

1 The Receivership Assets were defined in the Order as:

2 [a]ll money and other assets contributed to Oakleaf International
3 and Rosewood International investment programs; all money and
4 assets contributed to Meliorations Management Teem, World
5 Cultural Center (Samoa) Inc., SBC Inc., Millennium SA, Third
6 Millennium SA, Privateassets.com SA, Isaacson Global Holding
7 SA, and PIBC in relation to the Oakleaf International or Rosewood
8 International investment program; all money and assets contributed
9 to programs of similar design or purpose operated by defendants
10 John W. Zidar, John W. Matthews, or Elizabeth A. Phillips, or
11 relief defendants William H. Cravens or Steven C. Moreland; and
12 all proceeds, rents, interest, capital gains, and other income
13 attributable to the use of such money and assets.

14 Order at Section I.

15 As Receiver, I am authorized:

16 to marshal, conserve, hold, and manage the Receivership Assets
17 with full power to take such steps as [I] [deem] necessary to secure
18 such assets including, but not limited to, obtaining an accounting
19 of the Assets, insuring the Assets, and preventing transfer,
20 withdrawal, concealment, dissipation, or misapplication of the
21 Assets.

22 *Id.* at Section I, subparagraph a.

23 Furthermore, the Receiver is authorized “to open one or more bank accounts in King
24 County, Washington, as designated depositories for the Receivership Assets, and to deposit
25 funds into such accounts and make payments from such accounts.” *Id.* at Section I,
26 subparagraph i.

27 **B. RECEIVERSHIP ASSETS**

28 The tables below summarize the status and activity that has occurred in the Receivership
Assets – the Money Market Account and Investment Account.

MONEY MARKET ACCOUNT:

DATE	TYPE	AMOUNT
8/23/01	Initial deposit from ANZ Bank, Samoa	\$6,728,657.63
8/31/01	Interest payment	\$4,015.07
9/26/01	Deposit (proceeds from Abdul Alishtari)	\$500,000.00
09/30/01	Interest Payment	\$13,058.14
10/25/01	Deposit (Proceeds from Elizabeth Ann Phillips)	\$3,850.57
10/31/01	Interest payment	\$12,285.25
11/30/01	Interest payment	\$10,719.71
Total as of 11/30/01 (First Report)		\$7,272,586.37
12/13/01	Interest Earned	\$4,160.32
12/17/01	Tax Payment to IRS	(\$11,020.21)
12/20/01	Transfer to Investment Account	(\$7,200,000.00)
12/31/01	Interest Earned	\$2,453.45
01/09/02	Professional Fees (McKay Chadwell, PLLC) ¹	(\$11,685.52)
02/05/02	Interest Earned	\$62.68
02/28/02	Interest Earned	\$49.96
03/15/02	Tax Payment	(\$2,667.00)
03/31/02	Interest Earned	\$61.96
04/30/02	Interest Earned	\$55.07
05/31/02	Interest Earned	\$64.00
06/27/02	Tax Payment	(\$2,667.00)
06/30/02	Interest Earned	\$65.99
07/31/02	Interest Earned	\$65.24
08/31/02	Interest Earned	\$65.32
09/30/02	Interest Earned	\$44.48
09/30/02	Tax Payment	(\$2,667.00)
10/31/02	Interest Earned	\$41.65
11/30/02	Interest Earned	\$24.88
12/13/02	Tax Payment	(\$2,667.00)
12/30/02	Interest Earned	\$20.16
Total as of 12/31/02 (Second Report)		\$46,447.80

¹ Pursuant to Court Order dated January 8, 2002.

1 MONEY MARKET ACCOUNT (CONTINUED):

2	Balance as of 12/31/02	Balance Forward	\$46,447.80
3	Interest Accrued	Interest Earned	\$ 97.70
4	Tax Deposit ²		\$ 8,001.00
5	McKay Chadwell Fees and Costs ³		(\$54,546.50)
6	Total as of 5/31/03 (Third Report)		\$0 (Account Closed)

7 INVESTMENT ACCOUNT:

8	DATE	TYPE	BALANCE
9	12/20/01	Wire deposit from above money market account	\$7,200,000.00
10	12/28/01	Wire Deposit \$7,664,284.09	\$14,864,284.09
11	12/31/02	Bond accretion (\$2,795.00)	\$14,861,489.09
12	07/16/02	Deposit \$1,850,167.76	\$16,711,656.85
13	09/30/02	Bank Fees (\$37,179.36)	\$16,674,477.49
14	09/30/03	Bond Income \$458,067.69	\$17,132,545.18
15	09/30/02	Bond Accretion (\$318,126.59)	\$16,814,418.59
16	09/30/02	Interest Accrual Adjustment (\$0.31)	\$16,814,418.28
17	10/01/02	Interest Income \$15,094.13	\$16,829,512.41
18	10/31/02	Interest Income \$17,590.46	\$16,847,102.87
19	10/31/02	Bank Fees (\$3,982.17)	\$16,843,120.70
20	11/30/02	Interest Income \$15,455.48	\$16,858,576.18
21	11/30/02	Bank Fees (\$3,984.48)	\$16,854,591.70
22	12/19/02	Bank Fees reversal \$15,924.90	\$16,870,516.60
23	12/31/02	Interest Income \$12,153.78	\$16,882,670.38
24	Total as of 12/31/02 (Second Report)		\$16,882,670.38

28 ² This deposit refers to a tax refund related to federal taxes paid in 2002. The total tax paid on the money market account for 2002 was \$2,667.00.

³ Pursuant to Court Order dated January 8, 2002.

INVESTMENT ACCOUNT (CONTINUED):

Balance forward as of 12/31/02	\$16,882,670.38
Deposits / Additional Assets ⁴	\$ 6,055,040.45
Interest Accrued	\$ 86,349.58
McKay Chadwell Fees and Costs ⁵	\$ (39,937.64)
Total as of 9/30/03 (Third Report)	\$22,984,122.77
Deposits / Additional Assets ⁶	\$ 839,597.31
Interest Accrued	\$ 67,305.66
McKay Chadwell Fees and Costs ⁷	\$ (136,603.51)
Total as of 3/31/04 (Fourth Report)	\$23,754,422.23
Deposit 4/6/04 (Barrick Gold Stock)	\$ 149,963.14
McKay Chadwell Costs ⁸	\$ (1,803.55)
Total as of 4/23/04	\$23,902,581.82

The following report outlines the procedures used to review each claim submitted by the investor victims and proposes a pro rata distribution based on the total Receivership Assets. The Receiver respectfully proposes that the Court approve the pro rata distribution formula presented below.

C. PROCEDURAL POSTURE

As of April 23, 2004, our staff was winding up its review of 3,471 investor applications⁹ claiming a total of \$58,214,784.44 in losses. Due to incomplete documentation, we were unable to confirm or approve the applications submitted by 186 investor applicants.¹⁰ We verified a total investment loss of \$43,702,920.85 for the approved claimants.¹¹ The difference between the total reported loss and the total verified loss is attributed primarily to downward adjustments

⁴ The amount actually deposited differs from the amount identified in the Order for Transfer of Liquid Assets because it reflects an amount reduced due to the U.S. Marshal's expenses.

⁵ Pursuant to Court Order dated January 8, 2002.

⁶ The amount actually deposited differs from the amount identified in the Order for Transfer of Liquid Assets because it reflects an amount reduced due to the U.S. Marshal's expenses.

⁷ Pursuant to Court Order dated January 8, 2002.

⁸ Pursuant to Court Order dated January 8, 2002.

⁹ We mailed notices to 6,212, of which approximately 3,471 responded with applications for reimbursement.

¹⁰ The Receiver will disclose to the Court the names of the investor applicants whose files were not approved for restitution at the same time it discloses a list of proposed distribution for each investor.

¹¹ The Receiver is wrapping up its review, and these figures are subject to change. However, the data will be finalized and ready for Court review once the Court determines how the information should be disclosed. Please see discussion in §1, subsection F.

1 due to (1) incomplete or inaccurate applications, (2) unreported investment returns, and (3)
2 unreported commission payments.¹²

3 On or about December 6, 2002, our office sent an initial letter to approximately 6,212
4 potential investors. See the Declaration of Receiver Michael D. McKay in Support of
5 Distribution Plan and Motion for Fees (“McKay Decl.”) at ¶6 and Exhibit B attached thereto.
6 The correspondence explained the Receiver’s role in this case and the restitution application
7 process.¹³ It also referred investors to our website, www.zidarreceivership.com. The December
8 6, 2002 correspondence included a questionnaire, and each investor was asked to complete the
9 questionnaire and return it to my office by March 15, 2003. The questionnaire requested that the
10 investors identify (1) funds invested, (2) investment returns, and (3) commission payments. It
11 also asked the investors to provide copies of (1) the form of payment, (2) investment contracts
12 and (3) investment certificates. Our office also received inquiries from investors that were not
13 among the initial list provided by the United States Attorney’s Office and the Internal Revenue
14 Service, and these individuals were sent the questionnaires upon request.
15

16 Our staff entered each investor’s information into a central database. The staff then
17 reviewed the material submitted by each investor, and confirmed or challenged that information
18 by comparing it to the defendants’ seized internal records. The staff assessed each file and
19 calculated a Verified Amount of loss.¹⁴ In order to ensure accuracy, a second staff member
20 reviewed each investor’s Verified Amount calculation.
21

22 Many of the investors did not produce the requested information by the March 15, 2003
23 deadline, but our office continued to accept material submitted beyond that date. Also,
24
25

26
27 ¹² We reduced all claims for restitution by any amount already paid to the victim in the form of investment returns.
28 We also reduced any restitution claim by any amount paid as commissions for investment sales. This is described in
more detail below.

¹³ The list of potentially-defrauded investors was supplied by the United States Attorney’s Office and the I.R.S.

¹⁴ Please see the definition of Verified Amount in subsection D below.

1 throughout the course of our review, we discovered that many investors lacked the
2 documentation needed to confirm certain investments. As a result, on or around December 13,
3 2003 and December 23, 2003, our office sent a supplemental letter requesting further
4 documentation to 816 investors. See McKay Decl. at ¶7 and Exhibit C attached thereto. We
5 requested that each investor supplement his or her file by January 16, 2004. The supplemental
6 request for information was fruitful in that we received a response from 654 investors and a
7 considerable amount of new, useful information.
8

9 On December 11, 2003, our office sent an Excel spreadsheet to attorney David Smith
10 outlining the deficiencies in many of the applications submitted by his clients. Mr. Smith is an
11 attorney from Alexandria, Virginia who represents 1,722 claimants. We worked directly with
12 Mr. Smith's office to seek the material needed to supplement his clients' files.
13

14 On November 26, 2003, our office sent a supplemental letter to approximately 100
15 individuals who appeared to have acted as "Member Representatives" in the investment fraud
16 scheme. Member Representatives received commission payments from the Zidar defendants for
17 recruiting new investors. Many apparent Member Representatives did not disclose in the initial
18 questionnaire the fact that they acted in that capacity. As a result, the November 26, 2003 letter
19 provided the Member Representatives an opportunity to correct the record and report
20 commission payments. A response was due January 16, 2004, and we received a response from
21 52 individuals who we previously identified as Member Representatives.
22

23 D. PRO-RATA DISTRIBUTION

24 This is a case where "equality is equity," and the restitution distribution should be
25 handled so that similarly-situated investors will be treated alike. *See United States v. Real*
26 *Property Located at 13328 and 13324 State Highway*, 89 F.3d 551, 554 (9th Cir. 1996) (citing
27 *Cunningham v. Brown*, 265 U.S. 1 (1924); *see also Commodity Futures Trading Comm'n v.*
28

1 *Topworth Int'l, Ltd.* 205 F.3d 1107 (9th Cir. 2000); *United States v. Durham*, 86 F.3d 70 (5th
2 Cir. 1996)). In *Real Property*, the Securities and Exchange Commission (S.E.C.) filed an action
3 against several defendants who pled guilty to securities fraud, mail fraud and bank fraud
4 stemming from an investment scam. The defendants agreed to disgorge assets that would be sold
5 and redistributed to victims. The court approved the S.E.C.'s proposal to redistribute the assets
6 to the victims on a pro rata basis.

7
8 The case at hand is similar to *Real Property* in that numerous investors lost money due to
9 the fraudulent investment representations made by the defendants, and the monetary losses
10 exceed the value of the assets the government was able to recover. Accordingly, the Receiver
11 respectfully asks this Court to rule that we shall distribute the assets to the investors pro rata
12 according to their "net investment," or Verified Amount.

13
14 *(1) Net Investment*

15 We define and calculate the net investment, or Verified Amount, as the total amount
16 invested in either Oakleaf, Rosewood, the Private International Development Banc, Vista, Dexia,
17 Sandpiper, the Bridge Fund, Millenium or Porter and Chase less (1) investment funds returned
18 and/or (2) commission payments received by Member Representatives. Thus, the net
19 investment, or Verified Amount, will reflect, when appropriate, a downward adjustment for
20 investment returns and/or commission payments.

21
22 When calculating the Verified Amount, our office reviewed each investor's investment
23 contract, investment certificates and proof of payment (bank statements, checks, wire transfers,
24 etc.). We also relied on the government's internal analysis of the defendants' bank records. For
25 example, we reviewed documentation of the Meliorations Management Washington Mutual bank
26 account, the Private Investment Development Banc account at the ANZ Bank, the World
27 Cultural Center bank account and the Prosper International Limited bank account. Many of the
28

1 bank records identified individual investor transactions. As a result, the records enabled our
2 office to confirm investor deposits, investor withdrawals, and Member Representative
3 commission payments. And we were able to use the government's analysis of the bank records
4 to verify many investments even though individual investors might not have been able to
5 produce an investment contract or investment certificate.

6
7 We calculated the Verified Amount at zero in cases where an investor received
8 investment returns in excess of the total amount invested or a Member Representative received
9 commission payments in excess of the total amount invested.

10 We also calculated an applicant's Verified Amount at zero in cases where one spouse
11 received investment returns or commission payments in excess of the total amount invested by
12 both spouses combined.

13
14 As noted, alleged Member Representatives were asked (1) to confirm whether they acted
15 as a Member Representative and (2) to disclose the amount of commission payments earned as a
16 Member Representative as compensation for collecting investments in these schemes. In cases
17 where the Member Representative disclosed commissions and the defendants' internal records
18 confirmed the commission amount, the Member Representatives Verified Amount was reduced
19 by the amount of the commission payment. We calculated a Verified Amount of zero when the
20 defendants' internal records confirmed a commission payment and the Member Representative
21 failed to disclose either participation in the fraud or the commission received.

22
23
24 Ultimately, we calculated a Verified Amount for applications that provided the
25 investment contract, investment certificate and some reasonable, satisfactory form of proof of
26 payment.¹⁵ We also calculated a Verified Amount for applications that provided a reasonable,
27 satisfactory form of payment that was confirmed by the defendants' seized bank records. We did
28

1 not approve claim applications that either did not provide a proof of payment or could not be
2 confirmed in the defendants' bank records.

3 *(2) The Pro Rata Distribution Rate*

4 The pro rata distribution is calculated by dividing the total Receivership Assets by the
5 total Verified Amount, or the total "net investment" lost by the 3,471 investor applicants. As
6 noted above, as of April 23, 2004, the Receivership Assets total \$23,902,581.82. The total
7 Verified Amount lost by investors with approved claims equals \$43,762,920.85. The total
8 \$167,500.00 will be needed to pay for future fees and expenses. The amount for future fees and
9 expenses should be deducted from the Receivership Assets. As a result, the Receivership Assets
10 would be reduced to \$23,735,081.82. The pro rata calculation would be \$23,735,081.00 divided
11 by \$43,762,920.85, or .5423%. Accordingly, we propose that each investor receive 54.23% of
12 his or her "net investment," or Verified Amount.¹⁶

13
14
15 E. UNIQUE CLAIM ISSUES

16 *(1) Smith Clients*

17 We will present to the Court a spreadsheet that contains the proposed pro rata
18 distributions to be awarded to each of Mr. Smith's clients.¹⁷ Upon approval of the plan, we
19 recommend that the Court order our office to forward the total Verified Amount, or sum of the
20 amount owed Mr. Smith's clients to Mr. Smith's office. Thereafter, Mr. Smith will distribute the
21 restitution payments directly to his clients pursuant to the pro rata distribution recommended
22 above.
23
24
25
26

27 ¹⁵ This proof included, for instance, cancelled checks, wire transfers, money orders, or bank statements reflecting
28 withdrawals of the appropriate amount.

¹⁶ As noted in subsection C above, the Receiver is finalizing the review of investor claims. The total numbers and
the pro rata distribution may vary accordingly. The final numbers will be ready for the Court's review once the
Court instructs the Receiver as to how to disclose the information. See discussion in subsection F, below.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

(2) *Higher Education Student Assistance Foundation*

Mr. Roland Baldwin was the Administrator of the Higher Education Student Assistance Foundation (HESAF) in Panama City, Florida. HESAF was an investment plan purportedly designed to provide college graduates an account from which they could begin repaying federal student loans. Baldwin invested HESAF funds in Rosewood. On July 25, 2002, Baldwin informed the United States Attorney's Office in Seattle that he was no longer acting as HESAF's Administrator, and he advised his investors to seek restitution from our office. The state Office of Financial Regulation (OFR) in Florida is currently investigating Mr. Baldwin and HESAF. See McKay Decl. at ¶8 and Exhibit D attached thereto.

Our records verify that Baldwin deposited \$65,994.00 with one of the defendants' investment schemes. Baldwin did not file a claim with our office, but we received claims from 29 of the 64 HESAF investors.

We have been in contact with the Florida OFR, and it has confirmed the names and addresses of the 64 individuals who invested with Mr. Baldwin and HESAF. We respectfully ask this Court to authorize our office to transfer the pro rata equivalent of Mr. Baldwin's \$65,994.00 Verified Amount, directly to the 64 individuals who invested with Mr. Baldwin and HESAF. We will distribute the Verified Amount to each HESAF investor based on the percentage share of each investor's original investment with HESAF.

(3) *United States v. Larry Wilcoxson, et al.*

On October 19, 2000, Robb Evans was appointed Receiver pursuant to the Order Appointing Trustee in *United States of America v. Larry Wilcoxson, et al., United States Dist. Court for the Eastern Dist. Of California (CR-S 99-0359 DFL)*. Mr. Evans has a valid claim for \$1,499,984.00 that was deposited into the World Cultural Center account by Larry Wilcoxson

1 and his colleagues.

2 Our records confirm the fact that Larry Wilcoxson, or a related party, made two deposits
3 into one of the accounts managed by the Zidar defendants. On August 3, 1999, C. William
4 Gording Accountancy transferred \$500,000.00 into the World Cultural Center account at the
5 ANZ Bank in Samoa, and also, on August 3, 1999, JRAM International Enterprises Ltd.
6 transferred \$999,984.00 to the World Cultural Center account. Mr. Evans informed our office
7 that Mr. Wilcoxson and his colleagues made these deposits with money that was fraudulently
8 induced from individual investors. See McKay Decl. at ¶9 and Exhibit E attached thereto.

9
10 As a result, we respectfully ask this Court to order our office to award Mr. Evans the pro
11 rata distribution of the \$1,499,984.00 Verified Amount invested by Mr. Wilcoxson. Thereafter,
12 Mr. Evans shall redistribute the funds to the investors that were defrauded in the matter of *United*
13 *States of America v. Larry Wilcoxson, et al.*

14
15 (4) *Frozen Funds at ANZ Bank New York*

16 On May 10, 2000, this Court entered a Temporary Restraining Order, Freeze of Assets
17 and Order Granting Other Relief in this matter. See McKay Decl. at ¶10 and Exhibit F attached
18 thereto. On May 18, 2000, this Court entered a Preliminary Injunction, Order Freezing Assets
19 and Granting Other Relief as to Defendants John Wayne Zidar and John Wesley Matthews and
20 Relief Defendant Meliorations Management Teem. See McKay Decl. at ¶11 and Exhibit G
21 attached thereto.

22
23 The relevant sections of the preliminary injunction are as follows:

24
25 IT IS HEREBY FURTHER ORDERED that, pending a determination of
26 this matter on the merits:

27 ...b. any financial or brokerage institution or other person or
28 entity located within the territorial jurisdiction of the United States
courts and holding any funds or other assets in the name of, for the
benefit of, or under the control of Defendants Zidar and Matthews,

1 individually or doing business as Oakleaf International, Rosewood
2 International or Meliorations Management Teem, or their officers,
3 directors, subsidiaries, affiliates, agents, servants, employees, attorneys
4 in fact and those persons in active concert or participation with them,
5 and each of them, shall hold and retain within their control and prohibit
6 the withdrawal, removal, transfer or other disposal of any such funds or
7 other assets; and

8 c. Defendants Zidar and Matthews, individually or doing
9 business as Oakleaf International, Rosewood International or
10 Meliorations Management Teem, and their officers, directors,
11 subsidiaries, and affiliates, agents, servants, employees, attorneys in fact,
12 and those persons in active concert or participation with them who
13 receive actual notice of this order by personal service or otherwise, and
14 each of them, shall refrain from accepting, taking control of, or
15 depositing in any financial institution additional funds from actual or
16 potential investors.

17 Pursuant to the temporary restraining order and preliminary injunction, the ANZ Bank in
18 New York stopped 27 separate transfers destined for the ANZ Bank in Samoa between May 15,
19 2000 and June 1, 2000. See McKay Decl. at ¶12 and Exhibit H attached thereto. Each transfer
20 was intended to be deposited in an account managed or controlled by the *Zidar* defendants: the
21 Private International Development Banc account, the World Cultural Center account, and the
22 Meliorations NA account. The ANZ Bank in New York originally froze \$392,372.00. The
23 funds were not commingled with any of the *Zidar* defendants' accounts.

24 On July 14, 2000, Assistant United States Attorney Peter Mueller informed the Assistant
25 Vice President of the ANZ Bank in New York that his office concluded that the frozen funds
26 should be returned to their originators. See McKay Decl. at ¶13 and Exhibit I attached thereto.

27 On March 21, 2003, Assistant United States Attorney Peter Mueller again advised the
28 Compliance Officer for the ANZ Bank's New York branch that the United States Attorney's
Office expected the ANZ Bank to return the funds to their originators once ANZ Bank was able
to disclose the identity of the originators. See McKay Decl. at ¶14 and Exhibit J attached
thereto.

1 On June 27, 2003, Thomas Brennan, an attorney in the Receiver's office, sent an e-mail
2 to Abel Picardi, the Compliance Officer for the ANZ Bank in New York requesting the identity
3 of the originators of the frozen funds. See McKay Decl. at ¶15 and Exhibit K attached thereto.
4 The Receiver's office requested this information in order to determine whether any of the frozen
5 funds belong to defrauded investors that have applied for restitution out of the Receiver's Assets.

6
7 Mr. Picardi informed Mr. Brennan that he would do so once he confirmed Mr. Brennan's
8 involvement in the case. Mr. Brennan again requested the information from Mr. Picardi on
9 August 5 and August 20, 2003. See McKay Decl. at ¶15 and Exhibit L attached thereto. The
10 Receiver's office has not received a response to these requests.

11
12 On January 29, 2004, the Court entered a Declaratory Order directing the ANZ Bank in
13 New York to release the frozen funds that belonged to Roy Biddle, the only individual investor
14 identified with particularity in the initial list of frozen funds supplied by the ANZ Bank.

15
16 The ANZ Bank in New York has neither released the other 26 frozen transfers nor
17 identified the originator of the transfer. Nonetheless, our office determined that certain frozen
18 transfers belong to several of the investors that applied for restitution with the Receivership. In
19 particular, we believe that twelve specific investors' funds currently are frozen in the ANZ Bank
20 in New York.¹⁸

21
22 As a result, we respectfully request the Court to order that these investors shall not
23 receive a distribution from the Receivership Assets, but instead, shall recoup the funds that were
24 frozen in the ANZ Bank in a manner consistent with the ruling the Court made in regards to the
25 funds belonging to Roy Biddle. We further petition the Court to lift the May 18, 2000
26 preliminary injunction to all such ANZ Bank, New York fund transfers and direct the ANZ Bank
27

28 ¹⁸ The Receiver will disclose the identity of these investors once the Court indicates whether investor information shall be filed under seal or in public document. Please see discussion in subsection F, below.

1 to return the funds to their originators. Furthermore, we request that the Court direct ANZ Bank
2 to disclose the originators to the Receiver so that we can ensure no claimant receives a double
3 payment, one from ANZ Bank and one from the Receivership.

4 F. OBJECTIONS TO DISTRIBUTION PLAN

5 Prior to approval of the distribution plan, we petition the Court to order our office on the
6 appropriate procedure for notifying each investor of his or her Verified Amount.¹⁹
7

8 One option is to order the Receiver to send a general letter by U.S. Mail to each investor,
9 which informs the investor that the Court intends to schedule a hearing to determine which
10 claims to allow and which claims to disallow in whole or in part. At the same time, the Receiver
11 would publicly post each and every investor's initial claim amount, Verified Amount and pro
12 rata amount on the Receiver's website and file it with the Court. The letter will invite the
13 investor to visit our website, www.zidarreceivership.com, in order to review a Distribution
14 Report. For investors not familiar with the Internet, the letter will encourage that investor to call
15 our office at 1-866-686-9753 (a toll-free number) for distribution information. The Distribution
16 Report will be a spreadsheet that identifies every investor's initial claim, investment returns,
17 commission payments, net investment, or Verified Amount and pro rata distribution.
18
19

20 In the second option, in order to preserve privacy, the Receiver would submit the investor
21 information to the court under seal, and send a personal letter to each and every claimant by U.S.
22 Mail. The personal letter would inform the investor of his or her initial claim, investment
23 returns, commission payments, the Verified Amount and his or her pro rata distribution.
24

25 Either letter will inform each investor of his or her right to be heard in the matter and the
26 date of the hearing.
27

28 ¹⁹ The Receiver seeks the Court's guidance on the proper handling of investor data in terms of privacy and public disclosure concerns. At page 2, line 25, the Receiver's Proposed Order provides an option in which the Court can choose one of two options by drawing a line through the text of the option the Court rejects.

1 The Receiver petitions the Court to direct the Receiver as to the Court's preferred method
2 of notifying investors of the distribution plan and of handling the public disclosure of investor
3 data.

4 Since this issue involves a significant privacy issue, it is submitted to the Court for
5 decision. Nevertheless, I respectfully recommend that the Court order the execution of the first
6 option (issuance of form letter to all claimants notifying them of the hearing and that they may
7 check the website or the court file for a report on what their proposed distribution will be).

8
9 There are two reasons for this recommendation. First, a public notice of how much claimants are
10 receiving will allow all to see how much each claimant is receiving. If anyone has information
11 that a particular claimant should not be receiving certain funds because incorrect information
12 was provided to the Receiver, they can bring this to the attention of the Receiver or the Court and
13 corrections can be made. And second, mailing a form letter to each claimant and publishing the
14 list of all proposed distributions will cost the receivership less to execute, leaving more funds to
15 be distributed to victims.
16

17 However the Court rules, I will faithfully execute the order.
18

19 Upon approval of a distribution plan, the Receiver respectfully requests that the Court
20 schedule a hearing no sooner than 75 days after approval of the plan. Investors wishing to object
21 to the proposed distribution must act to preserve their claims, and they shall have 45 days after
22 mailing of the letter regarding the plan to file any written objections with the Court and the
23 Receiver. Any objections not timely filed and served may be deemed waived. In addition, any
24 objections filed and served without evidence supporting allowance of the claim may be deemed
25 to be consent to disallowance of the claim. The Court will approve and allow claims that have
26 been verified by the Receiver. In those cases, the investors need to do nothing further.
27
28

The Receiver, in his discretion, may reply to any objections within 20 days after the

1 investors' deadline for filing objections. The Receiver does not waive any argument against
2 allowance of any disapproved claim by not filing a written reply to the claimant's objection in
3 support of such claim. At the hearing to allow and disallow specific claims or as soon thereafter
4 as the Court's schedule permits, the Court will rule on whether such claims should be allowed or
5 disallowed.

6
7 Finally, in order to provide certainty and to ensure the accuracy of the pro rata
8 distribution calculation, the Receiver petitions the Court to rule that the Receiver shall not accept
9 or consider any new investor claims after the date the Receiver mails the distribution plan notice
10 to the investors currently known to the Receiver.

11 G. SUPPLEMENTAL DISTRIBUTION

12
13 As noted above, the Receivership Assets totaled \$23,902,581.82 on April 23, 2004. We
14 expect this sum to increase due to the fact that we await payment on several assets including real
15 property in Arizona²⁰ and a petition we filed in *United States v. Peter Macari, et al., Dist. of AZ.*
16 *NO. CR00-713-PHX-JAT*. In *Macari*, the Receiver filed a claim for \$1,000,000.00 that Anne
17 Phillips and Meliorations Management invested in the Merrydale Company. On March 27,
18 2004, the government filed its proposed distribution plan, in which the Receiver would receive
19 \$727,789.09. If approved by the court, the government expects to distribute the assets in four or
20 five months. We also continue to investigate the recovery of potential assets located throughout
21 the United States and overseas. For instance, defendant Anne Phillips informed our office that
22 she used investor funds in 2000 to create a trust in Costa Rica. Apparently, the funds were
23 invested in real property. We have contacted the attorney for the individual who allegedly
24 created the trust for Ms. Phillips, and we hope to ascertain soon whether recoverable assets exist.
25
26
27

28 ²⁰ The United States has had difficulty developing evidence sufficient to void liens on the Arizona property due to the recalcitrance of witnesses. The Receiver likely will withdraw his interest in the real property, allow it to be forfeited, and pursue recovery thereafter from the Department of Justice.

1 At the same time, the United States Attorney's Office for the Northern District of
2 Oklahoma seized approximately 2,450 Chinese bonds that were purchased by Zidar and his
3 associates. The bonds currently are being used in a grand jury proceeding in Oklahoma, but it is
4 our understanding that the bonds will be transferred to our office soon thereafter. Estimates
5 concerning the value of the bonds vary significantly.

6 Also, we continue to investigate the potential to recover assets from some of the
7 defendants' business investments in other entities including the Gold & Silver Reserve, Inc. and
8 Alphacom.
9

10 Nonetheless, in order to distribute the bulk of the Receivership Assets to the victim
11 investors as soon as possible, we recommend that the Court order my office to make an "Initial
12 Distribution" based on the total of the Receivership Assets as of March 31, 2004. In the
13 meantime, my office will continue to wind up the recovery of potential assets and report to the
14 Court on our progress within six months of the date of the Initial Distribution. Once we are
15 satisfied that we have recovered as many assets as economically feasible, we will petition the
16 Court to order a "Supplemental Distribution" of the remaining Receivership Assets to the
17 investors with a "verified loss" at the above-calculated pro-rata distribution.
18
19

20 H. DISCLOSURE OF RECORDS TO LEAD DEFENDANT ZIDAR

21 Robert Caruso, counsel for the lead defendant, John W. Zidar, has requested access to the
22 list of investors that have filed claims with the Receiver. Mr. Caruso states that he will be able to
23 assist the Receiver by identifying potentially fraudulent claims filed with the Receiver. The
24 Receiver welcomes any useful information. However, due to privacy and potential harassment
25 considerations, the Receiver is concerned about disclosing claim information on 3,467 investors
26 to the defendant.
27
28

Since this matter relates to the privacy issues addressed in section F, the Receiver

1 petitions the Court to rule whether the Receiver should furnish this information to defendant
2 Zidar's attorney. And, if so, the Receiver requests that the Court direct defendant Zidar's
3 counsel to respond with relevant and useful information within the 45-day objection period
4 afforded each investor.

5 I. SUMMARY
6

7 This proposed distribution plan is my recommendation after 17 months of work on this
8 case. We recognize, however, that there might be other ways to do this. I will carefully execute
9 whatever distribution plan the Court orders. Of course, in the meantime, should the Court have
10 any questions or concerns about this case, I will promptly address them.

11 **II. RELIEF REQUESTED**
12

13 In sum, the Receiver moves the court to rule as follows:

- 14 (1) grant approval of the Receiver's above-mentioned pro rata distribution plan and
15 rule that each investor's pro rata distribution will be based on the Verified
16 Amount formula (investor's claim less investment returns and/or commission
17 payments);
18
19 (2) set a date for consideration and approval or denial of the proposed pro rata
20 distribution for each investor, but the date will be no sooner than 75 days after the
21 execution of the order;
22
23 (3) that within 10 days of the execution of this order, the Receiver shall notify each
24 investor by U.S. Mail that the Court has approved the distribution plan and advise
25 investors how to obtain information regarding the proposed resolution of their
26 claims (the Receiver requests that the Court approve one of the two notice
27 procedure options recommended in the attached proposed order);
28
29 (4) that within 10 days of the execution of this order, the Receiver shall notify each

1 investor by U.S. Mail that he or she must preserve their claim by mailing and
2 filing with the Court and Receiver any objection to the distribution plan within 45
3 days of the date the Receiver mailed the letter regarding the distribution plan and
4 objection process;

5 (5) that any objections not timely filed and served may be deemed waived, and that
6 any objections filed and served without evidence supporting allowance of the
7 claim may be deemed to be consent to disallowance of the claim;

8 (6) that the Receiver shall have 20 days beyond the expiration of the 45 day investor
9 objection period to file a response to any timely-filed investor objections, and that
10 the Receiver does not waive any argument against disallowance of any
11 disapproved claim by not filing a written reply to the claimant's objection;

12 (7) that on the date the Court sets to consider the proposed pro rata distribution, the
13 Court will approve and allow each distribution proposal and Verified Amount
14 calculated by the Receiver that has not been objected to by the investor;

15 (8) that in order to provide certainty and to ensure the accuracy of the pro rata
16 distribution calculation, the Receiver shall not accept or consider any new
17 investor claims after the date the Receiver mails the distribution plan and 45-day
18 objection notice to the investors currently known to the Receiver;

19 (9) that at the hearing to allow or disallow specific pro rata distributions or as soon
20 thereafter as possible, the Court will rule on the proposed distribution and any
21 objections;

22 (10) that after the Court approves or denies each pro rata distribution proposal, the
23 Receiver shall forward to David Smith, counsel for 1,722 investors, the total
24 Verified Amount, or sum of the amount owed Mr. Smith's clients with
25
26
27
28

instructions as to the pro rata distribution owed each of his clients;

- 1
- 2 (11) that the Receiver shall distribute the pro rata equivalent of Mr. Roland Baldwin's
- 3 \$65,994.00 investment in Rosewood to the 64 investors that invested in the
- 4 Higher Education Student Assistance Foundation. The 64 investors shall receive
- 5 a percentage distribution equivalent to their percentage of the \$65,994.00
- 6 investment;
- 7
- 8 (12) that the Receiver shall distribute the pro rata equivalent of the \$1,499,984.00
- 9 investment by Mr. Larry Wilcoxson and his colleagues to Mr. Robb Evans, a
- 10 court-appointed receiver in *United States of America v. Larry Wilcoxson, et al.*,
- 11 *United States Dist. Court for the Eastern Dist. Of California (CR-S 99-0359*
- 12 *DFL)*, and Mr. Robb Evans shall distribute the funds to investors who were
- 13 defrauded by Mr. Wilcoxson and his colleagues;
- 14
- 15 (13) that the Receiver shall calculate a Verified Amount of zero for investor applicants
- 16 that appear to have funds frozen at the ANZ Bank in New York;
- 17
- 18 (14) that the Court lift the May 18, 2000 Preliminary Injunction, Order Freezing Assets
- 19 and Granting Other Relief as to Defendants John Wayne Zidar and John Wesley
- 20 Matthews and Relief Defendant Meliorations Management Teem;
- 21
- 22 (15) that the ANZ Bank New York return the funds frozen by this Court's order to
- 23 their originators together with any accrued interest and disclose to the Receiver
- 24 the identity of the source of the originators of the transfer of funds;
- 25
- 26 (16) that the Receiver shall continue to attempt to recover assets that are linked to the
- 27 defendants fraudulent transactions. It is ordered that within 6 months of the initial
- 28 distribution of the assets currently being maintained and managed by the
- Receiver, the Receiver shall submit a supplemental distribution proposal if the

1 Receiver is able to locate and recover any outstanding assets that are linked to the
2 matters addressed in the underlying case; and

3 (17) that on the same day the Receiver notifies each investor of the 45-day objection
4 period, the Receiver shall furnish to Robert Caruso, counsel for John W. Zidar, a
5 list of the investors and his or her Verified Amount. Mr. Caruso and his client
6 shall review the data and proposed pro rata distribution for accuracy and provide
7 any relevant information to the Receiver within 45 days;

8 (18) that the Receiver shall deduct \$167,500.00 from the Receivership Assets for
9 future fees and costs prior to calculating and conducting the pro rata distribution.
10

11 III. MOTION FOR FEES

12 The Order states that the Receiver shall take payment from the Receivership Assets and
13 make application to the Court for such payment. The specific language provides:

14 [t]he costs, fees and expenses of the Receiver incurred in
15 connection with the performance of his duties described herein,
16 including the costs and expenses of those persons who may be
17 engaged or employed by the Receiver to assist him in carrying out
18 his duties and obligations hereunder, shall be paid out of
19 Receivership assets. All applications for costs, fees and expenses
20 for services rendered in connection with the Receiver shall be
made by application setting forth in reasonable detail the nature of
the services and shall be heard by the Court.

21 Order at Section II, subparagraph d.

22 From October 13, 2003 through March 31, 2004, the Receivership has incurred fees of
23 \$115,109.80. See McKay Decl. at ¶ 3 and Exhibit A attached thereto. This motion does not
24 include a petition for payment of costs, since costs are now being paid out of Receivership
25 Assets on a monthly basis pursuant to the Court's May 19, 2003, Motion Granting Clarification.
26 *Id.* at ¶ 4. Consistent with the terms of that order, we have filed with the Court each month a
27 report setting out those expenses. Pursuant to the March 27, 2001, Order Appointing Receiver,
28

1 we respectfully request this Court to grant the Receivership the authority to receive payment
2 from the Receivership Assets in the amount of \$115,109.80.

3 DATED this ___ day of April, 2004.

4 **McKAY CHADWELL, PLLC**

5
6
7 By: _____
8 Michael D. McKay, WSBA No. 7040
9 Receiver
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28