

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

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 MEMORANDUM  
AND RECOMMENDATIONS  
REGARDING CLAIMS NOT  
FILED WITH THE COURT, OR  
FILED AFTER THE SEPTEMBER  
29, 2004 COURT-IMPOSED  
DEADLINE**

COMES NOW the court-appointed Receiver, Michael D. McKay, who responds to claims submitted to the Receiver after the Court-imposed September 29, 2004 deadline for new claims. These claims were either not filed with the Court or were submitted to our office too late to address in the October 27, 2004 Receiver’s Response to Objections to Proposed Distribution Plan and Recommendation on Petitions for Participation in Distribution Plan (“Response”). The following discussion makes recommendations regarding each new claimant’s eligibility for the pro rata distribution.

**I. BACKGROUND FACTS**

On July 23, 2004, the Court ordered my office not to accept or consider any new investor claims after August 2, 2004, the date we mailed the distribution plan and the 45-day objection

1 letter to the investors currently known to the Receiver. Accordingly, after August 2, 2004, we  
2 advised potential new claimants to submit their claims directly to the Court.

3 On September 16, 2004, the Court ordered that all outstanding claims be filed with the  
4 Court by Wednesday, September 29, 2004, and that all claims filed after that date be denied.  
5 The Court further directed the Receiver's office to provide recommendations to the Court on  
6 whether each claimant has provided a good faith reason for not responding to the Receiver's  
7 December 6, 2002 request in a timely manner.  
8

## 9 **II. CLAIMS SUBMITTED TO RECEIVER AND NOT FILED WITH COURT**

### 10 **A. Deravy, Echan**

11 On September 23, 2004, Echan Deravy informed our office that he planned to contact the  
12 Court and make a claim for participation in the distribution plan. He stated that the claim would  
13 arrive in Seattle by September 29, 2004, the Court-imposed deadline for new claims. It appears  
14 that the Court never received Deravy's claim. Our office received Deravy's documentation on  
15 October 1, 2004. His papers include a shipping receipt dated September 24, 2004, which  
16 arguably evidences the fact that Deravy contacted the Court. See ¶2 of Declaration of Thomas  
17 M. Brennan in Support of Memorandum ("Brennan Dec.") and Exhibit A attached thereto.  
18  
19

20 Deravy claims a March 2000 \$99,638.00 investment in Rosewood International.  
21 Deravy's documents support the claim. He provides a March 16, 2000 \$99,653.00 wire transfer  
22 request and a March 16, 2000 Rosewood certificate.  
23

24 In his letter addressed to the Court, Deravy notes that he moved to Japan in 2001. We  
25 mailed our initial correspondence to investors in December of 2002, after Deravy left the  
26 country. It is possible that Deravy was unaware of the Receivership. However, it is unclear  
27  
28

1 whether Deravy has since filed a claim with the Court. As a result, it is difficult to conclude that  
2 Deravy has a good faith reason for failing to contact the Court in a timely manner.

3         Regardless, if the Court accepts Deravy's claim, we recommend it approve Deravy for a  
4 Verified Amount<sup>1</sup> of \$99,638.00.

5         B. Paige, Lynn

6         Lynn Paige did not file a restitution application with the Receiver. On August 12, 2004,  
7 our office instructed Paige by e-mail to submit documentation to the Court. See ¶3 of Brennan  
8 Dec. and Exhibit B attached thereto. On September 7, 2004, we received Paige's claim with a  
9 cover letter addressed to the Court. However, it appears that Paige never filed the claim with the  
10 Court.  
11

12         On February 6, 2003, our office informed Paige that she could access a claim application  
13 and questionnaire on our website. Paige responded that she would do so. Paige's materials also  
14 include a July 31, 2002 letter from attorney David Smith, which references this action. Paige  
15 was aware of the Receivership as early as the summer of 2002 and does not seem to have a good  
16 faith basis for failing to act in a timely manner.  
17  
18

19         Paige claims a \$12,940.00 December 1999 Rosewood investment. The documents  
20 support this claim. Specifically, Paige provides money orders totaling \$11,940.00 and a  
21 Rosewood contract. We confirmed the investment in the defendants' financial records.  
22

23         If the Court includes Paige in the distribution, we recommend a Verified Amount of  
24 \$12,940.00.

25         Paige also claims investments on behalf of four other individuals: Amanda Holdgraf,  
26 Martin Holdgraf, John Heinrich, and David Heinrich. None of these individuals have previously  
27

28 <sup>1</sup> As noted in our April 26, 2004 Petition for Approval of Proposed Distribution Plan, the Verified Amount is defined as the total amount invested less investment funds returned and commission payments.

1 filed a claim. We address each claim separately.

2 *1. Holdgraf, Amanda*

3 Paige claims that Amanda Holdgraf invested \$1,294.00 in Rosewood International in  
4 December of 1999. The documents provided by Paige and/or Holdgraf support this claim. If the  
5 Court includes Holdgraf in the distribution, we recommend a Verified Amount of \$1,294.00.  
6

7 *2. Holdgraf, Martin*

8 Paige claims that Martin Holdgraf invested \$1,294.00 in Rosewood International in  
9 December of 1999. The documents provided by Paige and/or Holdgraf support this claim. If the  
10 Court includes Holdgraf in the distribution, we recommend a Verified Amount of \$1,294.00.  
11

12 *3. Heinrich, John*

13 Paige claims that Heinrich invested \$12,940.00 in Rosewood International in November  
14 of 1999. The documents provided by Paige and/or Heinrich support this claim. We confirmed  
15 the deposit in the defendants' financial records. If the Court includes Heinrich in the  
16 distribution, we recommend a Verified Amount of \$12,940.00.  
17

18 *4. Heinrich, John as Trustee for Heinrich, David*

19 Paige claims that Heinrich invested \$6,470.00 in Rosewood International on behalf of  
20 David Heinrich in November of 1999. The documents provided by Paige and/or Heinrich  
21 support this claim. We confirmed the deposit in the defendants' financial records. If the Court  
22 includes Holdgraf in the distribution, we recommend a Verified Amount of \$6,470.00.  
23

24 **III. CLAIMS FILED AFTER THE SEPTEMBER 29, 2004 DEADLINE**

25 **A. Claims filed by Ervin Norwood**

26 On October 26, 2004, Norwood filed a letter with the Court and made claims on behalf of  
27 thirty-three other individuals. Norwood notes that he contacted the Receiver on or about the  
28

1 September 29, 2004 deadline for new claims. Our records indicate that Norwood first contacted  
2 our office on October 8, 2004. Norwood does not explain why he waited nearly three weeks to  
3 file the claims and appears to lack a good faith reason for the delay.

4 Of the thirty-three claims filed by Norwood, eleven had already been accepted and  
5 verified by our office. Therefore, their names appear in the Distribution Report, which was  
6 posted on the Receiver's website on August 2, 2004. These claims are:  
7

8	<u>Name</u>	<u>Verified Amount</u>
9	Berry, Darrell	\$5,176.00
10	Broome, Ralph	\$1,294.00
11	Chandler, Inez	\$ 0.00
12	Chandler, Robert	\$1,294.00
13	Gennaro, Mark	\$2,588.00
14	Johnson, Jewel	\$1,294.00
15	Meisenheimer, Roy	\$7,764.00
16	Noel, Henry	\$6,470.00
17	Randolph, Helen	\$1,294.00
18	Randolph, Moses	\$1,294.00
19	Robinson, Horace	\$3,882.00

20 The following addresses Norwood's twenty-two other claims.

21 *1. Bright Horizon Investors*

22 Member Representative Moses Williams started Bright Horizon after the Court stopped  
23 the operations of the lead defendants in this case. Williams is not a defendant in this case, and  
24 his assets are not a part of the Receivership assets. The March 27, 2001 Court order defines  
25 "Receivership Assets" as:

26 [a]ll money and other assets contributed to Oakleaf International  
27 and Rosewood International investment programs; all money and  
28 assets contributed to Meliorations Management Teem, World  
Cultural Center (Samoa) Inc., SBC Inc., Millennium SA, Third  
Millennium SA, Privateassets.com SA, Isaacson Global Holding  
SA, and PIBC in relation to the Oakleaf International or Rosewood  
International investment program; all money and assets contributed  
to programs of similar design or purpose operated by defendants

1 John W. Zidar, John W. Matthews, or Elizabeth A. Phillips, or  
2 relief defendants William H. Cravens or Steven C. Moreland; and  
3 all proceeds, rents, interest, capital gains, and other income  
4 attributable to the use of such money and assets.

5 Bright Horizon funds were not commingled with the defendants' accounts, and we  
6 recommend that Bright Horizon investors not be included in the pro rata distribution.

7 *2. Chandler, Inez*

8 We previously denied Inez Chandler's \$2,588.00 Bright Horizon claim.

9 Now, for Chandler, Norwood submits a \$1,294.00 check dated April 17, 2000 and an  
10 April 29, 2000 Rosewood certificate.

11 If the Court includes Chandler in the distribution, we recommend that she be  
12 approved for a verified amount of \$1,294.00, the amount of her April 2000 Rosewood  
13 investment. Her Bright Horizon investments should not be approved.

14 Norwood also claims that Curtisteen Matthews and Harvey Washington made  
15 investments in Bright Horizon. Again, the Bright Horizon scheme was separate from the  
16 investment schemes run by the Zidar defendants. We recommend that the Court deny these  
17 petitions.  
18

19 *3. Oakleaf and Rosewood Investors*

20 *a. Berry, Frances*

21 Norwood claims that Berry invested \$1,294.00 in Rosewood on or about February 5,  
22 2000. The defendants' financial records confirm the investment. If the Court includes Berry in  
23 the distribution, we recommend a Verified Amount of \$1,294.00.  
24

25 *b. Brown, Frederick*

26 Norwood claims that Brown invested \$1,294.00 in Oakleaf. He provides a proof of  
27 purchase dated September 5, 1999. The defendants' records confirm the investment. If the  
28

1 Court includes Brown in the distribution, we recommend a Verified Amount of \$1,294.00.

2 *c. Brown, Gregory*

3 Norwood claims that Brown invested \$1,294.00 in Rosewood on or about April 29, 2000.  
4 He provides a proof of purchase totaling only \$647.00. However, the defendants' financial  
5 records confirm that Brown made a \$1,294.00 investment. If the Court includes Brown in the  
6 distribution, we recommend a Verified Amount of \$1,294.00.  
7

8 *d. Dara, Rev. Joshua Joy*

9 Norwood claims that Dara invested \$1,294.00. The defendants' financial records confirm  
10 the investment. If the Court includes Dara in the distribution, we recommend a Verified Amount  
11 of \$1,294.00.  
12

13 *e. Fields, Rev. Deacue and Marria*

14 Norwood claims that the Fieldses invested \$2,588.00. The defendants' financial records  
15 confirm the investment. If the Court includes the Fieldses in the distribution, we recommend a  
16 Verified Amount of \$2,588.00.  
17

18 *f. Fields, Shelia*

19 Norwood claims that Shelia Fields invested \$1,294.00. The defendants' financial records  
20 confirm the investment. If the Court includes Fields in the distribution, we recommend a  
21 Verified Amount of \$1,294.00.  
22

23 *g. Fox, Gerald and Geneva*

24 Norwood claims that the Foxes invested \$3,882.00 in Rosewood. He provides two proofs  
25 of purchase and two certificates dated March 24, 2000, and April 21, 2000. The defendants'  
26 financial records confirm the investments. If the Court includes the Foxes in the distribution, we  
27 recommend a Verified Amount of \$3,882.00.  
28

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

*h. Meisenheimer, Charles*

Norwood claims that Meisenhemier invested \$1,294.00 in Rosewood on March 23, 2000. He provides a proof of purchase, and the defendants' financial records confirm the investment. If the Court includes Meisenheimer in the distribution, we recommend a Verified Amount of \$1,294.00.

*i. Mustiful, Eddie*

Norwood claims that Mustiful invested \$1,294.00 in Oakleaf on or about June 18, 2000. The proof of purchase and defendants' records confirm the investment. If the Court includes Mustiful in the distribution, we recommend a Verified Amount of \$1,294.00.

*j. Norwood, Alfonso*

Norwood claims that Alfonso Norwood invested \$1,294.00 in Rosewood on or about September 27, 1999. The defendants' financial records confirm the investment. If the Court includes Norwood in the distribution, we recommend a Verified Amount of \$1,294.00.

*k. Norwood, Christel*

Norwood claims that Christel Norwood invested \$1,294.00 on or about May 17, 2000. The Court issued its temporary restraining order freezing the defendants' assets on May 10, 2000. Therefore, it is unlikely that Norwood's investment was commingled in the defendants' accounts with other investors' deposits. The defendants' financial records do not confirm the deposit. We recommend that the Court not include Norwood in the pro rata distribution.

*l. Norwood, Ervin*

Norwood claims that he invested \$2,588.00 in Oakleaf on or about May 20, 1999. The defendants' financial records confirm the investment.

However, the defendants' records show that Norwood acted as a Member Representative

1 and received \$13,205.00 in commissions. See ¶4 of Brennan Dec. and Exhibit C attached  
2 thereto. If the Court includes Norwood in the distribution, we recommend a Verified Amount of  
3 \$0.00.

4 *m. Norwood, Sharoundala*

5 Norwood claims that Sharoundala Norwood invested \$1,294.00 in Rosewood on or about  
6 April 29, 2000. The defendants' financial records confirm the investment. If the Court includes  
7 Norwood in the distribution, we recommend a Verified Amount of \$1,294.00.  
8

9 *n. Owens, Jimmie*

10 Norwood claims that Owens invested \$1,294.00 in Rosewood on or about January 18,  
11 2000. The defendants' financial records confirm the investment. If the Court includes Owens in  
12 the distribution, we recommend a Verified Amount of \$1,294.00.  
13

14 *o. Owens, Patricia*

15 Norwood claims that Owens invested \$2,588.00 in Rosewood on or about November 20,  
16 1999. The defendants' financial records confirm the investment. If the Court includes Owens in  
17 the distribution, we recommend a Verified Amount of \$2,588.00.  
18

19 *p. Priddy-Nash, Mary*

20 Norwood claims that Priddy-Nash invested \$2,588.00 in Oakleaf on or about September  
21 3, 1999. The defendants' financial records confirm the investment. If the Court includes Priddy-  
22 Nash in the distribution, we recommend a Verified Amount of \$2,588.00.  
23

24 *q. Roberson, Marshandra*

25 Norwood claims that Roberson invested \$1,294.00 in Rosewood on or about March 15,  
26 2000. The defendants' financial records confirm the investment. If the Court includes Roberson  
27 in the distribution, we recommend a Verified Amount of \$1,294.00.  
28

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

*r. Washington, Terry*

Norwood claims that Washington invested \$10,352.00 on or about June 25, 1999. The proof of purchase and defendants' records confirm the investment. If the Court incorporates the Washington claim, we recommend a Verified Amount of \$8,281.60, which constitutes his initial investment less funds return.

*s. Williams, Edmonia*

Norwood claims that Williams invested \$1,294.00 on or about July 5, 1999. The defendants' financial records confirm the investment. If the Court includes Williams in the distribution, we recommend a Verified Amount of \$2,588.00.

**B. Claims Filed by Other Investors**

*1. Baker, Graham*

Baker, who did not file an application with the Receiver, seeks the Court's approval to participate in the restitution plan. He filed a petition with the Court on October 26, 2004, and he claims that he only learned of the Receivership on October 19, 2004.

Baker claims a March 9, 2000 Rosewood investment. Baker provided the proper paperwork, including a certificate and proof of purchase totaling \$6,470.00. The defendants' financial records confirm the investment.

If the Court incorporates Baker's claim, we recommend approving a Verified Amount of \$6,470.00.

*2. Hue, Frank and Patricia*

The Hues, who did not file an application with the Receiver, seek the Court's approval to participate in the restitution plan. The Hues filed a petition with the Court on November 12, 2004, and they claim that they only learned of the Receivership from a friend on October 19,

1 2004.

2 The Hues claim an April 7, 2000 Rosewood investment. The Hues provide the proper  
3 paperwork, including a certificate and proof of purchase totaling \$5,176.00. The defendants'  
4 financial records confirm the investment.

5 If the Court incorporates the Hues' claim, we recommend approving a Verified Amount  
6 of \$5,176.00.

7  
8 *3. Symonds, Steve and Merlyn*

9 The Symonds, who did not file an application with the Receiver, seek the Court's  
10 approval to participate in the restitution plan now. The Symonds filed a petition with the Court  
11 on October 26, 2004.

12 The Symonds claim a December 6, 1999 Rosewood investment. They provided the  
13 proper paperwork, including a certificate and proof of purchase totaling \$9,058.00. The  
14 defendants' financial records confirm this deposit.

15 In their letter to the Court, the Symonds note that they mistakenly thought the "Stephen  
16 Symons'" claim in the Distribution Report was their claim. The confusion was due to the fact  
17 that Meliorations Management mistakenly printed the name "Steve Simons" on their certificate.  
18 If the Symonds made an honest mistake and thought that their claim was included in our list,  
19 they likely have a good faith reason for submitting a late claim.

20 If the Court incorporates the Symonds' claim, we recommend approving a Verified  
21 Amount of \$9,058.00.

22  
23  
24  
25 **IV. Amendments to Timely Filed Claims**

26 A. Shultz, Betty

27 Shultz filed a petition on August 30, 2004. Her petition lacked documentation.  
28

1 However, the defendants' financial records show that Shultz invested a total of \$90,580.00, and  
2 in our Response, we recommended that Shultz be included in the distribution plan for a Verified  
3 Amount of \$90,580.00.

4 On October 8, 2004, Shultz's attorney forwarded additional supporting documentation.  
5 While most of the documents pertain to the investments that we verified, the new information  
6 also contained an additional proof of payment in the amount of \$10,352.00, dated January 29,  
7 2000. Initially, we could not locate this investment in the defendants' financial records because  
8 the payor on the check is listed as "Clifford Schultz."  
9

10 Given the additional proof of payment, we recommend that the Court increase Shultz's  
11 Verified Amount to \$100,932.00 (\$90,580.00 + \$10,352.00).  
12

13 DATED this 3<sup>rd</sup> day of December, 2004.

14  
15 **McKAY CHADWELL, PLLC**

16 By: s/ Michael D. McKay

17 Michael D. McKay, WSBA No. 7040  
18 Receiver  
19 McKay Chadwell, PLLC  
20 600 University Street, Suite 1601  
21 Seattle, WA 98101  
22 Phone: (206) 233-2800  
23 Facsimile: (206) 233-2809  
24 E-mail: [mdm@mckay-chadwell.com](mailto:mdm@mckay-chadwell.com)