

FILED
THIRD DISTRICT COURT
10 JAN 21 PM 3:48
SALT LAKE DEPARTMENT

MANNING CURTIS BRADSHAW
& BEDNAR LLC

L.R. Curtis, Jr. [0784]
David C. Castleberry [1151]
170 South Main, Suite 900
Salt Lake City, UT 84101-1655
Telephone (801) 363-5678
Facsimile (801) 364-5678

BY _____
DEPUTY CLERK

Attorneys for Receiver for FFCF Investors, LLC,
Ascendus Capital Management, LLC,
and Smith Holdings, LLC

IN THE THIRD DISTRICT COURT, SALT LAKE COUNTY

STATE OF UTAH

A. DAVID BARNES, M.D., P.C.,

Plaintiff,

vs.

FFCF INVESTORS, LLC, et al.

Defendants.

**RECEIVER'S MOTION FOR
APPROVAL OF PROOF OF CLAIM
FORM AND CLAIM REVIEW PROCESS**

Case No. 080922273

Judge: Denise P. Lindberg

FFCF INVESTORS, LLC,

Plaintiff,

vs.

RICHARD SMITH, et al.

Defendants.

R. Wayne Klein, the Court-Appointed Receiver (the “Receiver”) of Ascendus Capital Management, LLC (“Ascendus”), FFCF Investors, LLC (“FFCF”), and Smith Holdings, LLC (“Smith Holdings”), (collectively, the “Receivership Entities”), hereby moves for Court approval of the form to be used for investors and others (“Claimants”) to make claims (“Claims”) against the assets of the Receivership Entities and for approval of the process to be used by the Receiver in evaluating the Claims.

Background

The Court appointed the Receiver on March 18, 2009, in connection with an investor lawsuit filed against the Receivership Entities. Under the order appointing a receiver, the Receiver was initially empowered to “marshal and take control of all assets and property” of the Receivership Estate (*Order Appointing a Receiver*, at 2). The Receiver was directed to “liquidate and convert into money all of the assets” of the Receivership Entities (*id.* at 3), “pending further order of the Court” (*id.*).

Since the date the Receiver was appointed, notable progress has been made in recovering funds for the Receivership Estate. This progress is described in the five reports to the Court by the Receiver dated April 13, May 29, July 10, September 25, and November 25, 2009. Much remains to be accomplished in the recovery of funds. Nevertheless, the Receiver believes it is appropriate at this time to identify those persons who will be asserting Claims against the property of the Receivership Estate and determine the amount of valid Claims.

Accordingly, the Receiver moves for Court approval of the following Claims Review Procedure and the attached Proof of Claim Form.

Proposed Claims Review Procedure

1. **Distribution of Proof of Claim Forms** The Receiver will distribute Proof of Claim Forms, in the form attached as Exhibit A (Instructions and Proof of Claim Form), to all investors known to the Receiver and to others who have informed the Receiver of an intent to make Claims against the Receivership Estate. The Proof of Claim Form will also be posted on the website of the Receiver, available for any person to access.
2. **Proof of Claim Deadline** Proof of Claim Forms must be submitted to the Receiver by April 30, 2010 to be accepted. Proof of Claim Forms mailed after that date will be deemed invalid, absent demonstration of compelling circumstances or Court order.
3. **Assignment of Claim Number** When Claims are submitted, the Receiver will assign a Claim number (“Claim Number”) to each Claim. To maintain the confidentiality of Claimants, Claims will be referred to by Claim Number in public filings. Information as to the identity of Claimants will be provided to the Court for *in camera* review.
4. **Review for Completeness** Proof of Claim Forms will be reviewed for completeness when received. If required information is missing, the Claimant will be given an opportunity to submit the missing information within ten days after the Receiver mails notice to Claimant that information is missing.
5. **Documentation Required** Claimants will be expected to submit documents supporting the amount of their Claim. If Claimants fail to submit documents supporting the amount of their Claims, the Receiver will have discretion to make a recommendation to the Court of an allowable Claim amount, based on the records of the Receiver. The Receiver may

recommend that the Claim be allowed in full, allowed at a reduced Claim amount, or denied. (*Note: the amount allowed for the “Claim” does not mean there will be enough money to pay the full Claim.*)

6. **Signature and Waiver Required** For a Proof of Claim to be valid, the Claimant must sign the Proof of Claim Form under penalty of perjury and agree to make the Claims process the exclusive means of making a Claim against the Receivership Estate.
7. **Initial Classification of Claims** The Receiver will initially classify Claims as “allowed,” “reduced,” or “rejected.” The Receiver’s review will be premised upon the principles set forth in the attached Exhibit B.
 - a. “Allowed” Claims will be those where the amount of Claim is the same as shown on records of the Receiver or where the Claimant submits documentation demonstrating to the satisfaction of the Receiver that the claimed amount is accurate.
 - b. “Reduced” Claims will be those where the Receiver believes the Claimant is entitled to a portion, but not all, of the amount claimed. Reductions might be recommended based on i) inadequate evidence that the claimed amount was actually paid to the Receivership Entities making the Claim, ii) the Claimant failing to offset distributions paid by the Receivership Entities, iii) the Receiver’s belief that the Claimant had business affiliations with Ascendus, FFCE, or Smith Holdings, assisted in promoting the investment program, or was on notice of problems with the companies, such that the claimed amount should be discounted,

or iv) the presence of other factors indicating that the Claim amount should be reduced.

- c. “Rejected” Claims will be those where i) the Receiver believes the Claim knowingly contains false information, ii) the Claimant is an investor who has already received a return of the full principal amount invested, iii) the Claim is by a person who assisted in the investment program that is the subject of the Receivership, iv) the Claim is for debts not related to the operation of the Receivership Entities, or v) other situations where it would not be proper to use the assets of the Receivership Estate to pay the Claim.

8. **Notice of Preliminary Allowable Claim Amount** When the Receiver has finished his review of the completed Proof of Claim Forms and documentation submitted by Claimants, the Receiver will notify each Claimant of the Receiver’s determination of the “Preliminary Allowable Claim Amount.” For Claims where the Receiver intends to recommend a reduced Claim amount or reject the Claim, a Notice similar to Exhibit C will be mailed to the Claimant. Claimants who disagree with the Receiver’s determination of the Preliminary Allowable Claim Amount will be allowed thirty (30) days from the date of mailing to submit additional documentation to support the amount of their Claim or to seek to persuade the Receiver that his determination should be modified. Claimants will be able to indicate acceptance of the Receiver’s recommendation.

9. **Review of Supplemental Information** The Receiver will review any documentation

and information submitted in response to his notice of the Preliminary Allowable Claim and compile a list of recommended Allowable Claim Amounts.

10. **Recommendation to the Court.** The Receiver will file with the Court his recommendation of the Allowable Claim Amounts and send a copy to all Claimants.
11. **Claimant Objections Filed with the Court** Claimants who disagree with the Receiver's recommendation to the Court of the Allowable Claim Amount will have thirty (30) days from the time the Receiver's recommendations are filed with the Court to file an objection to the Receiver's recommendation. Any Claimant who fails to file a timely objection with the Court will be deemed to have consented to the Allowable Claim Amount as determined by the Receiver.
12. **Court Resolution of Objections** When the Receiver submits to the Court his recommendations of the Allowable Claim Amounts, the Receiver will suggest a process the Court might use to resolve the objections, in light of the number and nature of objections expected. Possible options include a hearing at which Claimants can argue their objections, making rulings based on written submissions, or referral to a special master.
13. **Determination of Final Allowable Claim Amounts** When the Court has ruled on the objections, the Receiver will file a Final Claims Summary which will report, as to each Claim number, the final allowed amount. This Final Claims Summary will also be posted on the Receiver's website. The Final Claims Summary amounts will be used by the Receiver in making pro-rata distributions of assets he has recovered in the Receivership.

14. **Distribution of Funds** The Receiver can begin making payments to investors and other Claimants. It is expected that the Receiver will make distributions in stages, depending on the pace at which remaining funds are recovered and litigation is completed.

Proposed Timetable The Claims procedure outlined above involves a number of steps and time periods for each step. It is hoped the Claims procedure can be completed according to the following timetable:

- **April 30, 2010** Deadline for submission of Proof of Claim Forms.
- **May 14, 2010** Receiver will have notified Claimants of any deficiencies in their Proof of Claim Forms and give an opportunity to supply missing information.
- **May 24, 2010** Deadline for submission of information identified by Receiver as missing.
- **June 15, 2010** Completion of initial review of Proof of Claim Forms by the Receiver. Receiver will send notice of Preliminary Allowable Claim Amounts to each Claimant.
- **July 15, 2010** Deadline for Claimants to submit any additional documentation in response to notice by the Receiver that the Preliminary Allowable Claim Amount is reduced or rejected.
- **August 13, 2010** Receiver will file with the Court a report listing the Allowable Claim Amounts recommended by the Receiver.
- **September 13, 2010** Deadline for Claimants to file with the Court any objections to the

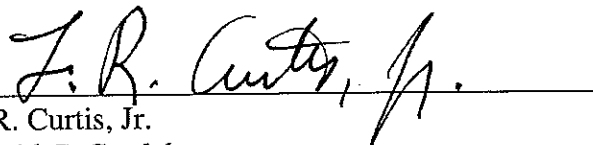
Receiver's list of Allowable Claim Amounts.

- **September 30, 2010** Receiver will file with the Court a proposed process for resolving the objections and a proposed distribution plan, to be implemented when the list of Allowable Claims is finalized.
- **November 15, 2010** Goal for completion of Court review of, and ruling on, objections and on the proposed distribution plan. This will result in a final list of Allowable Claims and permission for the Receiver to begin making distributions.

WHEREFORE, the Receiver Wayne Klein asks this Court to approve the foregoing claims procedure and enter the Order attached hereto as Exhibit D.

DATED this 21st day of January, 2010.

MANNING CURTIS BRADSHAW & BEDNAR LLC



L.R. Curtis, Jr.
David C. Castleberry
Attorneys for Receiver for FFCF Investors, LLC, Ascendus
Capital Management, LLC and Smith Holdings, LLC

Plaintiff:

Wayne Klein
Court-Appointed Receiver for FFCF Investors, LLC,
Ascendus Capital Management, LLC,
and Smith Holdings, LLC
299 South Main, Suite 1300
Salt Lake City, UT 84111

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of January, 2010, I caused to be sent via first-class mail, postage prepaid, a true and correct copy of the foregoing Receiver's Motion for Approval of Proof of Claim Form and Claim Review Process to:

Roger E. Taylor
1360 Summerwood Cir
Santa Clara UT 84765

Steven C. James
197 Centennial Cove
Lehi, UT 84043

James D. Gilson
Callister Nebeker & McCullough
10 East South Temple, Suite 900
Salt Lake City, UT 84133
Counsel for A. David Barnes

David W. Scofield
Peters/Scofield
2455 East Parleys Way, Suite 115
Salt Lake City, UT 84109
Counsel for Robert Workman

Richard T. Smith
443 North 750 East
Orem, UT 84097

Erik Christiansen
Parsons Behle & Latimer
201 South Main Street, Suite 1800
Salt Lake City, UT 84111
Counsel for Albert Wirth

Craig R. Madsen
1112 North 700 East
Springville, UT 84663
Counsel for Kathryn Rowley

Anthony W. Schofield
Kirton & McConkie
518 West 800 North, Suite 204
Orem, UT 84057
Counsel for T. Courtney Smith

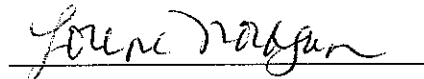


EXHIBIT A

EXHIBIT A

**THIRD DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH**

A. David Barnes, M.D.,

Case No. 080922273

vs.

FFCF Investors, LLC, Ascendus Capital Management, LLC, Smith Holdings, LLC, Richard T. Smith, and Roger E. Taylor.

PROOF OF CLAIM FORM

FFCF Investors, LLC ("FFCF") Ascendus Capital Management, LLC ("Ascendus") and Smith Holdings, LLC ("Smith Holdings")

Please review the attached "Instructions" for information on how to complete this form.

Deadline:

All Proof of Claim Forms must be returned to the Receiver (Wayne Klein) by April 30, 2010.

Mail to:

FFCF/Ascendus Claim Form

Wayne Klein, Receiver

299 South Main, Suite 1300

Salt Lake City, UT 84111

Note: Do not mail the claim form to the court.

A. CLAIMANT INFORMATION

Response

1.	Contact Information	
	Claimant Name	
	Joint Holder/Investor	
	Address	
	City, State, Zip	
	Phone Number	
	Mobile Phone	
	E-Mail Address	
	Tax Identification Number	
2.	Entities: If any of the investments were made by an entity, list all persons who directly or indirectly hold beneficial interests in the entity and their share of ownership.	
3.	Affiliation/Relationship: Attach an explanation for any "yes" answers.	
	Are you related to Roger Taylor or Richard Smith?	

	Have you been a business partner with Taylor or Smith, assisted in the creation of companies they managed, or been a signatory on any bank accounts they held?			
	Have you ever received financial support from Taylor or Smith, such as salary, loans, or gifts of money or property?			
4.	Sales Activity: Did you solicit others to invest with Ascendus or FFCF or did you receive compensation as a result of others investing with Ascendus or FFCF?			
5.	Type of Claim			
	<u>Ascendus Investor?</u> Did you pay money (or have others pay money for you) to Ascendus Capital Management? (<i>Note: do not include funds that you deposited into a brokerage account at Penson Financial Services or Great Eastern Securities .</i>)	Yes/No:		
	<u>Investor in FFCF?</u> Did you pay money to FFCF Investors, LLC?	Yes/No:		
	<u>Non-Investor Creditor?</u> Do you claim that Ascendus or FFCF owes you money for something other than an investment?	Yes/No:		
B. INVESTOR CLAIM INFORMATION				
1.	Funds Given to Ascendus. List the amount and date of each payment given to Ascendus by you, or by others for you, for investment purposes. (<i>Do not include monies given to FFCF, Penson, or Great Eastern.</i>)	Amount	Date	What documents are enclosed?
	First investment			
	Second investment			
	Third investment			
	Fourth investment			
	Fifth investment			
	Are additional sheets enclosed with more investments?			Yes/No:
	Total amount given to Ascendus			

2.	Monies Received from Ascendus. List the amount and date of each payment you received from Ascendus. This includes interest, withdrawals, and payments by Ascendus to others for you. It also includes payments to you by Roger Taylor, Richard Smith, or others in connection with your investment payments to Ascendus.	Amount	Date	What documents are enclosed?
	First payment			
	Second payment			
	Third payment			
	Fourth payment			
	Fifth payment			
	<i>Are additional sheets enclosed with more payments?</i>			Yes/No:
	Total amount received from Ascendus			
3.	Net Investment Results - Ascendus			
	What is the net results of your investment with Ascendus? In most cases, this will consist of the total amount of investments minus the total amount you were paid.			
4.	Funds Given to FFCF. List the amount and date of each payment given to FFCF by you, or by others for you, for investment purposes.	Amount	Date	What documents are enclosed?
	First payment			
	Second payment			
	Third payment			
	Fourth payment			
	Fifth payment			
	<i>Are additional sheets enclosed with more investments?</i>			Yes/No:
	Total amount given to FFCF			
5.	Monies Received from FFCF. List the amount and date of each payment you received from FFCF. This includes interest, withdrawals, and payments by FFCF to others for you. It also includes payments to you by Roger Taylor, Richard Smith, or others in connection with your investment.	Amount	Date	What documents are enclosed?
	First payment			
	Second payment			
	Third payment			
	Fourth payment			
	Fifth payment			
	<i>Are additional sheets enclosed with more payments?</i>			Yes/No:

	Total amount received from FFCF		
6.	Net Investment Results - FFCF		
	What is the net results of your investment with FFCF? In most cases, this will consist of the total amount of investments minus the total amount you were paid.		
C.	CLAIMS FOR NON-INVESTOR DEBTS		
1.	Nature of Claim	Explanation	
	Explain the nature of the claim you have against Ascendus, FFCF, or Smith Holdings. <i>Attach additional pages as necessary.</i>		
	Explain the reasons you believe this claim should be paid by the Receivership Estate. <i>Attach additional pages as necessary.</i>		
2.	Claims Against Receivership Estate. List the amounts you claim are owed you by the Receivership Estate, along with the dates of each payment and the documentation supporting your claim.	Amount	Date
			What documents are enclosed?
	First payment/amount claimed.		
	Second payment/amount claimed.		
	Third payment/amount claimed.		
	Fourth payment/amount claimed.		
	Fifth payment/amount claimed.		
	<i>Are additional sheets enclosed with more claims?</i>		Yes/No:
	Total amount claimed for non-investor debts.		
D.	TOTAL AMOUNT OF CLAIM (investors and creditors).		
E.	SIGNATURES OF CLAIMANT(S): <u>Important:</u> Filing this proof of claim shall constitute agreement that this claims process shall be the exclusive means of making a claim against the Receivership Entities and shall be a waiver of any other claims against the Receivership Entities or the Receiver. All Claimants must sign this Claim Form.		
	I/we do hereby declare under penalty of perjury that the above information is correct to the best of my/our knowledge and belief.		Date

[EXHIBIT A]
INSTRUCTIONS FOR PROOF OF CLAIM FORM

**Ascendus Capital Management, LLC (“Ascendus”), FFCF Investors, LLC (“FFCF”), and
Smith Holdings, LLC (“Smith Holdings”)**

Instructions

The attached “Proof of Claim” Form has been approved by the Third District Court of Utah. These instructions apply to that Proof of Claim Form. This process is the exclusive method for investors and others to assert claims against any of the monies or assets of Ascendus, FFCF, and Smith Holdings which have been or should be delivered to Wayne Klein, the Court-appointed Receiver (“Receiver”). Persons who invested in Ascendus or FFCF may complete the Proof of Claim Form and submit it to the Receiver. Persons who have other claims against the assets of Ascendus, FFCF, or Smith Holdings also may use this form to make claims.

The following guidelines apply to this Proof of Claim Form:

1. **Documents.** The Receiver will make an initial evaluation of the claim based on records deemed to be reliable. Investors are strongly encouraged to submit copies of documents establishing that funds were sent to Ascendus or FFCF in order to establish the amount invested. Copies of bank documents will be the most persuasive means of demonstrating how much money was invested. *Note: because investment account statements sent to investors did not reflect actual profits earned by the companies, copies of account statements received from Ascendus or FFCF will not be deemed reliable indications of monies invested.* In the event the documents submitted by investors show different results than bank records reconstructed by the Receiver, the Receiver will base his recommendation to the Court on the records deemed most reliable.
2. **Signed Under Oath.** The Proof of Claim Form must be signed under penalty of perjury. If the amount of a claim is based on false or misleading information, the Receiver may recommend that the entire claim be denied.
3. **Confidentiality.** The Receiver will endeavor to maintain the confidentiality of information submitted by claimants, by assigning a claim number to each claim. Public filings will refer to claims by claim number. The Receiver will provide to the Court information allowing it to identify each claimant.
4. **Types of Claims.** Persons whose claims are based on “investments” made with Ascendus or FFCF should list those investments in Section B of the Proof of Claim Form. Persons whose claims are based on other business dealings with Ascendus or FFCF should complete Section C of the Proof of Claim Form. Claimants may make claims under both sections if they had investment and non-investment dealings with the companies. Unsecured claims arising from non-investment dealings with these companies are less likely to be deemed valid claims against the assets of Ascendus,

FFCF, and Smith Holdings.

5. **Classes of Claims.** The Receiver may recommend to the Court that claims be divided into more than one class, with higher percentages of claims being paid to certain classes. Claims that may be assigned to classes receiving lower percentages of recovery might include claims for non-investment business dealings with the companies, claims by family members or business associates, claims by persons who may have had knowledge of the true financial condition of the companies or who otherwise may not have acted in complete good faith, claims based on goods or services, and claims containing false or misleading information.
6. **Allowable Claims will be Based on the Principal Amount of Investment.** The amount of valid claims determined by the Receiver will be based on the amount of funds actually paid to Ascendus or FFCF, not based on profits reported on account statements prepared by these companies. Because it is expected that there will only be enough money to pay a portion of valid claims, no one will be allowed to recover more than the amount of their actual investment unless all investors recover at least the amount of their investment.
7. **Submission Deadline.** The Proof of Claim Form must be sent to the Receiver and delivered or postmarked by **April 30, 2010**. Claims postmarked or delivered after that date may be denied. If you are aware of other claimants, please encourage them to submit claims before the deadline. Additional copies of this Proof of Claim Form are available on the Receiver's website at www.kleinutah.com. Proof of Claim Forms and documentation supporting the claim should be mailed, instead of being sent electronically. The Receiver cannot confirm the receipt of claim documents sent electronically. *Claim forms should NOT be sent to the court.*
8. **Keep a Copy!** Claimants should keep a copy of the Proof of Claim Form and supporting documentation. Claimants should keep their original copies of supporting documents and send photocopies to the Receiver. The Receiver will contact you if he needs the original documents for review.
9. **Steps in the Claim Review Process.**
 - a. Proof of Claim Forms will be reviewed for completeness when received. If required information (such as a signature) is missing, the claimant will be contacted and given an opportunity to submit the missing information within ten days.
 - b. The Receiver will determine the validity of the amount of the claim by reviewing the Proof of Claim Form and supporting documentation and by comparing the claim with the financial records reconstructed by the Receiver. If the records do not match, the Receiver will make his recommendations based on records he deems most accurate – whether from the claimant or from the Receiver's analysis.
 - c. The Receiver will make a determination of the Preliminary Allowable Claim Amount. *Note: This is the amount that the claimant can validly claim against the*

*amount of assets recovered by the Receiver. It does **not** mean that that amount will be available for payment. The amount actually paid to claimants is expected to be a small percentage of the amount of allowable claims because we anticipate that there will be valid claims for more money than will be recovered.*

- d. Claimants will be notified of the Receiver's determination of their Preliminary Allowable Claim Amount. Claimants who disagree with the Receiver's determination of the preliminary allowable claim amount will have thirty (30) days to provide additional documentation to support the amount of their claim or to persuade the Receiver that his preliminary determination should be modified.
- e. The Receiver will file with the Court his recommendations of the Allowable Claim Amount for each claimant.
- f. Claimants who disagree with the Receiver's recommendation will have thirty (30) days from the time the Receiver's recommendations are filed with the Court to file with the Court an objection to the Receiver's recommendation.
- g. The Court will establish a process for evaluating and ruling on the objections.
- h. When the Court has ruled on the objections, the list of allowable claim amounts will be deemed final.
- i. Distribution of funds recovered on behalf of Ascendus, FFCF, and Smith Holdings will be made on a pro-rata basis based on the final allowable claim amounts.

10. **Timetable.** The following is the expected timetable for determining allowable claims:

Date	Event
April 30, 2010	Deadline for submission of Proof of Claim Forms.
June 15, 2010	Receiver will complete his initial review of claim forms and will send notice of Preliminary Allowable Claim Amounts.
July 15, 2010	Deadline for submission of any additional information by claimants disagreeing with the Preliminary Allowable Claim determination and requesting additional review.
August 13, 2010	Receiver will file a report to the Court listing his recommendations for Allowable Claim Amounts. This report will also be mailed to all claimants.
September 13, 2010	Deadline for claimants to file with the Court any objections to the Receiver's recommendation of allowable claims.
November 15, 2010	Goal for completion of the Court's review of objections, creation of a final list of allowable claims, and Court approval of a distribution plan. Distributions of funds can begin.

The Proof of Claim Form must be mailed by **April 30, 2010** to the Receiver at:
Ascendus/FFCF Claim Form
Wayne Klein, Receiver
299 South Main, Suite 1300
Salt Lake City, UT 84111

EXHIBIT B

EXHIBIT B

[EXHIBIT B]

Guidelines for Claims Review, Reductions, and Rejections

1. **Claims should be supported by documentation.** Because the Receiver has determined that the records of Ascendus, FFCF, and Smith Holdings are incomplete and inaccurate, they will not be considered a reliable measure of amounts paid to these companies. Proof of Claim Forms should be accompanied by documents, such as bank records, providing evidence of the amounts paid to the companies and amounts received from them. If Proof of Claim Forms are submitted without supporting documentation, the Receiver will rely on documentation he believes best represents the actual financial transactions that occurred.
2. **Allowable claims should be based on “principal” amounts invested.** The “principal” amounts paid to Ascendus or FFCF will be used to calculate the amount of loss, not the amounts shown on account statements. Withdrawals or distributions will be deemed withdrawals of principal, not payment of profits.
3. **Allowable claims will be determined based on payments to Receivership Entities.** The allowable amount of claims will be based on amounts paid to Ascendus or FFCF for investment purposes. Payments investors may have made to Penson Financial Services, Taylor, Smith, or others will not be considered as components of a valid claim absent compelling justification.
4. **Grounds for disallowing claims.** Investors who received distributions in amounts greater than the amount of their principal investments will have their claims rejected. Claims that are not signed or are deemed to knowingly include false information will be rejected. Claims postmarked after the submission deadline will be rejected absent compelling justification for the delay.
5. **Claims by affiliated persons.** The Receiver may reject or reduce the recommended amount to be paid on claims submitted by persons who had a role in the operation of the businesses of Ascendus, FFCF, or Smith Holdings, solicited others to make investments, received compensation based on the investments of others, had close business relationships with the companies, Taylor, or Smith, or based on other appropriate factors.
6. **Receiver’s use of business judgment.** The Receiver will use his business judgment in making recommendations to the Court regarding: a) whether claims by persons associated with other investors (such as investments by a claimant from personal and business accounts) should be treated separately or aggregated and b) whether claims should be reduced or rejected based on indications of lack of good faith by claimants in their dealings with the companies, or with the Receiver.

EXHIBIT C

EXHIBIT C

[EXHIBIT C]
**WAYNE KLEIN, RECEIVER FOR FFCF INVESTORS, LLC, ASCENDUS
 CAPITAL MANAGEMENT, LLC, AND SMITH HOLDINGS, LLC**
Third District Court Case No. 080922273

Name
 Address
 City, State, Zip

NOTICE OF REDUCED OR REJECTED PROOF OF CLAIM

Dear _____:

Your Proof of Claim Form has been assigned Claim No. _____.

Wayne Klein, the Court-appointed Receiver for Ascendus, FFCF, and Smith Holdings has reviewed your Proof of Claim. The Receiver intends to recommend that your Claim be reduced or rejected for the reason(s) described below. Your Proof of Claim indicated a Claim amount of \$ _____. The Receiver intends to recommend that the Court allow \$ _____ of that Claim and reject any amounts in excess of the allowed amount.

The reason(s) for the Receiver's decision to recommend that your Claim be reduced or rejected are:

- _____ The Claim form was not signed.
- _____ The Claim form was not postmarked on or before April 30, 2010.
- _____ The documentation you provided does not support the amount you claimed.
- _____ Our records indicate that additional amounts should be deducted for distributions, withdrawals, or payments of profits to you.
- _____ Our records do not show that your payments were made to the Receivership Entities or to others for the Receivership Entities.
- _____ Other: _____

CALCULATIONS. The Receiver's records show the following payments relating to your dealings with Ascendus, FFCF, and Smith Holdings:

Amount actually paid by Claimant to or for the Receivership Entities:	
DEDUCTION: amounts previously paid to Claimant:	
Allowed amount:	
Claimed amount (on the Proof of Claim Form submitted by Claimant):	
Excess amount of Claim:	

What if I disagree with the Receiver's recommendation of a reduced or rejected Claim Amount?

You may submit additional documentation to the Receiver in response to this Notice by mailing it to the Receiver at the address below. **Note: Your response must be postmarked no later than _____** (30 days after mailing of Notice).

What happens next?

Following receipt of your supplemental documentation, the Receiver will review the information you submit and determine whether or not the Receiver changes his recommendation. If the Receiver changes his recommendation, you will be notified by letter indicating the amount of the allowed Claim.

If the Receiver does not change his recommendation, the Receiver will submit a list to the Court of the Allowable Claim Amounts, including his recommendation for your Claim. You will be mailed a copy of the Receiver's recommendation to the Court. You will have thirty (30) days from the time of the Receiver's filing with the Court to file with the Court an objection to the Receiver's recommendation. If you fail to file an objection with the Court, you will be deemed to have consented to the Receiver's recommendation.

How do I accept the Receiver's recommendation of the amount of my allowable Claim?

Please sign this form in the space provided below and return it to the Receiver at the address listed below. Upon receipt of this signed form, the Receiver's recommendation will be deemed accepted and your Claim amount will be reduced to the amount recommended by the Receiver.

I AGREE WITH THE RECEIVER'S RECOMMENDATION AND ACCEPT THE ALLOWED AMOUNT OF THE CLAIM.

Signed: _____ Date: _____

How much will I be paid under the Receiver's calculations?

The "allowed amount" is **not** the amount that will actually be paid. At a future date, the Court will approve a distribution plan, which is expected to be based on the amount of money available and the total amount of allowed Claims. The Receiver expects there will only be sufficient funds to pay a portion of the total amount of each allowed Claim.

When will the allowed amount be paid?

The Receiver hopes to receive approval from the Court to begin paying allowable Claims in November 2010. Because the Receiver does not expect that all the funds will be recovered by that time and that not all the litigation will be completed, the Receiver expects that additional payments will be made in stages, as funds are recovered.

Address of the Receiver:

Wayne Klein, Receiver for Ascendus, FFCF, and Smith Holdings
299 South Main, Suite 1300
Salt Lake City, UT 84111
(801) 534-4455

EXHIBIT D

EXHIBIT D

MANNING CURTIS BRADSHAW
& BEDNAR LLC

L.R. Curtis, Jr. [0784]
David C. Castleberry [1151]
170 South Main, Suite 900
Salt Lake City, UT 84101-1655
Telephone (801) 363-5678
Facsimile (801) 364-5678

Attorneys for Receiver for FFCF Investors, LLC,
Ascendus Capital Management, LLC,
and Smith Holdings, LLC

IN THE THIRD DISTRICT COURT, SALT LAKE COUNTY

STATE OF UTAH

A. DAVID BARNES, M.D., P.C.,

Plaintiff,

vs.

FFCF INVESTORS, LLC, et al.

Defendants.

[PROPOSED]

**ORDER APPROVING PROOF OF
CLAIM FORM AND CLAIM REVIEW
PROCESS**

Case No. 080922273

Judge: Denise P. Lindberg

FFCF INVESTORS, LLC,

Plaintiff,

vs.

RICHARD SMITH, et al.

Defendants.

The matter before the Court is the Receiver's Motion for Approval of Proof of Claim Form and Claim Review Process filed by R. Wayne Klein, the Court-Appointed Receiver of Ascendus Capital Management, LLC, FFCF Investors, LLC, and Smith Holdings, LLC. The Court has reviewed the Motion and the file and based thereon and for good cause shown,

IT IS HEREBY ORDERED that:

1. The Motion is GRANTED.
2. The Court approves the Proof of Claim Form and Instructions proposed by the Receiver attached as Exhibit A to the Receiver's motion.
3. The Court approves the Claim Review Process as set forth in the Motion, including the Guidelines for Claims Review, Reductions, and Rejections attached as Exhibit B and the form of the Receiver's Notice of Reduced or Rejected Proof of Claim, attached as Exhibit C to the Receiver's Motion.

Dated this ____ day of February, 2010.

BY THE COURT

Judge Denise P. Lindberg
District Court Judge