

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 THIRD REPORT
TO COURT ON RECEIVERSHIP
ASSETS AND MOTION FOR
FEES**

NOTE ON MOTION CALENDAR:
December 5, 2003

I. THIRD REPORT TO COURT ON RECEIVERSHIP ASSETS

A. BACKGROUND AND SCHEDULE

In a March 27, 2001, order (“Order”) entered in this case, I was appointed Receiver and was 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 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

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

6 Order at Section I.

7 As Receiver, I am authorized:

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

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

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

18 On or around December, 2002, and January, 2003, my office sent over 6,000 investor
19 applications for restitution to potential victims. Applications were due back in my office by May
20 15, 2003. Despite this deadline, we occasionally still receive applications. We have received
21 over 3,000 applications that claim more than \$55,000,000.00 in total losses.

22 Currently, my office is in the process of confirming and validating each application. A
23 significant number of the applications are deficient in some essential way. These deficiencies
24 include, among others, no proof of payment into one of the investment funds or failure to provide
25 an investment certificate or contract. As a result, I am in the process of making supplemental
26 requests to any applicant who failed to provide this type of information. I intend to allow each
27 applicant an additional thirty (30) days to supplement or correct his or her application. In this
28

1 second request for information, I will notify the applicants that failure to provide the appropriate
2 information may invalidate his or her claim.

3 At the same time, my office has identified approximately 118 individuals who acted as
4 Member Representatives for one of the investment funds. A vast majority of the Member
5 Representatives did not disclose this information in the initial applications. Typically, Member
6 Representatives received monetary commissions each time the representative persuaded a new
7 investor to invest in one of the funds. Some received shares in one of the funds despite making a
8 payment. As a result, I am contacting each identified Member Representative to allow that
9 individual a final opportunity to disclose his or her role, even though many did not understand
10 that they were assisting a fraudulent investment scheme. I intend to notify each Member
11 Representative that failure to disclose whether he or she acted as a Member Representative may
12 invalidate eligibility to receive redistribution.
13
14

15 I expect to complete this process by February 27, 2004. Thereafter, I will confirm the
16 accuracy of each claim and formulate a redistribution plan to present to the Court. I expect to
17 make a redistribution recommendation to the Court by March 26, 2004.
18

19 B. RECEIVERSHIP ASSET INVESTMENT STRATEGY

20 As reported to the Court on April 10, 2003, we maintained two accounts to hold the
21 Receivership Assets: the "Money Market Account" and the "Investment Account." The Money
22 Market Account held a small percentage of funds, which could be easily accessed to insure
23 sufficient immediate liquidity for the payment of expenses. This account was closed on May 31,
24 2003. The Investment Account refers to funds invested in tax-free national municipal bonds. As
25 reported to the Court in April, these bonds matured in July, 2002. The funds continue to be held
26
27
28

1 in a fully insured tax-free money market account with the U.S. Bank Trust Department, and this
2 account provides the liquidity necessary to pay expenses in a timely manner.

3 C. RECEIVERSHIP ASSETS

4 The below tables summarize the activity that has occurred in the Money Market Account
5 and Investment Account from December 31, 2003, through September 30, 2003.

6 MONEY MARKET ACCOUNT:

8	Balance as of 12/31/02	\$46,447.80
9	Interest Accrued	\$ 97.70
10	Tax Deposit ¹	\$ 8,001.00
11	McKay Chadwell Fees and Costs	<\$54,546.50>
12	Total as of 5/31/03	\$0 (Account Closed)

13 INVESTMENT ACCOUNT:

14	Balance as of 12/31/02	\$16,882,670.38
15	Deposits / Additional Assets ²	\$ 6,055,040.45
16	Interest Accrued	\$ 86,349.58
17	McKay Chadwell Fees and Costs	<\$ 39,937.64>
18	Total as of 9/30/03	\$22,984,122.77

19 D. ASSET RECOVERY

20 We continue to pursue a variety of assets in several locations that will be used for
21 eventual restitution. On July 29, 2003, in the related criminal matter, *United States v. Zidar*,
22 United States District Court, Western District of Washington, No. CR01-108R, the Court issued
23 an Order for Transfer of Liquid Assets, which directed the U.S. Marshal to transfer the following
24 funds to the Receivership, less the Marshal's costs:

- 25 1. Funds Seized from Bank Accounts as listed in Section C.1 of the Preliminary
26 Order of Forfeiture: \$4,847,117.20 in United States funds, and all proceeds

27 ¹ This deposit refers to a tax refund related to federal taxes paid in 2002. The total tax paid on the money market
28 account for 2002 was \$2,667.00.

1 therefrom, seized from account number 5043100429 at Washington Mutual Bank,
2 Lakewood, Washington, on or about May 10, 2000, pursuant to a warrant issued
3 in the Western District of Washington.³

4 2. Funds Seized from Bank Accounts as listed in Section C.2 of the Preliminary
5 Order of Forfeiture: \$58,116.00 in United States funds, and all proceeds
6 therefrom, seized from account number 202002584 at Washington State Bank,
7 Federal Way, Washington, on or about June 15, 2000, pursuant to a warrant
8 issued in the Western District of Washington.⁴

9
10 3. Funds Seized from Bank Accounts as listed in Section C.3 of the Preliminary
11 Order of Forfeiture: \$1,000,000.00 in United States funds, and all proceeds
12 therefrom, from account number 2072291, ANZ Bank, Apia, Samoa, seized at
13 ANZ Bank, New York, New York, on or about May 17, 2000, pursuant to a
14 warrant issued in the Western District of Washington.⁵

15
16 4. Funds Seized from Bank Accounts as listed in Section C.4 of the Preliminary
17 Order of Forfeiture: \$91,577.72 in United States funds, and all proceeds
18 therefrom, seized from account number 004671681579 at Bank of America,
19 Phoenix, Arizona, on or about May 10, 2000, pursuant to a warrant issued in the
20 District of Arizona.⁶

21
22
23
24
25
26 ² 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.

27 ³ The U.S. Marshal withheld \$110.66 for expenses, which means that the actual deposit was \$4,847,006.54.

28 ⁴ The U.S. Marshal withheld \$364.46 for expenses, which means that the actual deposit was \$57,751.54

⁵ The U.S. Marshal withheld \$57.99 for expenses, which means that the actual deposit was \$999,942.01

⁶ The U.S. Marshal withheld \$362.55 for expenses, which means that the actual deposit was \$91,215.17

1 Except for the \$91,577.72 referenced in paragraph D.4. above, my office received the
2 above funds on August 7, 2003. The \$91,577.72, less the Marshal's expenses, was received on
3 September 18, 2003.

4 On May 5, 2003, the Receivership received \$41,889.42 pursuant to an April 21, 2003,
5 Order Granting Judgment in Favor of Claimant Receiver in the matter *United States v.*
6 *\$42,429.79 in U.S. Funds From Account No. 01709-08847 at Bank of America, et al., United*
7 *States District Court, Western District of Washington, No. C00-1381C.*⁷

9 On July 15, 2003, the Receivership received \$17,235.77 in proceeds from an auction sale
10 related to forfeited property that John Wesley Matthews obtained as a result of his criminal
11 activity. The auction, administered by Cunningham & Associates, Inc. in Phoenix, Arizona,
12 included the sale of jewelry and vehicles identified in the Declaration of Defendant John Wesley
13 Matthews in Connection with Paragraph 7 of Plea Agreement filed in the matter *United States v.*
14 *Matthews*, United States District Court, Western District of Washington, No. CR01-108R.

16 Two pieces of real property have been sold in Arizona by the United States Marshal
17 pursuant to an Order Lifting Stay and Authorizing Interlocutory Sale of Real Property issued in
18 the matter *United States v. 2263 East San Tan Street*, United States District Court, Western
19 District of Washington, No. C00-0825C. The real property located at 2263 East San Tan Street,
20 Phoenix, Arizona, sold on July 17, 2003, for \$330,000.00. The real property located at 1200
21 West Chatham, Payson, Arizona, sold on May 6, 2003, for \$382,000.00.

24 The funds were directed to the United States Marshals Service Seized Asset Deposit
25 Fund pending resolution of the civil forfeiture case. We are working with the United States
26 Marshal to take the steps necessary to transfer the funds to the Receivership.

28 _____
⁷ The U.S. Marshal withheld \$540.37 for expenses, which means that the actual deposit was \$41,889.42

1 On August 14, 2002, in the parallel criminal action, *United States v. Zidar*, the Court
2 entered a Preliminary Order of Forfeiture regarding the real property located at 528 E.
3 Brookwood Ct., Phoenix, Arizona. On July 7, 2003, the Court entered an order authorizing both
4 the government and my office to conduct discovery concerning the validity of liens asserted on
5 the property by William Dion. Discovery is ongoing and a contempt hearing is pending in the
6 United States District Court for the District of Massachusetts regarding Mr. Dion's refusal to
7 participate in discovery.
8

9 We continue to pursue other potential assets that are potentially included within the
10 Court's definition of Receivership Assets. Such other assets include a series of 1912 Chinese
11 Bonds and rental proceeds from certain Zidar properties. We continue to investigate assets
12 that were transferred to a series of alleged business investments by Zidar and his
13 codefendants.
14

15 On July 29, 2003, the *United States v. Zidar* court issued an Order Disposing of Third
16 Party Claim and Directing Payment of Restitution to Third Party Petitioner Heinz O. Zunker.
17 Zunker claimed an interest in funds seized from account number 601 093 007, at the Marine Air
18 Federal Credit Union, San Dimas, California. All interested parties agreed that \$4,000,000.00 of
19 the funds were directly traceable to an investment by Mr. Zunker. Mr. Zunker agreed to accept
20 the amount of \$1,269,242.34 of the subject funds (representing 31.7% of his alleged loss) in
21 satisfaction of his petition therein, and to make no further claim for restitution against the funds
22 assembled by the Receiver, unless the percentage of loss recovered by other victims from assets
23 assembled by the Receiver exceeds 31.7%. The United States Marshal issued a check to Mr.
24 Zunker's attorney on August 8, 2003. While I was aware of this issue and monitored its
25
26
27
28

1 progress, none of the funds that are the subject of this paragraph had become Receivership
2 assets.

3 **II. MOTION FOR FEES**

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

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

15 Order at Section II, subparagraph d.

16 From March 21, 2003, through October 20, 2003, the Receivership has incurred expenses
17 of \$125,762.00. *See* Declaration of Receiver Michael D. McKay (“McKay Decl.”) at ¶ 3, and
18 Exhibit A attached thereto. This motion does not include a petition for payment of costs, since
19 costs are now being paid out of Receivership Assets on a monthly basis pursuant to the Court’s
20 May 19, 2003, Motion Granting Clarification. *Id.* at ¶ 4. Pursuant to the March 27, 2001, Order
21 Appointing Receiver, we respectfully request this Court to grant the Receivership the authority to
22 receive payment from the Receivership Assets in the amount of \$125,762.00.

23 DATED this ___ day of November, 2003.

24 **McKAY CHADWELL, PLLC**

25
26 By: _____
27 Michael D. McKay, WSBA No. 7040
28 Receiver