

THE HONORABLE JOHN C. COUGHENOUR

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

JOHN WAYNE ZIDAR, et al.,

Defendants.

No. C00-823C

**RECEIVER'S FIFTH
SUPPLEMENTAL REPORT
REGARDING ASSET RECOVERY
EFFORTS AND CASE STATUS**

**NOTE FOR MOTION:
December 7, 2007**

COMES NOW the court-appointed Receiver who submits this report in compliance with the Court's May 14, 2007 Order Directing the Receiver to Continue Asset Recovery Efforts and Submit Supplemental Report ("Order"). The Order directed the Receiver to report to the Court within six (6) months regarding the status of this case, asset recovery efforts and a supplemental distribution plan.¹

The Receivership has recovered an additional \$26,730.00 since the Receiver's last report, but the total amount of funds available for a supplemental and final distribution will not be

¹This report was filed four court days after the deadline set in the Order so that the Receiver could confirm the receipt of a \$8,230.00 down payment on the sale of real property in Costa Rica and incorporate news regarding proof of service on Michelle von Wald. Both matters will be discussed in detail below.

1 known until all assets have been liquidated and the proceeds transferred to the receivership. The
 2 Receiver has made considerable progress identifying and investigating the Zidar Defendants' last
 3 remaining assets and claims, and only a few matters remain unliquidated.

4 The Receiver estimates that the assets identified below could increase the Receivership
 5 Assets by as much as \$355,000.00. As well, the Special Receiver has yet to conclude its
 6 investigation of C.W. Sullivan. The Receiver respectfully suggests that it would be premature to
 7 recommend a final pro rata distribution plan since not all assets have been liquidated.
 8

9 The following discussion explains the work that has been accomplished since the
 10 Receiver's Fourth Supplemental Report, and the Receiver asks the Court to direct the Receiver to
 11 continue its work and update the Court on the timeframe for a final distribution plan within six
 12 months of the Court's review of this report.
 13

14 I. Current Balance of Receivership Assets

15 The following table summarizes the Receiver's investment account activity since the
 16 April 24, 2007 Fourth Supplemental Report Regarding Asset Recovery Efforts and Case Status.
 17 The funds, listed below, have not been distributed to the defrauded investors.
 18

<i>Date of Activity</i>	<i>Type of Activity</i>	<i>Investment Account Balance</i>
04/30/2007	\$2,427.47 Interest Income	\$902,998.20
04/30/2007	(\$645.91) Receiver Costs ²	\$902,352.29
05/01/2007	(\$6,087.35) Receiver Costs ²	\$896,264.94
05/14/2007	\$5,000.00 Sale of Gold & Silver Reserve, Inc. stock certificates ³	\$901,264.94
05/14/2007	(\$885.75) Payment to Henry Lang ⁴	\$900,379.19
05/16/2007	(\$176,473.55) Receiver Fees ⁵	\$723,905.64
05/31/2007	\$2,357.67 Interest Income	\$726,263.31

26 ²Pursuant to May 19, 2003 Order Granting Receiver's Motion for Clarification.

27 ³Proceeds from sale of Gold and Silver Reserve, Inc. stock certificates.

28 ⁴Payment to Henry Lang, local counsel in Costa Rica, who is assisting in the sale of commercial property.

⁵ Pursuant to May 14, 2007 Order Granting Receiver's Motion for Attorney Fees.

06/27/2007	(\$6,487.32)	Payment to Special Receiver ⁶	\$719,775.99
06/30/2007	\$1,940.82	Interest Income	\$721,716.81
06/30/2007	(\$10.00)	Bank Fee	\$721,706.81
07/18/2007	(\$3,801.82)	Receiver Costs ⁷	\$717,904.99
07/31/2007	\$1,945.47	Interest Income	\$719,850.46
08/15/2007	\$13,500.00	Proceeds from Chinese Bonds ⁸	\$733,350.46
08/31/2007	\$1,996.09	Interest Income	\$735,346.55
09/27/2007	(\$1,382.40)	Receiver Costs ⁷	\$733,964.15
09/30/2007	\$2,037.06	Interest Income	\$736,001.21
10/04/2007	(\$1,580.50)	Payment to Henry Lang	\$734,420.71
10/31/2007	\$1,939.74	Interest Income	\$736,360.45
11/16/2007	\$8,230.00	Payment re Costa Rica property	\$744,590.45

II. Ongoing Asset Recovery Investigations and Liquidations

The March 27, 2001 Order Appointing Receiver directed the Receiver to take custody, control and possession of property known as the Receivership Assets and to marshal, conserve, hold, and manage those assets. The Receiver has worked diligently to recover potential assets in a cost-effective manner and understands that it is not useful or beneficial to the victims of this fraud to pursue assets at a cost greater than the potential return on the asset. Accordingly, the Receiver is mindful not to deplete the Receivership Assets as he winds up this matter. The following discussion provides a status report on the Receiver's work to date.

A. Assets the Receiver Expects to Recover and Incorporate in the Final Distribution

Since its last report, the Receiver has focused solely on the following matters that are expected to result in a monetary recovery.

(1) Belize Trust - Pending Sale of San Jose, Costa Rica Office Condominium

Criminal defendant Elizabeth Ann Phillips placed approximately \$625,000.00 in a trust created in Costa Rica, known as the "Belize Trust." A significant portion of those funds were

⁶Pursuant to November 6, 2006 Order Directing Special Receiver to Continue Investigation of Sullivan Transaction and Order Approving Fees and Costs.

⁷Pursuant to May 19, 2003 Order Granting Receiver's Motion for Clarification.

⁸ Proceeds from sale of 500 Chinese bonds by bond dealer Scott Winslow.

1 lost through poor investments. However, the Belize Trust trustees produced an accounting,
2 which showed that some real property and cash assets remained in the trust.

3 On July 20, 2006, the Court issued an order approving the transfer of assets from the
4 Belize Trust to the receivership. On August 17, 2006, the Belize Trust trustee wired \$225,934.99
5 to the receivership. On August 16, 2006, the Belize Trust trustee transferred possession of real
6 property to the Zidar Receivership S.R.L., a corporate entity in Costa Rica. The real property is
7 an office condominium located in San Jose, Costa Rica. The Receiver's local counsel in Costa
8 Rica is helping to market the real property so that it can be sold at fair market value as quickly as
9 possible, and the Receiver has engaged two separate commercial real estate agents.
10

11 On July 27, 2007, an individual in Costa Rica named Ana Elena Loria contacted the
12 Receiver by e-mail to inquire about the sale of the office condominium. Loria is a real estate
13 broker whose client has agreed to buy the office condominium. Over the course of the last
14 couple of months, the Receiver and Loria have negotiated the terms of a real estate sales
15 commission and purchase-sale agreement.
16

17 On November 15, 2007, Loria's client agreed to buy the property for \$165,000.00 and
18 wired a \$8,250.00 down payment to the Receiver on that date. Pursuant to the purchase
19 agreement, closing and final payment is due on January 1, 2008.
20

21 (2) Bahamas Fund

22 On October 19, 1999, Phillips wired \$255,000.00 to an account controlled by Mark
23 Cohen at a Citibank branch in Florida. It was understood that the funds would be invested in an
24 entity called either the Bahamas Fund or Glocap Holdings. On November 23, 2005, the Receiver
25 served a subpoena on Citibank for Cohen's bank statements. Citibank responded to the
26 subpoena and provided records on January 4, 2006.
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1 The Citibank records revealed that Cohen moved to Carlisle, Massachusetts, and the
2 Receiver located Cohen on or about February 27, 2006. In subsequent telephone conversations
3 with the Receiver's office, Cohen claims the funds were intended to fund a movie production.
4 He also claims that \$154,500.00 was returned to Tradewinds Holding and Michelle von Wald in
5 Florida. Cohen claimed that the remaining \$100,500.00 was placed in an account in France and
6 later seized by agents of the French government. The Receiver deposed Cohen on April 18,
7 2007.
8

9 The Receiver located von Wald in Miami, Florida on June 6, 2006. von Wald claims that
10 she never received Zidar funds from Cohen. By subpoena, the Receivership has obtained both
11 von Wald's Turnberry Bank account records and her Florida Savings Bank account records.
12 Cohen also provided IBJ Whitehall bank wire records that indicate \$55,000.00 was wired to von
13 Wald.⁹ von Wald's Turnberry Bank records confirm the fact that von Wald did indeed receive
14 significant funds, but the source of those funds could not be determined.
15

16 On August 31, 2006, von Wald forwarded to the Receiver a letter that her mother
17 received from a law firm (B.M.B. & Associates) in Paris, France. The Parisian firm claims to have
18 represented von Wald's mother's in an effort to recover funds that were seized by the French
19 government.
20

21 Via communications with an attorney (Sophie Bottai) in Marseille, France, the Receiver
22 contacted French attorney Christopher Boinet, who works at B.M.B. & Associates in Paris, and on
23 March 7, 2007, the Receiver's office interviewed Mr. Boinet by phone. Boinet confirmed that
24 United States residents hired his firm to recover funds that were seized by the French
25 government. He also confirmed that the funds were seized in connection to a criminal
26

27 ⁹The Mizuho Corporate Bank controls IBJ Whitehall Bank. On or about April 4, 2007, Mizuho produced Cohen's
28 IBJ Whitehall bank account records.

1 investigation. Boinet stopped working on the matter in 2003 when the plaintiffs ceased making
2 payments for his services. Boinet expressed confidentiality concerns and was unwilling to
3 disclose any other details concerning this case.

4 Cohen was sued in the Southern District of Florida in relation to the funds that were
5 seized in Paris, France. A \$3,700,000.00 judgment was entered against him on December 3,
6 2003. The Receiver's office interviewed Mr. Donald Beckner, a former United States Attorney,
7 who brought the action against Cohen. Beckner's investigation and lawsuit concluded that
8 Cohen's partner (Jean Pierre Martinez) was the main culprit in that Martinez stole funds from the
9 French account of Creai. Creai was a legitimate French government agency. Martinez served
10 time in France for theft.
11

12 Beckner hired Patton Boggs in Washington, D.C. to determine whether it was possible to
13 enforce the civil judgment in France. In turn, they hired Charles de Gaulle's grandson, an
14 attorney in Paris. It was concluded that the \$3,700,000.00 judgment could not be enforced in
15 France, and the case closed because Cohen has no other assets. All Cohen funds were ultimately
16 traced to the Creai account in the French bank. Beckner believes the representations Cohen has
17 made to the Receiver are consistent with Beckner's investigation. The Receiver has concluded
18 that Cohen has no assets worth pursuing.
19

20 On April 20, 2007, the Receiver deposed Michelle von Wald. At the end of the three
21 hour and forty-five minute deposition, von Wald agreed to repay the Receivership \$154,500.00.
22 von Wald had worked with Cohen to induce individuals to invest in Cohen's Ponzi scheme.
23 Cohen transferred a total of \$154,500.00 of the Zidar Defendants' funds to von Wald in Miami,
24 Florida between August, 1999 and June 2001. As noted, Cohen lost the remaining \$100,500.00
25 in the above-mentioned wayward investment in Paris, France. von Wald made no attempt to
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1 return the \$154,500.00 to the Zidar Defendants or the victims of the fraud committed by the
2 Zidar Defendants.

3 Instead, von Wald used the \$154,500.00 for her personal gain and benefit, and von Wald
4 admitted under oath during the April 20, 2007 deposition that she kept all funds that Cohen
5 transferred to her. von Wald agreed under oath during an April 20, 2007 deposition that she
6 would return the \$154,500.00 to the Receiver.
7

8 Unfortunately, on or about May 1, 2007, von Wald informed the Receiver through her
9 attorney that she did not intend to return the funds in accord with her April 20, 2007 promise. As
10 a result, the Receiver filed a complaint against von Wald for fraud, breach of contract and
11 conversion on November 8, 2007. von Wald was served with the complaint and summons on
12 November 14, 2007.
13

14 (3) Chinese Bonds

15 Pursuant to the Court's October 27, 2005 Order, the Receiver arranged to sell Chinese
16 Government 5% Reorganization Gold Loan of 1913 bonds for collector's value. The Receiver
17 hired bond dealer Scott J. Winslow Associates, Inc. to assist with the sales.
18

19 The Receiver initially shipped 1,424 bonds to Winslow. After the United States Postal
20 Inspection Service located additional bonds, the Receiver delivered another 456 bonds to
21 Winslow on February 15, 2007 for a total of 1,880 bonds.
22

23 Over the last fifteen months, Winslow has sold three different blocks of the Chinese
24 bonds for a total of \$40,500.00. He has sold all but 484 bonds. He continues to market the
25 bonds that remain in his possession. Based on Winslow's representations, the Receiver
26 anticipates the remaining 484 bonds will be sold within the next couple of months.
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1 (4) James Haslem

2 Zidar loaned James Lynn Haslem \$125,000.00 to explore a deal with Saudi Arabian
3 investors. Haslem acknowledged the loan during the Zidar criminal trial and claimed the loan
4 was secured by a lien on his home.

5 The Receiver sued Haslem in Utah state court and obtained a \$211,081.12 default
6 judgment on January 2, 2007. The Receiver's local counsel interviewed Haslem on or about
7 February 6, 2007 regarding his ability to satisfy the judgment. Haslem appears to lack any
8 substantial assets.
9

10 The Receiver and Haslem have been attempting to settle the default judgment. On
11 August 6, 2007, the Receiver's local counsel in Utah informed Haslem that the Receiver would
12 settle this matter for \$25,000.00, if Haslem made payment by August 10, 2007. Haslem was
13 unable to satisfy that demand. He informed local counsel, however, that his brother expects to
14 obtain financing regarding a business plan, and that he would be able to partially repay his debt
15 once he and his brother obtain that financing.
16

17 As of the date of this report, Haslem and his brother have yet to obtain the business loan.
18 The Receiver is exploring other options to liquidate its default judgment short of brokering a
19 settlement agreement with Haslem.
20

21 **III. CONCLUSION**

22 Due to the aforementioned outstanding matters, including work by the Special Receiver,
23 the Receiver respectfully suggests that it would be premature to propose a supplemental
24 distribution plan to the Court at this time. The Receiver recommends conducting a supplemental
25 distribution only after all viable assets have been recovered and any potential appeals have been
26 resolved.
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1 As noted, the Receiver is in the process of closing a sale on real property in San Jose,
2 Costa Rica. It expects to complete its other investigations and recover outstanding assets within
3 the next few months. The Receiver is sensitive not to deplete Receivership Assets by chasing
4 unrealistic leads and instigating costly litigation. In that light, the Receiver is confident that he is
5 expending energy to assert only viable claims. The Receiver estimates that the assets identified
6 above may increase the Receivership Assets by as much as \$355,000.00. It is likely, but not
7 certain, that work will be completed within the next six months and that the Receiver will be able
8 to submit a supplemental distribution to the Court at that time.
9

10 Accordingly, the Receiver moves the court to order the Receiver to issue another report
11 within six months. The Receiver further petitions the Court to order the Receiver to submit a
12 supplemental distribution plan once all assets have been recovered by the Receiver and Special
13 Receiver. The Receiver estimates that it will cost approximately \$10,000.00 to facilitate the next
14 monetary distribution to approximately 3,500 victims. Given the costs associated with the
15 distribution, the Receiver believes it is most cost-effective to incur this cost only one more time,
16 at the conclusion of this case. If approved in a final order, the distribution plan will only be
17 implemented if no interested party appeals the Court's ruling that approves such a plan.
18
19

20 DATED this 20th day of November, 2007.

21 **McKAY CHADWELL, PLLC**

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