21 Arizona or the state in which the claimant resided at the time of his or her

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21

death, showing that the claimant is deceased, and that the person seeking to receive distributions on the approved claim of the deceased claimant is the duly appointed and serving personal representative of the deceased claimant and is entitled to take possession of the property of the deceased claimant;

(2) An affidavit under A.R.S. §14-3971(B) showing that the claimant is deceased, and that the person seeking to receive distributions on the approved claim of the deceased claimant is a lawful heir entitled to part or all of the property of the deceased investor and the percentage of the distribution to which he or she is entitled;

(3) An affidavit complying with the laws of another state authorizing a summary disposition of estate assets similar to A.R.S. §14-3971(B), showing that the claimant is deceased, and that the person seeking to receive distributions on the approved claim of the deceased claimant is a lawful heir entitled to part or all of the property of the deceased investor and the percentage of the distribution to which he or she is entitled;

(4) An affidavit showing that the claimant is deceased, together with a copy of the trust instrument showing that the person seeking to receive distributions on the approved claim of the deceased claimant is the duly appointed and serving trustee of a trust for the deceased claimant and is entitled to take possession of the property of the deceased claimant;

1                   (5) An affidavit together with supporting documentation that the  
2 claimant is deceased; and that the investment underlying the approved claim  
3 was held in an IRA or other custodial account and that the claimant is a  
4 beneficiary of the custodial account and the percentage beneficial interest the  
5 person has in the custodial account.

6           18. The Receiver will not be required to verify the truth of the statements contained  
7 in any affidavit submitted to the Receiver, although the Receiver may apply to the  
8 Receivership Court to resolve disputes or seek further instructions in extraordinary cases.

9           19. Any distribution approved by the Court will be paid to the claimant identified in  
10 the orders of the court, including without limitation *Order Re: Petition No. 18*, or if the  
11 claimant is deceased at the time of the distribution, to the:

12           a. Beneficiary designated in the New Account Information Form who has  
13 filed an affidavit as required above;

14           b. Personal representative of the deceased investor who has filed an  
15 affidavit as required above;

16           c. Heir of the deceased investor who has filed an affidavit as required  
17 above. In the event that more than one heir produces an affidavit as required above,  
18 the Receiver will pay the respective percentages set forth in the affidavits as long as  
19 they do not exceed 100% of the distribution being made to the deceased claimant;

20           d. Trustee of the trust holding title to the investment underlying the  
21 approved claim who has filed an affidavit as required above; or

1 e. The person designated as the beneficiary under an IRA or other custodial  
2 account holding title to the investment underlying the approved claim who has filed an  
3 affidavit as required above. In the event that more than one person produces an  
4 affidavit as required above, the Receiver will pay the respective percentages set forth  
5 in the affidavits as long as they do not exceed 100% of the distribution being made on  
6 the approved claim of the deceased claimant.

7 WHEREFORE, the Receiver respectfully requests that the Court enter an order:

8 1. Amending the Court's *Amended Order Re: Petition No. 18; Order Approving*  
9 *Claim Amounts in Trend Receivership* to replace the approved claim of James and Bettie  
10 Webster in the amount of \$16,093.60 with the following: James Webster in the amount of  
11 \$8,046.80 and William E. Pierce as Trustee for Bettie M. Webster in the amount of  
12 \$8,046.80;

13 2. Amending *Order Re: Petition No. 32* to replace the first interim distribution to  
14 James and Bettie Webster in the amount of \$5,310.88 with the following: James Webster in  
15 the amount of \$2,655.44 and William E. Pierce as Trustee for Bettie M. Webster in the  
16 amount of \$2,655.44;

17 3. Amending the Court's *Amended Order Re: Petition No. 18; Order Approving*  
18 *Claim Amounts in Trend Receivership* and the Court's *Amended Order Re: Petition No. 18;*  
19 *Order Approving Claim Amounts in Trend Receivership* to replace the name of Stephanie  
20 Napier for the name Stephanie Mulcahy;  
21

