



AlaFile E-Notice

11-CV-2018-900431.00

Judge: BRIAN P HOWELL

To: MICHAEL G DEAN
mdean@ago.state.al.us

NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF CALHOUN COUNTY, ALABAMA

STATE OF ALABAMA ET AL V. AMERICAN PLUMBING AND SEPTIC SERVICE, LLC E
11-CV-2018-900431.00

The following matter was FILED on 12/8/2020 1:23:59 PM

0001 JEFFERY SCHNEIDER, P.A., CRT APPOINTED RECEIVER

RECEIVER'S UNOPPOSED MOTION TO APPROVE CLAIMS PROCEDURE FOR DISTRIBUTIONS TO
VICTIMS

[Filer: DEAN MICHAEL GREGORY]

Notice Date: 12/8/2020 1:23:59 PM

KIM MCCARSON
CIRCUIT COURT CLERK
CALHOUN COUNTY, ALABAMA
25 WEST 11TH STREET
ANNISTON, AL, 36201

256-231-1750
Kim.McCarson@alacourt.gov



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11-CV-2018-900431.00
CIRCUIT COURT OF
CALHOUN COUNTY, ALABAMA
KIM MCCARSON, CLERK

STATE OF ALABAMA

Revised 3/5/08

Cas

Unified Judicial System

11-CALHOUN

 District Court
 Circuit Court

CV2

STATE OF ALABAMA ET AL V. AMERICAN
PLUMBING AND SEPTIC SERVICE, LLC E

CIVIL MOTION COVER SHEET

Name of Filing Party: O001 - JEFFERY SCHNEIDER, P.A., CRT
APPOINTED RECEIVER

Name, Address, and Telephone No. of Attorney or Party. If Not Represented.

MICHAEL G DEAN
501 Washington Avenue
MONTGOMERY, AL 36104
Attorney Bar No.: DEA037

 Oral Arguments Requested
TYPE OF MOTION**Motions Requiring Fee**

- Default Judgment (\$50.00)
Joinder in Other Party's Dispositive Motion
(i.e. Summary Judgment, Judgment on the Pleadings,
or other Dispositive Motion not pursuant to Rule 12(b))
(\$50.00)
- Judgment on the Pleadings (\$50.00)
- Motion to Dismiss, or in the Alternative
Summary Judgment (\$50.00)
- Renewed Dispositive Motion (Summary
Judgment, Judgment on the Pleadings, or other
Dispositive Motion not pursuant to Rule 12(b)) (\$50.00)
- Summary Judgment pursuant to Rule 56 (\$50.00)
- Motion to Intervene (\$297.00)
- Other _____
pursuant to Rule _____ (\$50.00)

*Motion fees are enumerated in §12-19-71(a). Fees
pursuant to Local Act are not included. Please contact the
Clerk of the Court regarding applicable local fees.

Local Court Costs \$ 0

Motions Not Requiring Fee

- Add Party
- Amend
- Change of Venue/Transfer
- Compel
- Consolidation
- Continue
- Deposition
- Designate a Mediator
- Judgment as a Matter of Law (during Trial)
- Disburse Funds
- Extension of Time
- In Limine
- Joinder
- More Definite Statement
- Motion to Dismiss pursuant to Rule 12(b)
- New Trial
- Objection of Exemptions Claimed
- Pendente Lite
- Plaintiff's Motion to Dismiss
- Preliminary Injunction
- Protective Order
- Quash
- Release from Stay of Execution
- Sanctions
- Sever
- Special Practice in Alabama
- Stay
- Strike
- Supplement to Pending Motion
- Vacate or Modify
- Withdraw
- Other Receiver's Unopposed Motion to
Approve Claims Procedure for
Distributions to Victims

pursuant to Rule N/A (Subject to Filing Fee)

Check here if you have filed or are filing contemporaneously
with this motion an Affidavit of Substantial Hardship or if you
are filing on behalf of an agency or department of the State,
county, or municipal government. (Pursuant to §6-5-1 Code
of Alabama (1975), governmental entities are exempt from
prepayment of filing fees)

Date:
12/8/2020 1:18:22 PM

Signature of Attorney or Party
/s/ MICHAEL G DEAN

*This Cover Sheet must be completed and submitted to the Clerk of Court upon the filing of any motion. Each motion should contain a separate Cover Sheet.
**Motions titled 'Motion to Dismiss' that are not pursuant to Rule 12(b) and are in fact Motions for Summary Judgments are subject to filing fee.



**IN THE CIRCUIT COURT OF CALHOUN COUNTY,
 CASE NO.: 11-CV-2018-900431**

THE STATE OF ALABAMA,
 THE ALABAMA BOARD OF ELECTRICAL CONTRACTORS,
 THE ALABAMA DEPARTMENT OF PUBLIC HEALTH,
 THE ALABAMA LIQUEFIED PETROLEUM GAS BOARD,
 THE ALABAMA ONSITE WASTEWATER BOARD,
 THE ALABAMA PLUMBERS AND GASFITTERS EXAMINING BOARD,

Plaintiffs,

vs.

AMERICAN PLUMBING AND SEPTIC SERVICE, LLC,
 an Alabama corporation;
 AMERICAN PLUMBING AND SEPTIC SERVICE, LLC
 d/b/a A American Drain Cleaning & Plumbing Service;
 RICHARD JOSHUA PESNELL, individually
 and as owner/incorporator of AMERICAN
 PLUMBING AND SEPTIC SERVICE, LLC
 and AMERICAN PLUMBING AND SEPTIC
 SERVICE, LLC d/b/a A American Drain &
 Cleaning & Plumbing Service;
 JESSICA PESNELL, individually
 and as incorporator of AMERICAN PLUMBING
 AND SEPTIC SERVICE, LLC and AMERICAN
 PLUMBING AND SEPTIC SERVICE, LLC
 d/b/a A American Drain & Cleaning &
 Plumbing Service; RICHARD G. PESNELL, individually
 and as owner/incorporator of AMERICAN PLUMBING
 AND SEPTIC SERVICE, LLC and AMERICAN
 PLUMBING AND SEPTIC SERVICE, LLC
 d/b/a A American Drain Cleaning & Plumbing
 Service; DAVIS UNLIMITED, LLC, an Alabama
 corporation; RICHARD JOSHUA PESNELL,
 as co-owner of DAVIS UNLIMITED, *et al*,

Defendants.

**RECEIVER'S UNOPPOSED MOTION TO APPROVE CLAIMS PROCEDURE FOR
 DISTRIBUTIONS TO VICTIMS AND OTHER AFFECTED PARTIES AND FOR
 ALLOWANCE OF COMPENSATION AND REIMBURSEMENT OF EXPENSES**

Pursuant to Section VII.4. of this Court's Stipulated Order for Permanent Injunction and Final Order (the "Injunction Order"), which was issued after this Court's September 14, 2018 Preliminary Injunction Order (the "PI Order") and August 3, 2018 Temporary Injunction Order (the "TRO"), Jeffrey C. Schneider, not individually, but solely in his capacity as court-appointed receiver for American Plumbing and Septic Service, LLC and American Plumbing and Septic Service, LLC d/b/a A American Drain Cleaning and Plumbing Service (the "Receivership Defendants"), hereby submits this Unopposed Motion to approve a claims procedure for distributions to victims and other affected parties and for allowance of compensation and reimbursement of expenses for the time period of November 1, 2019 through November 30, 2020.

INTRODUCTION

The Receiver is pleased to report that, since the issuance of the Injunction Order, sufficient funds have been generated to enable the Receiver to accomplish many of the goals that existed for this case. Specifically, the Receiver is currently holding over **\$825,000.00** in the Receivership Estate, which is enough to (1) pay all testifying witnesses 100% of the amounts to which they are entitled under the Injunction Order; (2) pay certain state agency plaintiffs 100% of the amounts to which they are entitled under the Injunction Order; (3) pay certain consumers 80% of the amounts of the loans that they secured to pay for work performed by the Receivership Defendants; (4) pay the law firms that represented the Individual Defendants 50% of the amounts to which they are entitled under the Injunction Order; (5) pay the Office of the Attorney General 50% of the amount to which it is entitled under the Injunction Order; and (6) pay certain other consumers and unsecured creditors a pro-rata share of their losses.

This is an outstanding result that could not have been accomplished without the extraordinary work by the Office of the Attorney General. Accordingly, by this Motion, the Receiver is requesting Court approval for a specific procedure for making distributions of funds to

the consumers and creditors. To that end, the Receiver has determined that, in order to equitably accomplish distributions to investors and creditors, this Court should: (1) approve the proposed procedure for the distributions delineated below; (2) establish the procedure delineated herein by which the Receiver can object to claims; and (3) permit the Receiver to establish the reserve funds delineated below. The Receiver also seeks compensation, and reimbursement of his expenses, for the time period of November 1, 2019 through November 30, 2020.

BACKGROUND

On August 3, 2018, the Office of the Attorney General, State of Alabama, (the “Attorney General”), the Alabama Board of Electrical Contractors, the Alabama Department of Public Health, the Alabama Liquified Petroleum Gas Board, the Alabama Onsite Wastewater Board, and the Alabama Plumbers and Pipefitters Gasfitters Examining Board (collectively with the Attorney General, the “State”) sued the Receivership Defendants, along with Davis Unlimited, LLC and individual defendants Richard Joshua Pesnell (“Josh Pesnell”), Jessica Pesnell, and Richard G. Pesnell (the “Individual Defendants”), for violations of the Deceptive Trade Practices Act and for violations of various other provisions of the Alabama code regarding public health violations and unlicensed practices. The State sought temporary, preliminary, and permanent injunctive relief to prevent the Individual Defendants and the Receivership Defendants from continuing to provide plumbing, septic, and other unlicensed services to consumers.¹

That same day, the Court entered the TRO, which appointed Jeffrey C. Schneider (the “Receiver”) as temporary receiver over the Receivership Defendants. Thereafter, the Court entered the PI Order, which made the Receiver a permanent equity receiver in this case, which permanent appointment was affirmed by the Injunction Order. To fulfill his duties, the Receiver utilized the

¹ The Individual Defendants and the Receivership Defendants will collectively be referred to as “Defendants.”

experienced receivership professionals at the Receiver's law firm, Levine Kellogg Lehman Schneider + Grossman LLP ("LKLSG").

MOTION TO ESTABLISH CLAIMS PROCEDURE

A. Introduction

Pursuant to the Injunction Order, the Receiver is obligated to take possession of the Receivership Defendant's assets for the benefit of consumers and to take whatever other steps are necessary for the consumers' protection. The Receiver's goal, of course, was to quickly and efficiently distribute those assets to consumers with allowed claims (and to certain other creditor(s)) (the "Distributions").

From the beginning of the case to date, the Receiver has had contact with hundreds of consumers who were either overbilled or charged for unnecessary or improper work by the Receivership Defendants, and dozens who took out and paid off loans to pay for that unnecessary or improper work. The Receiver has also been contacted by approximately thirty unsecured creditors of the Receivership Entities and taxing authorities.

By this Motion, the Receiver is requesting Court approval for a specific procedure for making distributions of funds to the consumers and creditors. As of the filing of this Motion, based on the Receiver's efforts to collect receivables and otherwise pursue claims, the Receivership Estate has **\$828,835.47** in its bank account (the "Total Amount"), available for distribution to consumers and creditors and the payment of professional fees (including those requested herein).

B. The Receiver's Proposed Distribution Procedure

Testifying Witnesses

In the Injunction Order, this Court ordered the Receiver to pay the witnesses that testified before this Court 50% of their claimed amounts immediately, with the rest to be paid if the Receivership Estate generated sufficient funds to pay the rest. As set forth above, the Receivership

Estate has, indeed, generated such funds, so the Receiver proposes paying the 50% balance immediately. That amount is **\$36,103.75**, which leaves \$792,731.72 for further distribution.

Attorneys' Fees and Costs

In the fee application below, the Receiver seeks approval of fees in the amount of **\$76,540.64** for the time period of November 1, 2019 through November 30, 2020. Subtracting this amount from the total in the Receivership Estate, along with the amount allocated for the testifying witnesses, leaves a total of \$716,191.08 for further distribution.

In the Injunction Order, this Court approved the fees and expenses of the Plaintiffs in the total amount of \$440,026.40, set forth as follows: Board of Electrical Contractors, \$29,478.47; Plumbers and Gas Pipefitters Board, \$6,835.62, Onsite Wastewater Board, \$743.48, and the Office of the Attorney General, \$402,968.80, for a total of \$440,026.37. The Receiver proposes to pay the Board of Electrical Contractors, Plumbers and Gas Pipefitters Board, and Onsite Wastewater Board in full for a total of **\$37,057.57**. The Office of the Attorney General has graciously agreed to accept only \$10,000, so that additional amounts are available for consumers. Therefore, the Receiver proposes a total payment to Plaintiff's attorneys of **\$47,057.57**.

This Court also approved fees for counsel for the Defendants, which the Receiver understands to currently be as follows: M. Douglas Ghee, \$3,500.00; Bruce Downey \$7,500.00; and Starnes, Davis and Florie, currently \$169,409.32. The Receiver proposes to pay 50% of the attorneys' fees owed to these attorneys (\$1,750 to Ghee, \$3,500 to Downey, and \$85,000 to Starnes, Davis and Florie). This would be a total proposed payment to Defendants' counsel of **\$90,500.00**.

After the foregoing deductions are made from the Total Amount, \$578,633.51 remains for distribution.

Consumers Who Paid Off Their Loans

There were dozens of consumers who were forced to take out loans to pay for the work performed by the Receivership Defendants, and they undertook extraordinary measures to pay those loans off. The Receiver has calculated that this group of consumers collectively paid off \$263,424.81 in loans. The Receiver recommends that 80% of this full amount—**\$210,739.85**—be paid to those consumers. This would leave \$367,893.66 for additional distribution.

Consumers Without Loans

In general, the Receiver believes that the most equitable approach for the Distributions is to send each consumer with whom the Receiver has made contact (excluding the consumers who took out loans) a pro-rata² amount based on their proportionate share of the total amounts available for distribution in this category—which the Receiver recommends should be **\$291,000**—as compared to the amounts they paid for their work. The Receiver estimates the total amount of these claims to be \$575,058.68. After payment of the \$291,000, this would leave \$76,893.86 for additional distribution.

Unsecured creditors

There are a number of unsecured creditors—landlords, suppliers, and equipment companies—who have asserted unsecured claims against the Receivership Entities. The Receiver proposes that **\$20,000.00** be set aside to pay these claims on a *pro rata* basis, but with a preference given to local unsecured creditors. This would leave \$56,893.86 to be held back for administration of the distribution or contingencies (addressed in greater detail below).

² “Pro-rata” means that each claimant with an allowed claim receives a distribution, the amount of which is calculated as follows: the amount to be distributed to all claimants multiplied by a fraction, the numerator of which is the amount of the claimant’s allowed claim and the denominator of which is the total of all allowed claims.

C. The Receiver's Proposed Procedure for Distribution

The Receiver also seeks to establish a procedure for distribution of the proceeds in accordance with the foregoing (the "Distribution Procedure"):

- (i) At the time of filing this Motion, the Receiver and his team have analyzed their records—which included logs of calls, emails, and other contacts made with and by the various groups of consumers and creditors; that is how the amounts delineated above were determined.
- (ii) Payment of all attorneys' fees and Receivers' fees and expenses, as well as payments to testifying witnesses, will be made immediately upon entry of an Order granting this Motion.
- (iii) Payments to all individuals who obtained loans and paid them off will be made by check upon entry of an Order granting this Motion, and must be cashed within ninety (90) calendar days, absent which the check will be voided and the uncashed checks will be deemed "unclaimed funds" available for distribution to other consumers and creditors.
- (iv) The remaining distribution to other consumers and creditors will be made within sixty (60) days of entry of an Order granting this Motion. Any such payments will be made by check, and such checks must be cashed within ninety (90) calendar days, absent which the check will be voided and the uncashed checks will be deemed "unclaimed funds" available for distribution to other consumers and creditors.
- (v) The Receiver will provide the Court with a status report one hundred and twenty-five (125) days after entry of an Order granting the Motion.

D. The Receiver's Proposed Procedure for Reserves

As set forth above, the Receiver proposes to hold back \$56,893.86 for the Receiver to use to pay for the ongoing costs of administering and closing the estate. At the same time the Receiver submits his status report referenced above (125 days after entry of an Order granting this Motion), the Receiver will file a final fee application and a request to close the estate. To the extent there are amounts uncashed at that time, or to the extent there are additional reserves available that were not utilized in administering the distribution, the Receiver will so advise the Court and propose a distribution plan as to such funds.

FEE APPLICATION

The Receiver's First and Second Reports (the "First Report" and the "Second Report") chronicled the vast majority of the work performed by the Receiver and his professionals as of that time. Other filings before this Court have detailed the work by the Receiver and his team since that time. Since the entry of the Injunction Order and the Court's October 4, 2018 Order, the Receiver has been in a liquidation mode after terminating all real estate and equipment leases, vacating the business offices, and eliminating recurring expenses. The Receiver has been focused on attempting to generate funds for the Receivership Estate.

Since his last fee application, the Receiver has spent approximately 55.70 hours on this case. The Receiver's daily timesheets, which describe the work performed since November 1, 2019 with particularity, are attached as **Exhibit A**.

Since their retention to serve as the Receiver's professionals and, effectively, to act as his "deputy receiver," the LKLSG professionals have spent approximately 216.4 hours on this case. LKLSG's daily timesheets, which describe the work performed with particularity, are attached as **Exhibit B**.

The Receiver and his team

The Receiver's current standard hourly rate is \$730.00. **For purposes of this receivership, however, the Receiver reduced his hourly rate by more than 50% to \$300.00.** The Receiver also agreed not to raise this rate during the life of this receivership. Through the time period covered by this Application, the Receiver has expended a total of 55.7 hours at a reduced hourly rate of \$300.00 for a total of \$16,710.00 in fees.

The services performed by the Receiver's professionals, and the non-reimbursed expenses relating to those services, are set forth and described in detail in the attached Exhibit B. The timesheets include the description of the services performed, the hours expended, and the hourly

rates at which services were rendered. Like the Receiver, the hourly rates of the Receiver's professionals have been substantially reduced; Stephanie Traband, who has been the most involved, has a current standard hourly rate of \$650.00. **For purposes of this receivership, her rate has been reduced to \$300.00 as well for the life of this case.**

Indeed, the Receiver has endeavored to keep the fees in this case as low as possible. He has primarily been assisted by his law partner, Ms. Traband, and by his paralegal (Ana Salazar), both of whom are very experienced in receivership matters and have been working closely with the Receiver for many years. Ms. Salazar's standard hourly rate is \$270.00 and has likewise been reduced for this case to \$125.00.

For the Court's convenience, the Receiver has prepared the summary below for the fees of the Receiver and his team:

The Receiver

<u>Receiver</u>	<u>Reduced Hourly Rate</u>	<u>Time Expended</u>	<u>Total</u>
Jeffrey C. Schneider	\$300.00	55.70	\$16,710.00

LKLSG Professional Services

<u>Name of Professional</u>	<u>Reduced Hourly Rate</u>	<u>Time Expended</u>	<u>Total Per Attorney</u>
Stephanie Reed Traband	\$300.00	165.50	\$49,650.00
Tal Aburos	\$175.00	3.0	\$ 525.00

LKLSG Para-professional Services

<u>Name of Paraprofessional</u>	<u>Reduced Hourly Rate</u>	<u>Time Expended</u>	<u>Total Per Paraprofessional</u>
Ana M. Salazar	\$125.00	47.90	\$5,987.50

MEMORANDUM OF LAW

I. Summary of Services Rendered by the Receiver and His Team

The professional services rendered by the Receiver and his professionals, as well as the necessary and reasonable non-reimbursed out-of-pocket costs attendant to those services, are set forth and described in detail in **Exhibits A and B**. A mere reading of the time summaries cannot completely reflect the full range of services rendered by the Receiver and his professionals, the complexity of the issues, and the pressures of time and performance which have been placed upon the Receiver and his professionals in connection with this case.

The schedules of disbursement for expenses, incorporated into **Exhibits A and B**, are those actual and necessary expense items, including but not limited to delivery charges, travel expenses, fees for records maintenance, postage charges, and various other expenses incurred in connection with the Receiver's liquidation of the Receivership Defendants' business, marshalling of the Receivership's assets, and otherwise fulfilling his obligations and performing his functions under the Injunction Order. All of these expenses are expenses that the Receiver and his professionals would typically bill to their commercial clients.

The Receiver and his professionals have not been paid compensation in connection with the services and expenses referenced in **Exhibits A and B**.

II. Applicable Legal Standard

In determining attorneys' fees, a court must (1) determine the nature and extent of the services rendered; (2) determine the value of those services; and (3) consider the factors set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974). *See Grant v. George Schumann Tire & Battery Co.*, 908 F.2d 874, 877-78 (11th Cir. 1990) (bankruptcy fee award case addressing the issue of attorney's fees generally before considering specific requirements in the bankruptcy context). The twelve factors set forth in *Johnson*, a case involving an award of attorneys' fees under Federal civil rights statutes, as incorporated by the Eleventh Circuit in *Grant*,

a bankruptcy case, are as follows: (1) the time and labor required; (2) the novelty and difficulty of the questions presented; (3) the skill required to perform the legal services properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee for similar work in the community; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or by the circumstances; (8) the amount involved and results obtained; (9) the experience, reputation, and ability of the attorney; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. *See Seiple v. Mitchell*, 239 Ala. 533, 535 (Ala. 1940) (holding that compensation to a receiver “is primarily within the sound discretion of the court having the custody and control of the receivership, having regard to all the relevant circumstances”).

A. The Time and Labor Required

The summary description, together with the time records attached hereto, detail the time, nature, and extent of the professional services rendered by the Receiver and LKLSG during the period covered by this Application. The Receiver and his professionals have no doubt that the time spent is justified by the results that have been achieved thus far. The Receiver and his professionals believe they have played a necessary and significant role during the course of this case.

B. The Novelty and Difficulty of the Questions Presented

This case required a high level of skill to secure the receivership assets and to carry out the Receiver’s duties.

C. The Skill Requisite to Perform the Services Properly

In order to perform the required services, substantial legal skill and experience in the areas of commercial law, lending, and litigation were required of the Receiver and his team. The Receiver is acutely aware of the financial considerations arising in receiverships such as this one. Accordingly, as this Court may gather from **Exhibits A and B**, the Receiver has continued to very

leanly staff the administration of this case as much as possible, under the direction and immediate supervision of the Receiver.

D. The Preclusion of Other Employment Due to This Case

Although the Receiver and his professionals were not explicitly precluded as a result of this case from accepting other matters, this case required the Receiver and his professionals to devote a significant amount of time to this matter during the period of this Application, to the preclusion of expending time on other active matters, especially considering that the Receivership was located outside the Receiver's home territory.

E. The Customary Fee

The hourly rates of the Receiver and his professionals set forth on the attached exhibits reflect a rate that is considerably lower than the hourly rates billed by the Receiver and his professionals to clients in other cases. This is because the Receiver views this work as being in the nature of public service, which the Receiver is proud and privileged to be able to do. Similar—and higher—rates have been confirmed and approved in other matters in which the Receiver and his professionals have been involved.

F. Whether the Fee Is Fixed or Contingent

The compensation of the Receiver and his professionals is subject to the approval of this Court, and the Receiver and his professionals have not received any compensation for the services sought herein from any other source. The above factors should be taken into consideration by this Court, and the compensation should reflect the assumption of the risk of nonpayment and delay in payment.

G. The Time Limitations Imposed

This case has imposed time limitations on the Receiver and his professionals due to the necessity for rapid resolutions of issues at inception.

H. The Experience, Reputation, and Ability of the Professionals

The Receiver and his professionals enjoy a fine reputation and have proven substantial ability in the fields of receiverships, complex commercial litigation, and bankruptcy.

I. The “Undesirability” of the Case

This case is not undesirable and the Receiver and his professionals are, indeed, privileged to participate in this proceeding.

J. The Nature and Length of Professional Relationship

The Receiver and his professionals have had no prior relationship with the Receivership Defendants or the Non-Receivership Defendants prior to this case.

K. Awards in Similar Cases

The amounts requested by the Receiver and his professionals are not unreasonable in terms of awards in cases of similar magnitude and complexity. The compensation requested by the Receiver and his professionals comports with the mandate of applicable law, which directs that services be evaluated in light of comparable services performed in other cases in the community. In fact, the hourly rates requested by the Receiver and his professionals are considerably lower than the ordinary and usual hourly rates billed by the Receiver and his professionals to their ordinary clients, notwithstanding the risks associated with this case.

L. The Source of Payment for the Amounts Sought Hereunder

The Receiver and his professionals request that the amounts for which payment is authorized hereunder be paid from the receivership funds presently held by the Receiver.

CONCLUSION

Based on the foregoing authorities and arguments, the Receiver respectfully request that this Court enter a proposed Order approving the Distribution Procedure and amounts delineated above and authorize compensation to the Receiver of \$16,710.00 and to the Receiver's professionals at LKLSG of \$56,162.50 in fees and \$3,668.14 in expenses for a combined total of \$76,540.64. For this Court's convenience, a proposed Order granting this Motion is attached as Exhibit C.

CERTIFICATION

The Receiver has conferred with the Office of the Attorney General regarding this Motion, which has advised that, on behalf of all plaintiff entities, it consents to this Motion. Moreover, the Receiver has conferred with counsel for the Defendants, who also have no objection.

Dated: December 8, 2020

Respectfully submitted,

Jeffrey C. Schneider, P.A.
Court-Appointed Receiver
201 South Biscayne Blvd.
Citigroup Center, 22nd Floor
Miami, Florida 33131
Telephone: 305.403.8788
Facsimile: 305.403.8789
Email: jcs@klsg.com

By: /s/ Jeffrey C. Schneider
JEFFREY C. SCHNEIDER, P.A.
Court-Appointed Receiver

CERTIFICATE OF SERVICE

I hereby certify that on December 8, 2020, the foregoing document was served this day on all counsel of record identified on the attached Service List via electronic mail.

/s/ Jeffrey C. Schneider
 Jeffrey C. Schneider, P.A.
Court-Appointed Receiver

SERVICE LIST

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Hendon B. Coody
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hendonbcoody@earthlink.net

EXHIBIT A

Levine Kellogg Lehman Schneider + Grossman LLP

22nd Floor, Citigroup Center
201 S. Biscayne Blvd.
Miami, Florida 33131
Tax ID No. [REDACTED]

Tax I.D.: [REDACTED]

Jeffrey C. Schneider

December 1, 2020
Bill # 29664

Re: 78561-002
Receiver for American Plumbing

Professional Fees

Atty	Description	Hours	Amount
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Client Ref: 78561 - 002
Bill # 29664

December 1, 2020
Page 2

Professional Fees

Atty	Description	Hours	Amount
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Client Ref: 78561 - 002
Bill # 29664

December 1, 2020
Page 3

Professional Fees

Atty	Description	Hours	Amount
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Client Ref: 78561 - 002
Bill # 29664

December 1, 2020
Page 4

Professional Fees

Atty	Description	Hours	Amount
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Client Ref: 78561 - 002
Bill # 29664

December 1, 2020
Page 5

Professional Fees

Atty	Description	Hours	Amount
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	Total Fees	<u>55.70</u>	<u>\$16,710.00</u>
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Client Ref: 78561 - 002
Bill # 29664

December 1, 2020
Page 6

Current Bill Total Amount Due

\$16,710.00

Please return this page with remittance

to

Levine Kellogg Lehman Schneider + Grossman LLP
22nd Floor, Citigroup Center
201 S. Biscayne Blvd.
Miami, Florida 33131

Bill # 29664
Bill Date: December 1, 2020
Client Code: 78561
Client Name: Jeffrey C. Schneider as Receivership
Matter Code: 002
Matter Name: Receiver for American Plumbing

Current Bill Total Amount Due

\$16,710.00

Amount enclosed: _____

EXHIBIT B

Levine Kellogg Lehman Schneider + Grossman LLP

22nd Floor, Citigroup Center
201 S. Biscayne Blvd.
Miami, Florida 33131
Tax ID No. [REDACTED]

Tax I.D.: [REDACTED]

Jeffrey C. Schneider

December 1, 2020
Bill # 29665

Re: 78561-003
American Plumbing

Professional Fees

Atty	Description	Hours	Amount
------	-------------	-------	--------

Client Ref: 78561 - 003
Bill # 29665

December 1, 2020
Page 2

Professional Fees

Atty	Description	Hours	Amount
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Client Ref: 78561 - 003
Bill # 29665

December 1, 2020
Page 3

Professional Fees

Atty	Description	Hours	Amount
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Client Ref: 78561 - 003
Bill # 29665

December 1, 2020
Page 4

Professional Fees

Atty	Description	Hours	Amount
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0

Client Ref: 78561 - 003
Bill # 29665

December 1, 2020
Page 5

Professional Fees

Atty	Description	Hours	Amount
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Client Ref: 78561 - 003
Bill # 29665

December 1, 2020
Page 6

Professional Fees

Atty	Description	Hours	Amount
------	-------------	-------	--------

Client Ref: 78561 - 003
Bill # 29665

December 1, 2020
Page 7

Professional Fees

Atty	Description	Hours	Amount
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Client Ref: 78561 - 003
Bill # 29665

December 1, 2020
Page 8

Professional Fees

06/	Atty	Description	Hours	Amount
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Client Ref: 78561 - 003
Bill # 29665

December 1, 2020
Page 9

Professional Fees

Atty	Description	Hours	Amount
------	-------------	-------	--------

Client Ref: 78561 - 003
Bill # 29665

December 1, 2020
Page 10

Professional Fees

Atty	Description	Hours	Amount
------	-------------	-------	--------

Client Ref: 78561 - 003
Bill # 29665

December 1, 2020
Page 11

Professional Fees

Atty	Description	Hours	Amount
------	-------------	-------	--------

Client Ref: 78561 - 003
 Bill # 29665

December 1, 2020
 Page 12

Fee Summary

Name	Hours	Amount
Tal Aburos	3.00	525.00
Ana Maria Salazar	47.90	5,987.50
Stephanie Reed Traband	165.50	49,650.00
	<hr/>	<hr/>
Total Fees	216.40	\$56,162.50

Costs

Expenses	Amount
Web Forward	1.99
Web Forward	-1.99
Quickbooks	77.00
Web Forwarding	1.99
Quick Books	77.00
Quick books	4.95
Web for warding	1.99
QuickBooks	82.50
Web Forwarding	1.99
Quickbooks	82.50
Web Forwarding	1.99
Quickbooks	82.50
Web Forwarding	1.99
QuickBooks	165.00
Web Forwarding	1.99
Quickbook	165.00
Web Forwarding	1.99
Quickbook	165.00
Web forwarding	1.99
Web forwarding	1.99
Domain renewal	116.96
Quickbooks	165.00
Web Forwarding	1.99
Quickbook	165.00
Postage	32.00
Web forwarding	1.99
Postage	31.00
Quickbooks	165.00
Web forwarding	1.99
Quick book	165.00
Web Forwarding	1.99
Quickbook	165.00
Web Forwarding	1.99
Quickbook	165.00

Client Ref: 78561 - 003
Bill # 29665

December 1, 2020
Page 13

Costs

Expenses	Amount
Postage	59.40
Parking	34.00
Car Rental	117.18
Taxi Service	90.31
Overnight Delivery	205.89
External Copy Fee	32.09
Air Fare	623.20
Hotel	283.92
Westlaw Research	0.10
Business Meals	118.48
Searches	4.30
Total Costs	<u>\$3,668.14</u>
Current Bill Total Amount Due	<u><u>\$59,830.64</u></u>

Please return this page with remittance

to

Levine Kellogg Lehman Schneider + Grossman LLP
22nd Floor, Citigroup Center
201 S. Biscayne Blvd.
Miami, Florida 33131

Bill # 29665
Bill Date: December 1, 2020
Client Code: 78561
Client Name: Jeffrey C. Schneider as Receivership
Matter Code: 003
Matter Name: American Plumbing

Current Bill Total Amount Due

\$59,830.64

Amount enclosed: _____

EXHIBIT C

**IN THE CIRCUIT COURT OF CALHOUN COUNTY, ALABAMA
CASE NO.: 11-CV-2018-900431**

THE STATE OF ALABAMA,
THE ALABAMA BOARD OF ELECTRICAL CONTRACTORS,
THE ALABAMA DEPARTMENT OF PUBLIC HEALTH,
THE ALABAMA LIQUEFIED PETROLEUM GAS BOARD,
THE ALABAMA ONSITE WASTEWATER BOARD,
THE ALABAMA PLUMBERS AND GASFITTERS EXAMINING BOARD,

Plaintiffs,

vs.

AMERICAN PLUMBING AND SEPTIC SERVICE, LLC,
an Alabama corporation;
AMERICAN PLUMBING AND SEPTIC SERVICE, LLC
d/b/a A American Drain Cleaning & Plumbing Service;
RICHARD JOSHUA PESNELL, individually
and as owner/incorporator of AMERICAN
PLUMBING AND SEPTIC SERVICE, LLC
and AMERICAN PLUMBING AND SEPTIC
SERVICE, LLC d/b/a A American Drain &
Cleaning & Plumbing Service;
JESSICA PESNELL, individually
and as incorporator of AMERICAN PLUMBING
AND SEPTIC SERVICE, LLC and AMERICAN
PLUMBING AND SEPTIC SERVICE, LLC
d/b/a A American Drain & Cleaning &
Plumbing Service; RICHARD G. PESNELL, individually
and as owner/incorporator of AMERICAN PLUMBING
AND SEPTIC SERVICE, LLC and AMERICAN
PLUMBING AND SEPTIC SERVICE, LLC
d/b/a A American Drain Cleaning & Plumbing
Service; DAVIS UNLIMITED, LLC, an Alabama
corporation; RICHARD JOSHUA PESNELL,
as co-owner of DAVIS UNLIMITED, *et al*,

Defendants.

**ORDER GRANTING
RECEIVER'S UNOPPOSED MOTION TO APPROVE CLAIMS PROCEDURE FOR
DISTRIBUTIONS TO VICTIMS AND OTHER AFFECTED PARTIES AND FOR
ALLOWANCE OF COMPENSATION AND REIMBURSEMENT OF EXPENSES**

THIS CAUSE, having come on to be heard on the Receiver's Unopposed Motion to Approve Claims Procedure for Distribution to Victims and Other Affected Parties and for Allowance of Compensation and Reimbursement of Expenses (the "Motion"), and the Court having reviewed the papers and being advised that the parties do not oppose the requested relief, the Court HEREBY

ORDERS AND ADJUDGES as follows:

1. The Motion is GRANTED.
2. The Receiver is authorized and directed to make the following distributions and payments, as set forth in his Motion:
 - a. Consistent with this Court's Stipulated Order for Permanent Injunction and Final Order (the "Injunction Order"), the Receiver is directed to pay the remaining 50% balance owed to the testifying witnesses, in the amount of **\$36,103.75**.
 - b. Consistent with the amounts approved in the Injunction Order, the Receiver is authorized and directed to make payments for the attorneys' fees and costs of the Plaintiff agencies as follows, in the total amount of **\$47,057.57**:
 - i. Alabama Board of Electrical Contractors, \$29,478.47;
 - ii. Alabama Plumbers and Gas Pipefitters Board, \$6,835.62;
 - iii. Alabama Onsite Wastewater Board, \$743.48;
 - iv. Office of the Attorney General, \$10,000.
 - c. Consistent with this Court's prior approval of fees for Defendants' counsel, the Receiver is authorized and directed to make payments for the attorneys' fees and costs for Defendants' counsel as follows, in the total amount of **\$90,500.00**:

- i. \$1,750 to M. Douglas Ghee;¹
 - ii. \$3,500 to Bruce Downey; and
 - iii. \$85,000 to Starnes, Davis and Florie.
- d. The Court approves the Receiver's request for compensation to the Receiver in the following amounts, and directs the Receiver to make payments totaling **\$76,540.64** as follows:
 - i. \$16,710.00 to the Receiver;
 - ii. \$56,162.50 to the Receiver's professionals at LKLSG for their fees and \$3,668.14 for expenses.
- e. The Receiver is authorized and directed to distribute **\$210,739.85**, on a *pro rata* basis, to consumers who took out loans and paid them off, based on documentation in the Receiver's possession and upon which the Receiver relied in making the calculations in the Motion. These payments will be made by check and must be cashed within ninety (90) calendar days of the date of the check, absent which the check will be voided and the uncashed checks will be deemed "unclaimed funds" available for distribution to other consumers and creditors.
- f. The Receiver is authorized and directed to distribute **\$291,000.00** to consumers who previously registered with or made contact with the Receiver (excluding the consumers who took out loans), on a *pro rata* basis, based on their proportionate share, using the documentation in the Receiver's possession and upon which the Receiver relied in making the calculations in the Motion. These payments will be made within sixty (60) days, absent an extension for good cause shown. Any such payments will be made by check, and such checks must be cashed within

¹ If any of the Defendants' counsel has already been paid in full by Defendants, they are directed to advise the Receiver and return any of these funds to the Receiver to be distributed elsewhere.

ninety (90) calendar days of the date on the check, absent which the check will be voided and the uncashed checks will be deemed “unclaimed funds” available for distribution to other consumers and creditors.

- g. The Receiver is authorized and directed to distribute **\$20,000** to unsecured creditors, on a *pro rata* basis, with a preference given to local² unsecured creditors. These payments will be made within sixty (60) days, absent an extension for good cause shown. Any such payments will be made by check, and such checks must be cashed within ninety (90) calendar days of the date on the check, absent which the check will be voided and the uncashed checks will be deemed “unclaimed funds” available for distribution to other consumers and creditors.
 - h. Other than as specifically delineated above, the Receiver is authorized to use his discretion in good faith to make final determinations and calculations without the need for further direction from the Court.
3. The Receiver is directed to provide a written status report to the Court within 125 days of the date of this Order regarding the distributions set forth above.
 4. The Receiver is authorized and directed to hold back \$56,893.86 to be used to pay for the ongoing costs of administering and closing the receivership estate. At the same time the Receiver submits his status report referenced above (125 days after entry of this Order), the Receiver is directed to file his final fee application and a request to close the estate. To the extent there are amounts uncashed at that time, or to the extent there are additional reserves available that were not utilized in administering the distribution, the

² Incorporated in the State of Alabama and operating in or near Calhoun County.

Receiver will so advise the Court and shall propose a distribution plan as to such funds.

DONE and ORDERED in Chambers in Calhoun County, this ____ day of December, 2020.

HONORABLE BRIAN HOWELL
CIRCUIT COURT JUDGE

Copies provided to Receiver and counsel of record