

**I.
INTRODUCTION**

This motion relates to the Receiver's efforts to conclude this case. The only remaining asset is \$3,123,978.62 that U.S. Financial Life Insurance paid into the Court's registry. The Receiver now asks the Court to pay those funds to him by agreement of the parties and in partial satisfaction of his judgment against Surety Marketing Source, LLC.

**II.
BACKGROUND FACTS**

1. On March 18, 2008, the Receiver filed an Unopposed Motion to Approve Compromise and Settlement Agreement (Dkt. No. 73) that settled all claims against Goldenberg's estate.¹ Under that agreement, the Receiver would claim a \$3,123,978.62 death benefit for Goldenberg's U.S. Financial Life Insurance policy. The Court entered an Order (Dkt. No. 74) approving that agreement.

2. Although Surety Marketing Source, LLC ("SMS") is the named beneficiary for Goldenberg's life insurance policy, that company has effectively ceased to exist. SMS's legal counsel withdrew representation (Dkt. No. 65) and no substitute counsel entered an appearance on the company's behalf. Its principal officer, David Goldenberg, committed suicide on October 14, 2007. (Id.) Its other officer, Mark Wolok, is no longer acting on the company's behalf and agreed to have default judgment taken against him (Dkt. No. 52) rather than appear in this case. Furthermore, SMS's former counsel notified the Court that no one remains to make decisions for the company. (Mot. to Withdraw [Dkt. No. 65] at 2.)

3. On July 10, 2008, the Court entered summary judgment (Dkt. No. 83) for the Receiver and against SMS for more than \$3,267,037.50. As explained below, the Receiver now

¹ That agreement was negotiated with Goldenberg's widow, Lisa Portney-Goldenberg, who is not a named defendant in this case.

asks the Court to award him the \$3,123,978.62 death benefit (plus accrued interest) from its registry by agreement of the parties and in partial satisfaction of that judgment.

III. ARGUMENT AND AUTHORITIES

It is well settled that Federal Courts have “broad powers and wide discretion” to fashion relief in equitable receivership proceedings. *SEC v. Basic Energy & Affiliated Resources*, 273 F.3d 657, 668 (6th Cir. 2001). This discretion certainly extends to proceedings for disbursement from the Court’s registry, which are equitable in nature. *See, e.g., In re Craig’s Stores*, 402 F.3d 522, 531 (5th Cir. 2005) (Dennis, J. concurring).

In disbursing funds from its registry, the Court is guided by 28 U.S.C. § 2041 and § 2042. FED. R. CIV. PROC. 67(b). Those statutes generally require an order awarding disbursement to a claimant. 28 U.S.C. § 2042. To obtain an order under § 2042, the claimant must establish his right to receive the money deposited with the Court. *In re Craig’s Stores*, 402 F.3d at 524, 530.

In this case, the Receiver has the strongest claim to receive the \$3,123,978.62 held in the Court’s registry. First, this Court has already approved a Compromise and Settlement Agreement with David Goldenberg’s widow (Dkt. Nos. 73-2, 74) that permits the Receiver to pursue those funds as proceeds of U.S. Financial Life Insurance policy no. 000353005. Second, the named beneficiary for that insurance policy, SMS, ceases to exist and no acting officers remain to appear in this case or challenge the Receiver’s claim. (Mot. to Withdraw [Dkt. No. 65] at 2.) Third, even if SMS had a claim for the \$3,123,978.62 death benefit, the Receiver would still be entitled to those funds in partial satisfaction of his \$3,267,037.50 judgment (Dkt. No. 83) against SMS.

The Receiver’s claim is also supported by general principles of equity. ABC paid \$3,267,037.50 of investor funds to SMS, Goldenberg, and Wolok for non-existent bonds. Equity

CERTIFICATE OF CONFERENCE

The remaining defendants are entities that are not represented by counsel in this case. The Receiver, therefore, files this motion as unopposed.

/s/ Brent J. Rodine

CERTIFICATE OF SERVICE

A true and correct copy of this motion will be served on all interested parties through the Court's electronic filing system and by U.S. Mail, first class postage prepaid, to:

Estate of David Goldenberg
3036 West Ridge Court
Bloomfield Hills, Michigan 48302

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Bloomfield Hills, Michigan 48302

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c/o Michael Nedelman
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32000 Northwestern Highway, Suite 240
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/s/ Brent J. Rodine

This motion will also be posted on the Receiver's website, www.secreceiver.com after filing.