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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 SECOND REPORT TO
COURT ON RECEIVERSHIP
ASSETS AND MOTION FOR FEES
AND CLARIFICATION

NOTE ON MOTION CALENDAR:

FRIDAY, APRIL 25, 2003

I. SECOND REPORT TO COURT ON RECEIVERSHIP ASSETS

A. BACKGROUND

In a March 27, 2001 order (“Order”) entered in this case, I was appointed Receiver and ordered to take custody, control and possession of property known as the “Receivership Assets.”

The Receivership Assets were defined in the Order as:

[a]ll money and other assets contributed to Oakleaf International and Rosewood International investment programs; all money and assets contributed to Meliorations Management Teem, World Cultural Center (Samoa) Inc., SBC Inc., Millennium SA, Third

1 Millennium SA, Privateassets.com SA, Isaacson Global Holding
2 SA, and PIBC in relation to the Oakleaf International or Rosewood
3 International investment program; all money and assets contributed
4 to programs of similar design or purpose operated by defendants
5 John W. Zidar, John W. Matthews, or Elizabeth A. Phillips, or
6 relief defendants William H. Cravens or Steven C. Moreland; and
7 all proceeds, rents, interest, capital gains, and other income
8 attributable to the use of such money and assets.

9 Order at Section I.

10 As Receiver, I am authorized:

11 to marshal, conserve, hold, and manage the Receivership Assets
12 with full power to take such steps as [I] [deem] necessary to secure
13 such assets including, but not limited to, obtaining an accounting
14 of the Assets, insuring the Assets, and preventing transfer,
15 withdrawal, concealment, dissipation, or misapplication of Assets.

16 Order at Section I, subparagraph a.

17 Furthermore, the Receiver is authorized “to open one or more bank accounts in King
18 County, Washington, as designated depositories for the Receivership Assets, and to deposit
19 funds into such accounts and make payments from such accounts.” Order at Section I,
20 subparagraph i.

21 **B. RECEIVERSHIP ASSET INVESTMENT STRATEGY**

22 As reported to the Court on December 17, 2001, we developed a strategy to increase the
23 return on these funds and to provide greater protection to the owners of these funds. A small
24 percentage of Assets remain in a money market fund in order to insure sufficient immediate
25 liquidity for the payment of expenses (“Money Market Account”). The remainder of the funds
26 were invested in tax-free national municipal bonds (“Investment Account”), all of which were
27 either fully insured against default by various private insurance issuers or collaterally backed
28 with a block of U.S. Treasury Bonds. According to the senior portfolio manager of U.S. Bank in
Seattle, the Treasury collateral guarantees the repayment to the investor in the unlikely event of

1 default, nullifying the need for insurance. Furthermore, Bond rating agencies have awarded a
 2 AAA rating for a Treasury bond collateral due to its low risk nature. These bonds matured in
 3 July 2002, and all of the funds are now being held in a fully insured tax-free money market
 4 account. We have attached three letters from Michael Brejda, the Senior Portfolio Manager at
 5 U.S. Bank, which explain the benefits of our investment strategy. See Exhibits 1, 2, and 3 to
 6 Declaration of Receiver Michael D. McKay.

8 **C. RECEIVERSHIP ASSETS**

9 Since our last report to the Court, the following activity has occurred in our Money
 10 Market Account and Investment Account.

11 **MONEY MARKET ACCOUNT:**

13 DATE	TYPE	AMOUNT
14 12/13/01	Interest Earned	\$4,160.32
15 12/17/01	Tax Payment to IRS	(\$11,020.21)
16 12/31/01	Interest Earned	\$2,453.45
17 01/09/02	Professional Fees (McKay Chadwell, PLLC) ¹	(\$11,685.52)
18 02/05/02	Interest Earned	\$62.68
19 02/28/02	Interest Earned	\$49.96
20 03/15/02	Tax Payment	(\$2,667.00)
21 03/31/02	Interest Earned	\$61.96
22 04/30/02	Interest Earned	\$55.07
23 05/31/02	Interest Earned	\$64.00
24 06/27/02	Tax Payment	(\$2,667.00)
25 06/30/02	Interest Earned	\$65.99
26 07/31/02	Interest Earned	\$65.24
27 08/31/02	Interest Earned	\$65.32
28 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		\$46,447.80

¹ Pursuant to Court Order dated January 8, 2002.

1 INVESTMENT ACCOUNT:

2

3 DATE	4 TYPE	5 BALANCE
6 12/20/01	7 Wire deposit from above 8 money market account	9 \$7,200,000.00
10 12/28/01	11 Wire Deposit 12 \$7,664,284.09	13 \$14,864,284.09
14 12/31/02	15 Bond accretion 16 (\$2,795.00)	17 \$14,861,489.09
18 07/16/02	19 Deposit \$1,850,167.76	20 \$16,711,656.85
21 09/30/02	22 Bank Fees (\$37,179.36)	23 \$16,674,477.49
24 09/30/03	25 Bond Income \$458,067.69	26 \$17,132,545.18
27 09/30/02	28 Bond Accretion (\$318,126.59)	\$16,814,418.59
09/30/02	Interest Accrual Adjustment (\$0.31)	\$16,814,418.28
10/01/02	Interest Income \$15,094.13	\$16,829,512.41
10/31/02	Interest Income \$17,590.46	\$16,847,102.87
10/31/02	Bank Fees (\$3,982.17)	\$16,843,120.70
11/30/02	Interest Income \$15,455.48	\$16,858,576.18
11/30/02	Bank Fees (\$3,984.48)	\$16,854,591.70
12/19/02	Bank Fees reversal \$15,924.90	\$16,870,516.60
12/31/02	Interest Income \$12,153.78	\$16,882,670.38
Total as of 12/31/02		\$16,882,670.38

20 **D. ASSET RECOVERY**

21 Since my last report, I have also undertaken to recover additional assets to be used for
 22 eventual restitution. To assist me in recovering and managing assets as well as organizing and
 23 managing databases with regard to victims with a view to eventual restitution, I have retained the
 24 services of James Fleming, Jr. Mr. Fleming earned an MBA degree in 1986 and has a wealth of
 25 experience in business and logistics and can more efficiently and economically carry out these
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1 duties as he is billed at \$120 per hour², substantially lower than my rate or other attorney rates in
2 our office. *See* Resume of Jim Fleming, attached at Exhibit 4. Although I do not believe it is
3 relevant other than explaining how Mr. Fleming's availability became known to me, I advise the
4 court that Mr. Fleming is my brother-in-law.

5 With respect to assets that I have undertaken to obtain, I have filed a claim of properties
6 included in a preliminary order of forfeiture in the related criminal matter, *United States v. John*
7 *Wayne Zidar, et al.*, United States District Court, Western District of Washington, No. CR01-
8 108R. These properties include the following:

- 10 1) Property listed at A.1 in the Preliminary Forfeiture Order: All that lot or parcel of
11 land, together with its buildings, appurtenances, improvements, fixtures, attachments
12 and easements, located at 1200 W. Chatham Drive, Payson, Arizona, more
13 particularly described as: Lot 4, of MANZANITA HILLS, PHASE ONE, according
14 to the plat of record in the office of the County Recorder of Gila County, Arizona,
15 recorded in Map No. 658.
- 16 2) Property listed at A.2: All that lot or parcel of land, together with its buildings,
17 appurtenances, improvements, fixtures, attachments and easements, located at 528 E.
18 Brookwood Ct., Phoenix, Arizona, more particularly described as: Lot 83, of Parcel
19 11-E, Phase 2 At THE FOOTHILLS, according to the plat of record in the office of
20 the County Recorder of Maricopa County, Arizona, recorded in book 380 of Maps,
21 Page 01; EXCEPT all oil, gases and other hydrocarbon substances, helium or other
22 substances of a gaseous nature, coal, metals, minerals, fossils and fertilizers of every
23 name and description, together with all uranium, thorium, or any other materials
24 which is or may be determined by the laws of the United States or of this state, or
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² Mr. Fleming often adjusts his billing rate downward to \$85 or \$60 per hour, depending on the task.

1 decisions of the Courts to be peculiarly essential to the production of fissionable
2 materials, whether or not of commercial value and the exclusive right thereto, on, in
3 or under the above described lands, shall be and remain and are hereby reserved in and
4 retained by the State of Arizona in Patent recorded June 20, 1981 in Docket 15292,
5 Page 317.

- 6
- 7 3) Property listed in A.3: All that lot or parcel of land, together with its buildings,
8 appurtenances, improvements, fixtures, attachments and easements, located at 29921
9 321st Avenue SE, Ravensdale, Washington, more particularly described as: Lot C,
10 King County short Plat Number 674107, recorded under Recording Number
11 7605130689, being a portion of the southeast quarter of the southeast quarter of
12 Section 4, Township 21 North, Range 7 East, Willamette Meridian, in King County,
13 Washington, together with an easement for road and utility purposes as described in
14 instruments recorded under Recording Numbers 7407050487, 7407250078, and
15 7501300034, and except any portion thereof lying with the main parcel above.
16
- 17 4) Conveyance as listed in B.1: 1999 Ford Expedition, VIN No.
18 1FMPU18L7XLA41740.
19
- 20 5) Conveyance as listed in B.2: 1999 Ford F150 Pickup, VIN No.
21 1FTRX18L5XNC36051.
22
- 23 6) Conveyances as listed in B.3: 1994 Kawasaki Vulcan 750 Motorcycle, VIN No.
24 JKAVNDAIXRB52632.
25
- 26 7) Conveyances as listed in B.4: 1996 Honda Shadow Motorcycle, VIN No.
27 1HFSC320XTA100299.
28

- 1 8) Conveyances as listed in B.5: Honda Magna Motorcycle, VIN No.
2 JH2RC434VM200222.
- 3 9) Conveyances as listed in B.6: 1999 Polaris Ranger ATV, VIN No.
4 4XARF50A9XD210036.
- 5 10) Conveyances as listed in B.7: 2000 Polaris Expedition ATV, VIN No.
6 4XACK42AXYA174112.
- 7
8 11) Conveyances as listed in B.8: 2000 Polaris SP500 ATV, VIN No.
9 4XACH50A0YA183005
- 10 12) Conveyances as listed in B.9: 1999 Carson Hiway Cargo Trailer, VIN No.
11 4HXHC2020YC017477.
- 12
13 13) Funds Seized from Bank Accounts as listed in C.1: Approximately \$4,847,117.20 in
14 United States funds, and all proceeds therefrom, seized from account number
15 5043100429 at Washington Mutual Bank, Lakewood, Washington, on or about May
16 10, 2000, pursuant to a warrant issued in the Western District of Washington.
- 17
18 14) Funds Seized from Bank Accounts as listed in C.2: Approximately \$58,116.00 in
19 United States funds, and all proceeds therefrom, seized from account number
20 202002584 at Washington State Bank, Federal Way, Washington, on or about June
21 15, 2000, pursuant to a warrant issued in the Western District of Washington.
- 22
23 15) Funds Seized from Bank Accounts as listed in C.3: Approximately \$1,000,000.00 in
24 United States funds, and all proceeds therefrom, from account number 2072291, ANZ
25 Bank, Apia, Samoa, seized at ANZ Bank, New York, New York, on or about May 17,
26 2000, pursuant to a warrant issued in the Western District of Washington.
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1 16) Funds Seized from Bank Accounts as listed in C.4: Approximately \$91,577.72 in
2 United States funds, and all proceeds therefrom, seized from account number
3 004671681579 at Bank of America, Phoenix, Arizona, on or about May 10, 2000,
4 pursuant to a warrant issued in the District of Arizona.

5 17) Funds seized from Bank Accounts as listed in C.5: Approximately \$1,144,465.10 in
6 United States funds, and all proceeds therefrom seized from account number 601 093
7 007, at the Marine Air Federal Credit Union, San Dimas, California, on or about
8 January 24, 2000, pursuant to a warrant issued in the District of South Carolina.³

9 18) Gold and Silver Coins as listed in D: 336 gold and 13 silver coins each weighing
10 approximately one ounce or one troy ounce.

11 19) Foreign Bank Accounts as listed in E.1: Samoa. All United States currency funds or
12 other monetary instruments, and all proceeds therefrom, credited to the following
13 accounts located at the ANZ Bank Apia, Samoa:

14 (a) Approximately \$6,728,732.63, more or less, from account number 2072291 in the
15 name of WCC - Samoa (Samoa), Inc., including all amounts now held by the Court
16 appointed Receiver in *Securities and Exchange Commission v. John Wayne Zidar, et*
17 *al.*, Case No. C00-823, Western District of Washington;

18 (b) Approximately \$826,775.01, more or less, from account number 2152940 in the
19 name of SBC Inc., including all amounts now held by the Court appointed Receiver
20 in *Securities and Exchange Commission v. John Wayne Zidar, et al.*, Case No. C00-
21 823, Western District of Washington;

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27 ³ I have agreed that these funds are directly traceable to funds invested by a particular investor and that these funds
28 were never intermingled with other funds. Accordingly, I have agreed to relinquish my claim as Receiver to these
funds if the court in the criminal matter grants the particular investor's petition to receive the assets. Otherwise, I
will maintain the Receiver's claim.

1 (c) Approximately \$6,837,604.00, more or less, from account number 2303876 in the
2 name of Private International Development Bank, including all amounts now held by
3 the Court appointed Receiver in *Securities and Exchange Commission v. John Wayne*
4 *Zidar, et al.*, Case No. C00-823, Western District of Washington;

5 (d) Approximately \$1,358,189.83, more or less, from account number 2176959 in the
6 name of Privateassets.com, including all amounts now held by the Court appointed
7 Receiver in *Securities and Exchange Commission v. John Wayne Zidar, et al.*, Case
8 No. C00-823, Western District of Washington;

9 (e) Approximately \$536,684.18, more or less, from account number 219365 in the
10 name of Third Millennium SA, including all amounts now held by the Court
11 appointed Receiver in *Securities and Exchange Commission v. John Wayne Zidar, et*
12 *al.*, Case No. C00-823, Western District of Washington; and

13 (f) Approximately \$2,914.56, more or less, from account number 2176948 in the
14 name of Millennium SA.

15 20) Foreign Bank Accounts as listed in E.2: Bahamas. All United States currency funds
16 or other monetary instruments, and all proceeds therefrom, held on behalf of any of
17 the defendants and Meliorations Management Team under account number
18 0100202259, (sub accounts PT 28000-Meliorations Management Team; 13005-John
19 Wayne Zidar; and 24420-Steven Craig Moreland) at CIBC Bahamas Ltd., located at
20 Shirley Street, Nassau, Bahamas.

21 21) Securities and Brokerage Accounts as listed in F.1: All funds, securities and financial
22 assets of any kind held in Accounts number E718-21BA-22297; E718-218A-22537;
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1 and 57216390-2 in the name of Meliorations Management Teem, located at ED&F
2 Mann and Company, New York, N.Y.

3 22) Securities and Brokerage Accounts as listed in F.2: Approximately 6,306 shares in
4 Barrick Gold Corporation.

5 23) Securities and Brokerage Accounts as listed in F.3: 450,000 share in Gold and Silver
6 Reserve, Inc.

7 24) Securities and Brokerage Accounts as listed in F.4: Defendants' rights to receive
8 237,000 shares in Alpha.com.

9 25) Other Property as listed in G.1: The ownership interest of the defendants d/b/a
10 Meliorations Management Teem in a joint venture known as Performance Motor
11 Racing, Atlanta, Georgia.

12 26) Other Property as listed in G.2: 1990 Canon Copier, Serial No. CYR24809.
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16 In the U.S. v. Zidar case, no claims other than the Receiver's have been filed or other
17 claims have been dismissed and I expect to receive the assets when forfeited. I anticipate
18 that the United States Marshals Service will conduct the marketing and sale of these assets
19 and the proceeds deposited with the Receiver.
20

21 I have filed a petition for money forfeited in a criminal case in Arizona, *United States*
22 *v. Macari, et al.*, United States District Court of Arizona, No. CR 00-713-PHX-JAT.
23 Meliorations Management Teem allegedly invested approximately \$1,000,000.00 in a
24 scheme that gave rise to criminal prosecution. I have petitioned the court for that amount but
25 expect to receive only a portion of the amount invested since much of the money invested in
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1 the scheme was dissipated. Numerous other parties have petitioned for assets in that case as
2 well.

3 I have filed answers alleging a property interest in several civil forfeiture claims as
4 well: *United States v. Real Property Located at 2263 East San Tan Street, Chandler,*
5 *Arizona, et al.*, United States District Court for the Western District of Washington, No. C00-
6 0825R; *United States v. \$42,429.79 in U.S. Funds from Account No. 01709-08847, at Bank*
7 *of America, et al.*, United States District Court for the Western District of Washington, No.
8 C00-1381; and *United States v. One (1) 1999 Ford Expedition, VIN No.*
9 *1FMPU18L7XLA41740, et al.*, United States District Court for the Western District of
10 Washington, No. C00-1380.
11

12 I also continue to pursue other potential assets that are included within the Court's
13 definition of Receivership Assets. Such other assets include a series of 1912 Chinese Bonds
14 that have collector's value that are currently being marketed, jewelry and a vehicle that the
15 Receiver has received from the wife of one of the defendants and personal property and
16 assets purchased with money invested in the Zidar schemes.
17

18 I have also arranged for a website to provide information to investors and to give
19 updates on my efforts. The website is www.zidarreceivership.com.
20

21 II. MOTION FOR CLARIFICATION

22 In fulfilling my responsibilities set forth in the Order, I have encountered two
23 situations in which I find it proper to seek additional guidance from the Court. The first
24 regards collecting information in order to propose a restitution plan to the court. The second
25 involves my authority to incur expenses and make payments from Receivership Assets.
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1 **A. COLLECTION OF INFORMATION**

2 The Order currently states that “[t]he Receiver shall make every practicable effort to
3 distribute all such assets [recovered in foreign actions by the United States Department of
4 Justice] as restitution to injured investors.” Order, Section I(c). I propose collecting
5 information from potential claimants in order to propose a restitution plan to the Court at the
6 appropriate time. Although I believe the above-quoted language of the Order allows me to
7 collect this information and I have already begun this process pursuant to this authority, I am
8 seeking additional confirmation and clarification from the Court. Specifically, I am
9 requesting that the Court authorize me to collect information from all claimants for the
10 purpose of recommending a restitution plan to the Court. A proposed order adding such
11 language is attached.
12
13

14 **B. PAYMENT OF EXPENSES**

15 The Order currently states in one section:

16 [T]he Receiver is hereby authorized, empowered, and directed . . .
17 to make or authorize payments and disbursements from the
18 Receivership assets, to incur, or authorize the incurrence of, such
19 expenses, and to make, or authorize the making of, such
20 agreements as may be reasonable, necessary and advisable in
21 discharging his duties as Receiver

22 Order at Section I(f).

23 Another section states:

24 [t]he costs, fees and expenses of the Receiver incurred in
25 connection with the performance of his duties described herein,
26 including the costs and expenses of those persons who may be
27 engaged or employed by the Receiver to assist him in carrying out
28 his duties and obligations hereunder, shall be paid out of
 Receivership assets. All applications for costs, fees and expenses
 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.

1 Order at Section II(d).

2 I am asking the court for clarification of the procedure for paying expenses and
3 moving the Court for additional language in the Order specifically authorizing me to pay
4 expenses incurred from the Receiver Assets. I expect that these expenses will involve
5 mailing and copying expenses associated with contact with those seeking restitution,
6 expenses associated with selling assets not sold by the United States Marshals Service, and
7 other administrative expenses. In the past year, my firm has advanced \$21,752.84 in costs,
8 which is a burden for a firm of my size. The Receiver's fees will continue to be paid only
9 upon the Court's order and I propose providing monthly reports to the Court regarding
10 expenses.
11
12

13 III. MOTION FOR FEES

14 The Order states that the Receiver shall take payment from the Receivership Assets and
15 make application to the Court for such payment. The specific language provides:
16

17 [t]he costs, fees and expenses of the Receiver incurred in
18 connection with the performance of his duties described herein,
19 including the costs and expenses of those persons who may be
20 engaged or employed by the Receiver to assist him in carrying out
21 his duties and obligations hereunder, shall be paid out of
22 Receivership assets. All applications for costs, fees and expenses
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.

23 Order at Section II, subparagraph d.

24 As of Thursday, March 20, 2003, the Receivership has incurred expenses of \$94,484.14
25 for the last 15 months. Declaration of Michael D. McKay at ¶ 2, and Exhibit 5 to Declaration of
26 Receiver Michael D. McKay. Of this amount, \$72,306.30 is attributable to legal fees, \$425.00
27 is attributable to accounting fees, and \$21,752.84 is attributable to other expenses. Declaration
28

1 of Michael D. McKay at ¶ 3 and Exhibit 5 to the Declaration of Receiver Michael D. McKay.

2 Pursuant to the Order, we respectfully request this Court to grant the Receivership the authority

3 to receive payment from the Receivership Assets in the amount of \$94,484.14.

4 DATED this ____ day of April, 2003.

5 **McKAY CHADWELL, PLLC**

6
7
8 By: _____
9 Michael D. McKay, WSBA No. 7040
10 Receiver