

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

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U.S. COMMODITY FUTURES TRADING		§	
COMMISSION, <i>et al.</i>		§	
		§	
	Plaintiffs,	§	
		§	
v.		§	CIVIL ACTION NO.
		§	3:20-CV-2910-L
		§	
TMTE, INC. a/k/a METALS.COM, CHASE		§	
METALS, INC., CHASE METALS, LLC,		§	
BARRICK CAPITAL, INC., LUCAS THOMAS		§	
ERB a/k/a LUCAS ASHER a/k/a LUKE ASHER,		§	
and SIMON BATASHVILI,		§	
		§	
	Defendants,	§	
		§	
TOWER EQUITY, LLC,		§	
		§	
	Relief Defendant.	§	
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**ORDER ESTABLISHING CLAIMS ADJUDICATION PROCESS**

Before the court is the Receiver’s Motion for Order Establishing Claims Adjudication Process (“Claims Motion”) (Doc. 219), filed February 1, 2021. Plaintiffs are unopposed to the relief sought in the motion and Defendants Lucas Asher and Simon Batashvili have filed no response opposing the motion. The court can think of no undue prejudice that would occur to Defendants Lucas Asher and Simon Batashvili if the claims adjudication process is established. , The court determines that the motion should be, and is hereby, **granted**. Accordingly, it is hereby ordered as follows:

**1. DEFINITIONS**

Unless the context otherwise requires, the following terms shall have the meanings specified below:

**1.1 Approved Claim:** A Claim that has been timely filed with the Receiver and has been approved by the Court.

**1.2 Claim:**

a. Any right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured, which right arose or accrued prior to September 22, 2020; or

b. Any right to an equitable remedy for breach of performance if such right gives rise to a right of payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, where such right arose or accrued prior to September 22, 2020; or

c. Any right to payment arising from the rejection by the Receiver of an executory contract or as a result of the Receivership Defendants' failure to complete its obligations under a lease; or

d. Any right to payment from the assets held by the Receiver.

**1.3 Claimant:** A person entitled to assert a Claim against any Receivership Defendant as of the Receivership Date or against any property in the possession of the Receiver.

**1.4 Claims Bar Date:** April 30, 2021. The deadline by which Claims must be received by the Receiver, or if mailed to the Receiver, the deadline by which the Claim must be postmarked. Untimely Claims will not be allowed unless further ordered by this Court.

**1.5 Claims Report:** The Receiver's report filed with the Court describing the Claims received by the Receiver and setting forth his recommendations concerning those Claims.

**1.6 Court:** The United States District Court for the Northern District of Texas, Dallas Division, assigned Civil Action No. 3:20-CV-2910-L.

**1.7 Investor Claim:** Any Claim or right to payment arising from a person's investment of the person's own funds or retirement funds with any of the Receivership Defendants, for the purchase of metals, or as part of an investment program. An Investor Claim includes qualified funds invested by a custodian for the benefit of the investor.

**1.8 Proof of Creditor Claim:** The Proof of Creditor Claim form attached as Exhibit C to the *Claims Motion* and hereby approved.

**1.9 Receiver:** Kelly M. Crawford.

**1.10 Receivership Assets:** Receivership Assets shall include the following:

a. Receivership Assets, as defined by the orders of the Court, encompass any legal or equitable interest, right to, or claim of the Receivership Defendants in any real or personal property, whether individually or jointly, directly or indirectly controlled, and wherever located, including but not limited to: chattels, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, mail or other deliveries, inventory, checks, notes, accounts (including, but not limited to, bank accounts and accounts at other financial institutions), credits, receivables, lines of credit, contracts (including spot, futures, options, or swaps contracts), insurance policies, and all funds, wherever located, whether in the United States or outside the United States are assets traceable to or derived from the monies, commodities, claims, and properties, real and personal, tangible and intangible, of whatever kind and description, wherever situated, of the Receivership Defendants.

b. All interest earned and paid to the Receiver on Receivership Assets defined above.

**1.11 Receivership Date:** September 22, 2020, the effective date of the orders of the Court placing part or all of the assets of the Receivership Defendants in receivership.

**1.12 Receivership Defendants:** TMTE, Inc. a/k/a Metals.com, Chase Metals, Inc., Chase Metals, Inc., Barrick Capital, Inc., Lucas Thomas Erb a/k/a Lucas Asher a/k/a Luke Asher and Simon Batashvili as Defendants, and Tower Equity, LLC as Relief Defendant, and any affiliates or subsidiaries owned or controlled by any of the foregoing Defendants or Relief Defendant.

**1.13 Secured Claim:** A Claim that a Claimant contends is secured by a properly-perfected lien on Receivership Assets. The Receiver maintains the right to contest whether the claim is secured.

## **2. NOTICE OF RIGHT TO FILE CLAIMS AND CLAIMS BAR DATE**

**2.1 Notice to Claimants:** The Receiver shall notify each Claimant of the Claims Bar Date and the Claimant's right to file a Claim as provided herein in a form substantially similar to Exhibit A attached to the Receiver's *Claims Motion*. Notices to Claimants shall be accompanied by a copy of the Confirmation, Non-Metals Claim, and/or Proof of Creditor Claim form as may be appropriate, and any other information the Receiver deems appropriate. The Notice to Claimants shall be deposited in the United States mail, postage pre-paid, addressed to the Claimant at the most-recent address contained in the records of the Receiver within thirty (30) days of the entry of this Order, or sent by electronic mail with receipt confirmed by electronic mail.

**2.2 Notice by Publication:** The Receiver shall also publish at least once in a publication with national circulation within ten (10) days of the entry of this Order a copy of the Notice by Publication in a form substantially similar to Exhibit B attached to the Receiver's *Claims Motion*.

### **3. FILING OF CLAIMS**

**3.1 Filing Claims:** Any Claimant asserting a Claim against the Receivership Defendants, the Receiver, or the property in the possession of the Receiver, regardless of whether the Claim has been acknowledged by the Receiver, shall submit to the Receiver a Confirmation, Non-Metals Claim, or Proof of Creditor Claim on or before the Claims Bar Date. The Confirmation, Non-Metals Claim, or Proof of Creditor Claim shall be deemed filed on the date it is received by the Receiver, or if the Claim has been mailed the date of postmark. The Confirmation, Non-Metals Claim, and Proof of Creditor Claim shall be on the forms approved by the Court and provided by the Receiver and shall contain all of the information requested in the form.

**3.2 Place to File Claims:** All Claims shall be filed with the Receiver by electronic mail to [kelly.crawford@solidcounsel.com](mailto:kelly.crawford@solidcounsel.com) or by mailing postage prepaid or delivering a properly-completed Confirmation, Non-Metals Claim or Proof of Creditor Claim with all required supporting documentation to the Receiver at the following address:

Kelly M. Crawford, Receiver  
500 North Akard, Suite 2700  
Dallas, Texas 75201

**3.3 Prohibition Against Filing Claims with Court:** No Claim shall be filed with the Court and any Claim so filed shall not be considered properly-filed as required under this Order.

**3.4 Supporting Documentation:** Unless previously provided by a Claimant to the Receiver, each Non-Metals Claim and Proof of Creditor Claim shall include as an attachment all documentation supporting the claim. Original documents should not be filed with the Claim. If a supporting document is not available, the Claimant must attach an explanation of why the document is not available.

**4. THE RECEIVER'S CLAIMS REPORT AND THE COURT'S ADJUDICATION OF CLAIMS**

**4.1 Receiver's Claims Report:** On or before May 28, 2021, the Receiver shall file with the Court his Claims Report setting forth all Claims filed with the Receiver together with the Receiver's recommendations concerning all Claims. The Claims Report will also include a recommendation concerning the amount of the Claim and the classification of Claims.

**4.2 Notice to Claimants:** The Receiver shall provide notice to each Claimant of the Receiver's recommendation concerning the Claimant's Claim by electronic mail with the receipt confirmed by electronic mail, or in writing and deposited in the United States mail, postage pre-paid, addressed to the Claimant at the most recent address contained in the records of the Receiver within five (5) days of the date for filing the Receiver's Claims Report.

**4.3 Copy of Claims Report:** Every Claimant shall have the right to obtain a copy of the Claims Report, however, the Receiver may charge a reasonable fee for providing a copy of the Claims Report not to exceed the cost of copying and postage.

**4.4 Service of Claims Report:** The Claims Report shall be served on all Claimants together with a Notice of Hearing which shall notice the person served of the Court's hearing scheduled on the Receiver's recommendation, if any, and the procedures and deadline for filing objections to the Receiver's recommendations. Such information shall also be posted on the Receiver's website. Service of the Claims Report shall be made by electronic mail with the

receipt confirmed by electronic mail or by depositing it in the United States mail, postage pre-paid, addressed to the recipient at the address set forth in the Receiver's records.

**4.5 Objections:** The Receiver, or any Claimant or other party-in-interest may file an objection to any Claim as provided in this Order. All objections to any part of the Claims Report shall be filed with the Receiver and not with the Court. The objections shall be sent to the Receiver by email or set forth in writing and deposited in the United States mail on or before July 30, 2021, postage pre-paid, addressed to the Receiver at:


Kelly M. Crawford, Receiver  
500 North Akard, Suite 2700  
Dallas, Texas 75225

**4.6 Filing of Objections by the Receiver:** The Receiver shall file with the Court not later than August 20, 2021, a copy of all timely objections received by the Receiver together with the Receiver's response to those objections and shall serve a copy of same on all persons who served the Receiver with objections as provided above.

**4.7 Hearing Date:** Unless the Court determines a hearing is not necessary, a hearing will be held by the Court on a date set by the Court regarding the Claims Report and the Receiver's recommendations and any objections thereto.

**4.8 Final Adjudication of Claims:** Following the Court's hearing, the Court shall enter an order approving or rejecting the Claims filed with the Receiver.

**It is so ordered** this 2nd day of March, 2021.

  
Sam A. Lindsay  
United States District Judge