

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**SECURITIES AND EXCHANGE
COMMISSION**

Plaintiff

v.

**DONALD ANTHONY WALKER YOUNG,
ET AL.**

Defendants

**OAK GROVE PARTNERS, L.P.,
NEELY YOUNG, AND W.B. DIXON
STROUD JR.,**

Relief Defendants

Civil Action No.: 2:09-cv-01634-JP

**RECEIVER LOUIS C. BECHTLE'S MOTION TO APPROVE PAYMENT OF
FEDERAL TAX CLAIM AND TO MODIFY DISTRIBUTION**

The Receiver, Louis C. Bechtle, hereby moves this Court for an order approving the payment of \$183,241 in final resolution of the tax claims of the United States against the assets of the Receivership. Pursuant to the terms of the settlement reached by the Receiver and the United States, the Receiver also seeks an Order modifying the plan of distribution such that future distributions will only be made to Investor Creditors and Oak Grove, and that no further distributions will be made to Trade Creditors. The grounds in support of this motion are set forth in the accompanying memorandum.

Date: February 27, 2013

Respectfully submitted,

/s/ Kevin Dooley Kent

Patricia M. Hamill, Esquire (I.D. No. 48416)
Kevin Dooley Kent, Esquire (I.D. No. 85962)
Andrew S. Gallinaro, Esquire (I.D. No. 201326)
Conrad O'Brien PC
1500 Market Street, Centre Square
West Tower, Suite 3900
Philadelphia, PA 19102

Counsel for Louis C. Bechtle, Receiver

CERTIFICATE OF SERVICE

I hereby certify that on this date a true and correct copy of the foregoing Motion to Approve Payment of Federal Tax Claim and Modify Distribution was filed and served on all counsel of record via the Court's Electronic Filing System, with additional copies served via electronic mail on the following:

Catherine E. Pappas, Esquire
Securities & Exchange Commission
Mellon Independence Center
701 Market Street, Suite 2000
Philadelphia, PA 19106

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123 S. Broad Street, Suite 810
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Drinker Biddle & Reath LLP
One Logan Square, 18th & Cherry Sts.
Philadelphia, PA 19103

DATED: February 28, 2013

s/ Kevin Dooley Kent
Kevin Dooley Kent

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**SECURITIES AND EXCHANGE
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Plaintiff

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**DONALD ANTHONY WALKER YOUNG,
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**OAK GROVE PARTNERS, L.P.,
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Relief Defendants

Civil Action No.: 2:09-cv-01634-JP

**BRIEF IN SUPPORT OF RECEIVER LOUIS C. BECHTLE’S MOTION TO APPROVE
PAYMENT OF FEDERAL TAX CLAIM AND TO MODIFY DISTRIBUTION**

On December 31, 2012 the Receiver filed a Motion to Resolve Claims of Internal Revenue Service (hereafter, “the Tax Motion”) seeking to confirm and subordinate the existing and potential pre-Receivership federal tax liabilities of Donald Anthony Walker Young, Acorn II, LP, Acorn Capital Management, LLC, including any and all entities owned or controlled by them, and relief defendant Neely Young (collectively, “the SEC Defendants”), to the extent the United States might seek to satisfy such liabilities out of the assets of the Receivership. (See Docket No. 310). Since the filing of the Tax Motion, the Receiver and counsel for the United States engaged in substantial negotiations to resolve their dispute, and now have reached an agreement. If approved, the agreement will allow the Receivership to continue to make distributions and fulfill its purpose in maximizing the recovery to the victims of the underlying

scheme. The Receiver recommends that the Court approve the proposed settlement because it represents the most practical and cost-effective resolution under the circumstances.

I. PROCEDURAL HISTORY

On May 14, 2010 the Court approved the Receiver's proposed Claims Resolution Procedure. In accordance with the approved procedure, the Receiver provided notice of the Claims Bar Date and Claims Resolution Procedure to all known Investor Creditors and Trade Creditors, and also published notice to unknown creditors in multiple forms of media in order to provide such creditors the opportunity to present claims. The vast majority of claims presented to the Receiver were determined through the claims procedure and ultimately approved by the Court without dispute, with only a small number of claims resolved through motion practice and this Court's Order dated March 18, 2011. No tax claims were involved in the Claims Procedure because, at that time, the Receiver did not believe there were any existing or potential tax liabilities for the Receiver or the Receivership relating to the period prior to the Receiver's appointment.¹

On December 23, 2010 the Receiver filed a Motion to Approve Proposed Plan of Distribution that called for pro-rata distributions according to a "Rising Tide" methodology to be paid to three classes of creditors with approved claims, each class receiving equal priority in the distributions. (Docket No. 198). The three categories were: Investor Creditors; Oak Grove; and Trade Creditors. This Court approved the Receiver's Distribution Methodology and First Interim Distribution on February 22, 2011 and a Second Interim Distribution on November 29, 2011, which distributions together totaled \$11 million. For the reasons explained in the Tax

¹ The Receiver continues to assert that neither he nor the Receivership has any tax liability for the pre-receivership time period.

Motion, the Receiver elected not to make further distributions until the potential tax liability issues set forth in the Tax Motion are resolved.

On December 31, 2012 the Receiver filed the Tax Motion requesting: (a) a determination that this Court has jurisdiction to resolve the alleged tax liabilities of the Receivership Estate; (b) permission to re-open the Claims Resolution Process to address the existing and potential tax liabilities for the pre-Receivership activity of the SEC Defendants; and (c) an order declaring that any tax liabilities approved through the Claims Resolution Process will be subordinated to victim restitution claims, and that the Receiver may distribute the Receivership assets free of any personal liability under 31 U.S.C. § 3713(b) for the payment of taxes owed by the SEC Defendants.

II. PROPOSED RESOLUTION

The Receiver and the United States have agreed to a proposed Consent Order, which if approved by the Court will resolve all of the issues raised in the Tax Motion. A copy of the proposed Consent Order is attached hereto as Exhibit A. Because the proposed resolution will impact future distributions, the Receiver has also included a proposed Order Modifying the Plan of Distribution, attached hereto as Exhibit B. The terms of the proposed Consent Order provide, in pertinent part, that:

the United States has assessed income taxes for the years from 2004 to 2008 against Donald Anthony Walker Young, totaling \$287,017 as of January 14, 2013;

[...]

ORDERED that the Receiver shall distribute \$183,241 to the United States within 30 days as payment of the claims the United States may have asserted against the: (a) the Receiver, (b) the Receiver's agents, servants, successors, assigns, administrators, employees, attorneys, advisors, and legal representatives, (c) the Receivership Estate, (d) Investor Creditors, or (e) Oak Grove for the unpaid income taxes of the Acorn Entities, relief defendant

Neely Young, and any liability arising under 31 U.S.C. § 3713(b) arising from any income taxes

ORDERED that the payment of \$183,241 shall be in full satisfaction of the United States' claims with respect to any further distributions to Investor Creditors or Oak Grove. The United States reserves the right to assert additional claims, including under 31 U.S.C. § 3713(b) with respect to future distributions to Trade Creditors;

ORDERED that the Receivership Assets, including any Receivership Asset that may be acquired in the future, may be distributed to Investor Creditors or Oak Grove pursuant to the Court approved distribution process free and clear of any tax liens of the United States arising from any income taxes of the Acorn Entities and relief defendant Neely Young;

Because the proposed resolution will terminate distributions to Trade Creditors, and to the extent the payment of \$183,241 to the United States reduces the proceeds available for distribution to Investor Creditors the Receiver has provided notice of this Motion to all creditors in the form attached hereto as Exhibit C, giving them 17 days to respond to the Court. Lastly, the Receiver has been in negotiations with Oak Grove, which is in agreement with the proposed resolution. As part of the proposed resolution, Oak Grove will agree to forego \$100,000 of its next distribution in satisfaction of the United States' priority position, and further has represented that it shall use all reasonable efforts to ensure that any future distributions received from the Receivership are paid to Oak Grove's limited partner investors..

III. ARGUMENT

The potential tax liability of a receivership poses many difficult issues. Chief among them, the Second Circuit in SEC v. Credit Bancorp, Ltd., 297 F.3d 127 (2002) found jurisdiction to be lacking based on a Receiver's motion to determine a Receivership's tax liability. As of the filing of this Motion, the Third Circuit has not ruled upon this issue.

Moreover, if the United States were to defeat the Receiver's Tax Motion on jurisdictional grounds, the only option for the Receiver to finally resolve the tax liabilities would be to reconstruct the books and records of the SEC Defendants in order to file returns for the nearly ten years in which they were active but failed to file returns. The Receiver maintains that recreating accurate returns for the fictional business activity of the Acorn ponzi scheme based on the fraudulent records maintained by the SEC Defendants is impossible. It is also the Receiver's position that he should not sign those returns given his scope as the Receiver for only the assets and records of the Acorn entities, a concern that is heightened by the fact that the underlying activities to be described in such returns relate to a fraud carried out over the course of a ten year period preceding the Receiver's appointment. Moreover, even if it were possible to create such returns, the additional accounting and legal work that would be required would be very time consuming and expensive, potentially costing more in professional fees than the current settlement amount being offered by the United States. In addition, the process for creating and filing returns, and then seeking assessments from the United States in order to confirm that all liabilities have been satisfied would likely span many months, and possibly years, and any subsequent litigation in United States Tax Court or this District Court over disputed liabilities could take even longer. For these reasons, the Receiver asserts that the current proposal represents the most equitable and efficient resolution of this dispute and will allow the Receiver to immediately recommence making distributions to victims and begin the process for winding down the Receivership.

The Receiver is mindful of the fact that under this proposal the twenty-seven (27) approved Trade Creditors will not receive any further distributions. The twenty-seven (27) approved Trade Creditor claims together total \$83,241. Of that amount the Receiver has already

paid \$34,347 for a 41.26% rate of recovery.² Accordingly, if the current proposal is approved, Trade Creditors will not receive pro-rata distributions on the remaining \$48,894 of their claims. For purposes of reference, a table listing all Receivership creditors by category, and the past distributions made to each is attached hereto as Exhibit D. Moreover, the amount previously distributed (\$34,347) will be resolved by the proposed payment from the Receivership Estate, rather than clawed back from the Trade Creditors. The Receiver moves for this modification because he has been advised that the United States will not subordinate its tax claims to general secured creditors of a lower priority and unsecured creditors. Thus, any payments made by the Receivership to Trade Creditors would be at risk, as would the Receivership for those amounts.³ The Order appointing the Receiver provides that “[t]he goal and purpose of the Receivership is to assume control of, marshal, pursue, and preserve the Receivership Assets with the objective of maximizing the recovery of defrauded investors, and ... ensuring that the distribution of those assets is as just and equitable as possible.” (June 25, 2009 Order, Docket No. 64). Under the circumstances, the Receiver suggests that it is more equitable to ensure the expeditious distribution of assets to the forty-five (45) other victims with approved claims, whose remaining claims total more than \$23 million, than to place all future distributions at the risk of lengthy delays and dissipation of Receivership assets through further litigation regarding any alleged Receivership tax liabilities with the government and/or Trade Creditors.

² It is important to note that the Receiver decided not to recommend providing higher priority to Investors than Trade Creditors largely because of the small amount at issue. The Receiver concluded that the cost of litigating a dispute by the Trade Creditors over priority did not justify the nominal benefit to the investors of a tiered priority distribution scheme.

³ Because the total Investor Creditor claims exceed the total value of the current and expected assets of the Receivership, subordination of the United States’ claims to Investor claims effectively allows the Receiver to distribute everything (beyond the referenced settlement amount) to investor victims without fear of future tax assessments and potential liability for improper payments under 31 U.S.C. § 3713(b).

CONCLUSION

For all the foregoing reasons, this Court should approve the proposed resolution of the Motion to Resolve Claims of Internal Revenue Service by entering the attached Consent Order, and further by entering an Order modifying the plan of distribution directing that all future distributions shall be made only to Investor Creditors and Oak Grove.

Respectfully submitted,

Date: February 28, 2013

/s/ Kevin Dooley Kent
Patricia M. Hamill, Esquire (I.D. No. 48416)
Kevin Dooley Kent, Esquire (I.D. No. 85962)
Andrew S. Gallinaro, Esquire (I.D. No. 201326)
Conrad O'Brien PC
1500 Market Street, Centre Square
West Tower, Suite 3900
Philadelphia, PA 19102

Counsel for Louis C. Bechtle, Receiver

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

SECURITIES AND EXCHANGE)	
COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	No. 2:09-cv-01634-JP
)	
DONALD ANTHONY WALKER)	
YOUNG, <i>et al.</i> ,)	
)	
Defendants,)	
)	
OAK GROVE PARTNERS, L.P., <i>et al.</i> ,)	
)	
Relief Defendants.)	

CONSENT ORDER RESOLVING FEDERAL TAX CLAIMS

WHEREAS on June 25, 2009, Louis Bechtle (“Receiver”) was appointed to serve as receiver for the assets of defendants Donald Anthony Walker Young, Acorn II, LP, Acorn Capital Management, LLC, including any and all entities owned or controlled by them (collectively, “the Acorn Entities”) and relief defendant Neely Young, (docket no. 64),

WHEREAS the Defendants Acorn II, LP and Acorn Capital Management, LLC have not filed income tax returns with the Internal Revenue Service,

WHEREAS the United States has assessed income taxes for the years from 2004 to 2008 against Donald Anthony Walker Young, totaling \$287,017 as of January 14, 2013,

WHEREAS upon assessment of a tax, and the failure to pay such a tax after notice and demand for payment, a tax lien arises under 26 U.S.C. § 6321, so that a federal tax lien attaches to all property and rights to property of Donald Anthony Walker Young,

WHEREAS 31 U.S.C. § 3713(b) provides that a “representative of a person or an estate . . . paying any part of a debt of the person or estate before paying a claim of the Government is liable to the extent of the payment for unpaid claims of the Government,”

WHEREAS the Receiver has made distributions to Oak Grove Partners, L.P., Investor Creditors, and Trade Creditors (as those terms are defined in the Receiver’s *Motion for Order Setting Claims Bar Date, Establishing Claims Procedure and Approving Notification Process*, docket no. 169),

WHEREAS the Receiver moved to reopen the claims procedures to resolve potential tax claims against the Receivership or the Receivership Assets (as that term is defined in the *Order Appointing a Receiver* (docket no. 64)) on December 31, 2012 (docket no. 310),

WHEREAS the Receiver may avail himself of the procedures to request a prompt assessment to the extent allowed under 26 U.S.C. § 6501(d) and 26 C.F.R. § 1.468B-2(m) for any tax liabilities of the Receiver or the Receivership Estate.

Upon the consent of the undersigned parties, it is hereby:

ORDERED that the Receiver shall distribute \$183,241 to the United States within 30 days as payment of the claims the United States may have asserted against the: (a) the Receiver, (b) the Receiver’s agents, servants, successors, assigns, administrators, employees, attorneys, advisors, and legal representatives, (c) the Receivership Estate, (d) Investor Creditors, or (e) Oak Grove for the unpaid income taxes of the Acorn Entities, relief defendant Neely Young, and any liability arising under 31 U.S.C. § 3713(b) arising from any income taxes;

ORDERED that the payment of \$183,241 shall be in full satisfaction of the United States’ claims with respect to any further distributions to Investor Creditors or Oak Grove. The

United States reserves the right to assert additional claims, including under 31 U.S.C. § 3713(b) with respect to future distributions to Trade Creditors;

ORDERED that the Receivership Assets, including any Receivership Asset that may be acquired in the future, may be distributed to Investor Creditors or Oak Grove pursuant to the Court approved distribution process free and clear of any tax liens of the United States arising from any income taxes of the Acorn Entities and relief defendant Neely Young; and it is

ORDERED that nothing in this order shall discharge or release the Acorn Entities and relief defendant Neely Young from any tax liabilities or any other obligations they may have under the Internal Revenue Code. Except as expressly provided for in the preceding paragraphs, this Order shall not discharge or release (a) the Receiver, (b) the Receiver's agents, servants, successors, assigns, administrators, employees, attorneys, advisors, and legal representatives, (c) the Receivership Estate, (d) Investor Creditors, or (e) Oak Grove of the federal income tax liabilities that may arise from their receipt of funds or other payments from the Receivership Estate.

Agreed:

By: /s/ Kevin Dooley Kent
Patricia M. Hamill, Esquire
Kevin Dooley Kent Esquire
Conrad O'Brien PC
1500 Market St, Centre Square
West Tower, Suite 3900
Philadelphia, PA 19102
Tel: (215) 864-9600
Fax: (215) 864-9620
Counsel for Louis C. Bechtle, Receiver

By: /s/ Ari D. Kunofsky
Ari D. Kunofsky
Trial Attorney, Tax Division
United States Department of Justice
P.O. Box 227, Ben Franklin Station
Washington, DC 20044
Tel: (202) 353-9187
Fax: (202) 514-6866
Counsel for the United States

APPROVED BY THE COURT:

Date: _____

, J.

EXHIBIT B

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**SECURITIES AND EXCHANGE
COMMISSION**

Plaintiff

v.

**DONALD ANTHONY WALKER YOUNG,
ET AL.**

Defendants

**OAK GROVE PARTNERS, L.P.,
NEELY YOUNG, AND W.B. DIXON
STROUD JR.,**

Relief Defendants

Civil Action No.: 2:09-cv-01634-JP

ORDER MODIFYING PLAN OF DISTRIBUTION

This matter came to be heard upon the Motion to Approve Payment of Federal Tax Claim and to Modify Distribution filed by Louis C. Bechtle (the “Receiver”), the Equity Receiver for the assets and records of defendants Donald Anthony Walker Young, Acorn Capital Management, LLC, Acorn II, LP and/or any entities that the defendants own or control or in which any of them have an interest (collectively “Acorn Entities”). The Receiver has represented that notice of the motion was served on all investors and trade creditors. Upon consideration of the Receiver’s Motion and all responses thereto, and based on the fact that the United States has reached an agreement with the Receiver, as reflected in the Consent Order Resolving Federal Tax Claims, that will resolve the United States’ claims against the Receivership Estate for any and all tax liability associated with the pre-Receivership activity of Donald Anthony Walker Young, Acorn II, LP, Acorn Capital Management, LLC, including any

and all entities owned or controlled by them, and relief defendant Neely Young, the Motion is GRANTED. It is further ORDERED as follows:

1. The Court's Order of February 23, 2011 Approving the Receiver's Plan of Distribution is hereby MODIFIED such that no further distributions shall be paid to Trade Creditors. Distributions to Investor Creditors and to Oak Grove may continue to be made consistent with the Receiver's approved plan, subject to paragraph 3 of this Order.

2. The Receiver is authorized to distribute \$183,241 to the United States as set forth in the Consent Order Resolving Federal Tax Claims. Payment shall be made to the "United States Treasury" and sent to United States Department of Justice- Tax Division, PO Box 310, Washington, DC 20044.

3. Oak Grove, LP's share of the next distribution shall be reduced by \$100,000, and Oak Grove shall use all reasonable efforts to ensure that any future distributions received from the Receivership are paid to Oak Grove's limited partner investors.

Date: _____

The Honorable John R. Padova, U.S.D.J.

EXHIBIT C

NOTICE OF MOTION TO MODIFY PLAN OF DISTRIBUTION

Donald Anthony Walker Young, Acorn II, L.P. and Acorn Capital Management, LLC
by its Receiver, Louis C. Bechtle

P.O. Box. 59227

Philadelphia, PA 19103

215-523-8307 – mail@acornreceiver.com

RE: Securities and Exchange Commission v. Young, et al.
United States District Court for the Eastern District of Pennsylvania,
Civil Action No. 09-1634

February 28, 2013

IMPORTANT NOTICE

Dear Creditor:

This is an important notification from the federally-appointed Receiver in the above-referenced matter. On February 28, 2013 the Receiver filed a Motion to Approve Payment of Federal Tax Claim and to Modify Distribution – a copy of which is attached to this Notice. If approved, the Receiver's Motion may materially impact your rights as a creditor of the Receivership Estate.

The Receiver has proposed to pay \$183,241 as part of a settlement with the Internal Revenue Service to satisfy the IRS' claims against the Receivership Estate for any and all tax liability associated with the pre-Receivership activity of Donald Anthony Walker Young, Acorn II, LP, Acorn Capital Management, LLC, including any and all entities owned or controlled by them, and relief defendant Neely Young in the above-captioned matter. Part of the proposed settlement requires that the Receiver make no further distributions to Trade Creditors. The reasons for the proposed modification to the plan of distribution are set forth in the attached Motion.

If you have an objection to the Receiver's Motion to Approve Payment of Federal Claim and to Modify Distribution, you must file a response with the Court. Pursuant to Rule 7.1 of the Eastern District of Pennsylvania Local Rules of Civil Procedure, **responses to this Motion are due within seventeen (17) days of your receipt of this Notice.** Responses must be filed with Court and should not be submitted to the Receiver. In addition to this notice, a copy of the Receiver's Motion to Approve Payment of Federal Claim and to Modify Distribution has been posted on the Receiver's website at www.acornreceiver.com.

CONRAD O'BRIEN, PC

Patricia M. Hamill, Esq.
Kevin Dooley Kent, Esq.
Counsel for the Receiver

EXHIBIT D

SEC v. Acorn Capital Management, LLC, et al.
Distribution Summary - 2nd Interim Distribution
Rising Tide Method

Claimants	Total Claims	Claim Amount	Pre-Distribution Recovery	1st Interim Distribution		2nd Interim Distribution		Total Distributions to Date		
				# of Claimants Receiving a Distribution	Distribution Amount	# of Claimants Receiving a Distribution	Distribution Amount	# of Claimants Receiving a Distribution	Total Distribution Amount	Average Cumulative Recovery
Investors Claims:										
Who Did Not Receive Redemptions	26	\$ 14,842,605	0.00%	26	\$ 3,339,453	26	\$ 2,784,861	26	\$ 6,124,313	41.26%
Who Received Redemptions	18	15,885,864	41.06%	7	850,354	11	2,539,497	11	3,389,851	54.99%
Total Investor Claims	44	30,728,469	20.53%	33	4,189,807	37	5,324,358	37	9,514,164	48.12%
Oak Grove Partners, LP	1	3,517,762	0.00%	1	791,465	1	660,024	1	1,451,489	41.26%
Trade Creditors	27	83,241	0.00%	27	18,728	27	15,618	27	34,347	41.26%
Total Claimants	72	\$ 34,329,472	13.69%	61	\$ 5,000,000	65	\$ 6,000,000	65	\$ 11,000,000	45.84%