

- The Court found “that interim payments are appropriate at this time to compensate the Receiver as well as the professionals that he has retained to assist him in managing the Estate.” (Dkt. 1030, at 9)
- “[T]he Court has repeatedly found that there has been a significant need for the Receivership assets to be managed by a neutral party until an orderly claims process is concluded, and the Receiver’s efforts on that front have benefited and will continue to benefit the Receivership Estate.” (*Id.* at 11 (citing, *e.g.*, 10/26/20 Order at 3; 6/9/20 Order at 3; 1/7/20 Order at 3))
- The Court referred to the magistrate judge issues relating to the Receiver’s proposed allocation of fees among the liquidated properties’ proceeds. (Dkt. 1030, at 2)
- The Court found that the Receiver’s “efforts to preserve, operate, maintain, and ultimately sell the more than 100 properties in question, including addressing numerous health and safety issues (such as the more than two dozen open building code violations, as an example), overseeing significant repairs and improvements, paying the required real estate taxes, and litigating various state court actions involving the properties.... benefited the Estate at a whole, as well as all of the creditors collectively. Thus, it is fair and equitable that the Receiver’s lien take priority over the liens of any and all secured creditors with respect to this first category of fees and expenses.” (Dkt. 1030, at 11-12)
- The Court also found that “[t]he Receiver expended significant effort to set up the streamlined process through which the validity and relative priority of each claim

can be determined (such as negotiating with stakeholders to develop standard discovery requests). This was necessary to untangle the morass of competing claims created by the Cohens, and the Institutional Lenders will reap the benefits of the process.” (Dkt. 1030, at 13-14)

- The Court further found that “[b]y developing and implementing the summary claim-priority adjudication process, the Receiver has conferred a ... benefit here, regardless of which claimant is determined to be the first-priority secured lienholder at the end.” (Dkt. 1030, at 13 (citing and discussing *S.E.C. v. Elliott*, 953 F.2d 1560, 1577 (11th Cir. 1992).) “As such, the Court grant[ed] the Receiver’s request that he be given a first- priority lien for his work developing and implementing the claim-priority adjudication process.” (Dkt. 1030, at 14)
- The Court “mandate[d] a 20% holdback on all fees (but not expenses) paid pursuant to the Receiver’s lien.” (Dkt. 1030, at 15) “[T]he Court [did] not order[] a clawback of any fees paid from unencumbered assets that were approved in previous orders granting the Receiver’s interim fee applications.” (Dkt. 1030, at 15) “But going forward, if a payment of approved fees is drawn from the sale proceeds of encumbered real estate, regardless of whether the Court approved the fees prior to the entry of this Order, then the Receiver must reduce the amount drawn by 20%.” (Dkt. 1030, at 15-16)
- “Furthermore, pursuant to the Court’s order approving a priming lien for certain categories of expenses, [the Court also ordered that] if the Receiver seeks to pay fees approved by this order from the sales proceeds of encumbered real estate,

then the amount the Receiver is entitled to draw is subject to an additional 20% holdback.” (Dkt. 1031, at 14.)

The Court, having considered the Receiver’s Motion and any objections thereto, hereby finds as follows:

The Receiver has made an earnest effort to allocate fees to specific real estate assets, and the schedules submitted to the Court by the Receiver (Dkt. 1107, Group Ex. 1) reasonably allocate the actual costs of the receivership to the specific assets of the Estate. *See Elliott*, 953 F.2d at 1578.

The Receiver’s apportionment of the general allocations (*id.*, Exs. 2 and 3) as a percentage of the gross sales price has been done in accordance with the approved methodology. (*Id.*, Ex. 5) The general allocations are proper and reflect the provision of benefits to the various properties to which such allocations have been assigned, but which it is impossible to further allocate such expenses. *See Elliott*, 953 F.2d at 1578.

The interim payment of fees from the segregated property accounts in accordance with the schedules attached to the Receiver’s motion as Exhibits 1-3, as amended on [DATE] to adjust for the closing of the final estate property and the allocation of agency fees, is approved.¹

The Receiver may transfer the allocated funds from the appropriate property account to the Estate’s operating account, except that consistent with the Court’s Orders #1030 and #1031, the Receiver shall hold back 20% of all fees paid pursuant to the Receiver’s lien, and an

¹ This Proposed Order assumes that the district court will have granted the Receiver’s Twelfth and Thirteenth Fee Applications covering the period from April 1, 2021 through September 30, 2021 (Dkt. 1026, 1087), and will need to be adjusted if the applications have not in fact been granted prior to the entry of this order.

additional 20% of fees incurred between July 1, 2020 and March 31, 2021.² The held-back amounts will remain in the segregated property accounts and held back from any interim distribution to claimants.

For fees that have already been paid to the Receiver in connection with the First through Third Fee Applications (Dkt. 411, 487, 569), the Receiver will hold in the Estate's operating account pending further rulings funds transferred in accordance with the schedules for fees incurred during the period from August 2018 through March 2019.

Entered:

Young B. Kim
United States Magistrate Judge

Date: _____

² Subject to adjustment based on rulings on the Twelfth and Thirteenth Fee Applications. (Dkt. 1026, 1087)