

Richard B. Roper, III (“Receiver”) files this Report to the Court regarding the affairs and findings of the Receivership, respectfully showing as follows:

By order dated March 26, 2009, this Court appointed Richard B. Roper as Receiver for the assets and records of the Defendants and Relief Defendants in the above-referenced case and all entities they own or control. The Receivership Order, and the subsequent orders re-appointing the Receiver, direct the Receiver to prepare and submit written periodic reports to the Court and to the parties. This Report is intended to brief the Court on the status of matters undertaken for the benefit of the Receivership Estate.

I. OVERVIEW

This Receiver’s Report is the fifth substantive update to the Receivership Court of the Receiver’s activities. Because the Receiver’s prior reports have provided significant detail regarding the Receiver’s work in the relevant periods, rather than repeating the extensive contents of those prior reports, each is summarized here to provide both a summary of the Receiver’s work to date and a context for the work performed in the last year.

A. SUMMARY OF DECEMBER 2009 RECEIVER’S REPORT

The Receiver’s Report of December 4, 2009 [Doc. 115] (the “2009 Report”) detailed at length the structure of the Millennium Entities and the manner in which the fraud on the investors occurred. Essentially, Millennium Bank and its related entities functioned as a simple Ponzi scheme, under the direction of Defendant William Wise. Investors in the various entities purchased a “certificate of deposit” for a set term of years, and for a set interest rate. The “interest,” however, was fictitious, as Wise simply paid out matured CDs with the money of new investors who believed they were also

purchasing CDs. The rest of the money was appropriated by Wise and his associates for personal use, in the manner detailed at length later in this Report. It was never invested. The Millennium Entities had very little corporate structure, and maintained a physical presence in Napa, California, Raleigh, North Carolina, and offshore on the island of St. Vincent and the Grenadines.

No actual investment of investor funds has been identified throughout the course of the Receivership. Instead, Wise spent the money on a lavish lifestyle, literally spending tens of millions of dollars for an island resort, airplanes and pilots, an extensive wine collection, boats, luxury automobiles and drivers, world travel, and large sums paid to his wife and various girlfriends, among other things. The findings of the forensic accountants explain the misappropriation of funds as thoroughly as possible in light of the poor recordkeeping of the Millennium businesses and the unavailability of William Wise himself.

The first Receiver's Report discussed tasks and matters undertaken by the Receiver in order to satisfy his appointed duties and responsibilities, such as review, seizure, and relinquishment of Millennium office locations; location-securing, and liquidation of assets; review and analysis of investor claims; and many other tasks and actions related to the litigation of claims by Defendants and Relief Defendants. The bulk of the Receiver's work in locating and liquidating assets had been accomplished as of the December 2009 Report to this Court.

B. SUMMARY OF NOVEMBER 2010 RECEIVER'S REPORT

On November 22, 2010, the Receiver filed an additional Receiver's Report with the Court [Doc. 147] outlining the work undertaken by the Receiver, his agents, and

representatives since the December 2009 Report (“the 2010 Report”). The 2010 Report focused on the Receiver’s substantial work, along with his forensic accountants, to better understand the financial activities of the Millennium Entities. This task was central to the Receivership Estate, both because it provided insight as to how to recoup some of the lost funds and also because the Court, along with investors and other creditors, needed a clear explanation of what happened to those investor funds which cannot be recovered.

The Receiver obtained the assistance of forensic accounting firm Litzler, Segner, Shaw & McKenney LLP (“LSS&M”) in order to analyze the bank deposits and withdrawals of Millennium Bank and its sister entities (the “Millennium Entities”) in an effort to determine how funds were used. LSS&M created a database of all the identifiable bank transactions conducted by the Millennium Entities to allow LSS&M and the Receiver to review the monies moving in and out of the Millennium Entities. This database was instrumental in aiding the Receiver’s understanding of the Millennium Entities’ financial activity. The results of an analysis of this database are covered in significant detail in the 2010 Report.

As detailed in the 2010 Report, the work by LSS&M revealed that the investor funds were deposited into one primary account, and that the money was appropriated by William Wise and his associates to fund a lavish lifestyle and little more, paying off earlier investors in order to perpetuate the scheme. At least \$156.9 million was deposited into accounts of the Millennium Entities since the Ponzi scheme’s inception. All of this \$156.9 million is believed to have come from investor deposits, and \$127.5 million can be traced back directly to the Millennium Entities’ bank records. A detailed explanation

of the spending analysis and the accounting challenges encountered by the Receiver and LSS&M to produce these figures is found at pages 8 to 12 of the 2010 Report.

C. SUMMARY OF APRIL 2012 RECEIVER'S REPORT

On April 9, 2012, the Receiver filed an additional Receiver's Report with the Court [Doc. 192] outlining the work undertaken by the Receiver, his agents, and representatives since the November 2010 Report ("the 2011 Report"). The 2011 Report focused on the Receiver's work in initiating and prosecuting ancillary litigation against various parties that benefited from illegitimate transfers from the Millennium Entities, cooperation with government authorities, and cooperating with the St. Vincent Joint Provisional Liquidators.

In the course of the Receiver's work, some illegitimate transfers of funds came to light. These transactions are deemed illegitimate because no reasonably equivalent exchange was made by the persons or entities who received certain funds from Millennium Bank or any of its sister entities. *See SEC v. Res. Dev. Int'l, LLC*, 487 F.3d 295, 301 (5th Cir. 2007); *Warfield v. Byron*, 436 F.3d 551, 559 (5th Cir. 2006). Because those transactions amount to "fraudulent transfers" under the applicable law, the Receiver sought to recoup those funds paid out to these certain individuals through ancillary litigation, which was prosecuted in accordance with procedures approved by the Court's Order Granting Receiver's Motion to Approve Procedures for Recovery of Receivership Assets in Third-Party Litigation [Doc. 156].

The Receiver commenced three ancillary suits. First, the Receiver determined that while numerous investors have been defrauded and lost most, if not all, of their investment in the Millennium Entities, other investors were paid back in full, with

interest (the “Net Winning Investors”). On March 1, 2011, the Receiver filed his Original Complaint in this Court against those Net Winning Investors who did not respond to the Receiver’s request for repayment or who refused to comply with repayment (*Cause No. 7:11-cv-00031*). The Complaint named 312 Defendants and sought more than \$5,000,000 in net winnings, alleging actual and constructive fraudulent transfer under California’s Uniform Fraudulent Transfer Act, unjust enrichment, and constructive trust. The Receiver spent a considerable amount of time discussing and settling claims with the Net Winning Investors. The Receiver also filed motions for default judgment and motions for summary judgment against the Net Winning Investors.

Second, the Receiver’s investigation revealed that Atlanta Northside Aviation received significant funds from the Millennium Entities during the course of the Ponzi scheme. On March 1, 2011, the Receiver filed his Original Complaint against Atlanta Northside Aviation (“ANA”) in this Court, Cause No. 7:11-cv-00034. The Complaint sought to recover \$800,000 from ANA, alleging actual and constructive fraudulent transfer under Georgia’s Uniform Fraudulent Transfer Act, unjust enrichment, and constructive trust. In January 2012, the Receiver filed his Motion for Summary Judgment against ANA.

Third, the Receiver instituted suit against three of the brokers, Defendants Robert Kelty, David Jones, and Scott Christopher, working to sell Millennium CD products over the years. Because of their relationships with Wise and the Millennium Entities, on March 1, 2011, the Receiver filed his Original Complaint against Defendants David Jones, Robert Kelty, and Scott Christopher in this Court, Cause No. 7:11-cv-00036. Defendant David Jones filed for bankruptcy shortly after commencement of the ancillary

suit. The Receiver, assisted by Kentucky local counsel Bingham Greenebaum Doll LLP (“BGD”), appeared, opposed the discharge, and the Court ultimately stayed its jurisdiction lifting the automatic stay against Defendant David Jones.

D. SUMMARY OF NOVEMBER 2012 RECEIVER’S REPORT

On November 29, 2012, the Receiver filed an additional Receiver’s Report with the Court [Doc. 196] outlining the work undertaken by the Receiver, his agents, and representatives since the April 2012 Report (“the 2012 Report”). The 2012 Report focused on the Receiver’s work on prosecuting and collecting on the ancillary litigation against the Net Winning Investors, Atlanta Northside Aviation, and the Brokers.

The Receiver and his counsel worked diligently to resolve the litigation against the Net Winning Investors through settlement where possible. The Receiver effectively completed settlement of the claims against 104 of the Defendants and dismissed those who completed the terms of their settlement agreements. The Receiver and his counsel spent significant time corresponding with investor defendants and working to resolve the claims against them.

The Court granted summary judgment on March 29, 2012 against 16 of the Defendants. Further, many of the Defendants failed to answer the Receiver’s complaint. On April 9, 2012, the Court granted the Receiver’s default judgment against 57 of the Defendants. Because all of the Net Winning Investors had settled or defaulted or dispositive motions had been resolved in favor of the Receiver, the Court suggested that the case be administratively closed at the April 19, 2012 pre-trial hearing. The Receiver collected over \$1.5 million from the Net Winning Investors. The Receiver began the process of collecting on the default and summary judgments.

Additionally, this Court's ruling on the parties' cross-motions for summary judgment found that ANA was liable to the Receivership Estate for \$445,000 in funds fraudulently transferred to ANA prior to institution of the Receivership. Following settlement discussions that were ultimately unconsummated, the Receiver took steps to finalize that judgment and recover the funds for the benefit of the Receivership Estate. The Receiver filed a Motion for Entry of Final Judgment Against ANA on September 28, 2012. On October 12, 2012, the Court granted the Receiver's Motion for Entry of Final Judgment against ANA [Doc. 40]. The Receiver has since received full payment from ANA in settlement of his claims.

Because of the bankruptcy, the Receiver's claims against the brokers did not move at the same pace as the other ancillary litigation. But the Receiver commenced the discovery phase of the litigation against the Millennium Brokers, following his success in lifting a bankruptcy stay to be able to pursue the litigation.

The parties mediated the case on October 9, 2012. Defendant Robert Kelty and the Receiver reached a tentative agreed resolution, but Defendant Scott Christopher and Defendant David Jones and the Receiver did not settle the claims at issue during the mediation. Defendant Robert Kelty completed the settlement terms and was dismissed from the suit on November 28, 2012 [Doc. 42]. Further, the Court extended the discovery period in this case to allow the Receiver to debrief William Wise.

II. RECENT WORK UNDERTAKEN BY THE RECEIVER

Since the 2012 Report was filed, the Receiver's work has focused on distributing funds to the net losing investors (the "Net Losing Investors"), prosecuting the ancillary

litigation against the Brokers, and collecting on the ancillary litigation against the Net Winning Investors and the Brokers.

A. DISTRIBUTION

On November 29, 2012 with his Receiver's Report, the Receiver also submitted a Request for Interim Distribution [Doc. 196]. To identify Net Losing Investors, the Receiver and his counsel, agents, and representatives reviewed the records and databases recovered from the offices of the Millennium Entities and the claims made by investors. Based upon such, the Receiver requested that the Court approve a distribution of 2.59% of the total allowed claims to 462 investors who lost their principal investment in the Millennium Entities. Thereafter, on December 11, 2012, the Receiver disseminated a status report and update via e-mail to the Net Losing Investors. However, after the filing of the Receiver's Request for Interim Distribution, over 130 additional investors contacted the Receiver with new claims or to dispute the amount listed on the Net Losing Investor Distribution Schedule. On January 9, 2013, the Receiver again contacted the Net Losing Investors and provided that if an investor had not made a claim he or she should do so by January 16, 2013. Although the Court granted the Receiver's initial request on January 30, 2013 [Doc. 198], on January 30, 2013 the Receiver filed his Amended Request for Interim Distribution [Doc. 199] to account for the additional 103 Net Losing Investors, which brought the total number of Net Losing Investor Claims to 565. On January 31, 2013, the Court approved the distribution of 2.24% of the total allowed claims to 565 Net Losing Investors [Doc. 201].

On February 4, 2013, the Receiver contacted the Net Losing Investors via e-mail to announce that the Court had approved the Receiver's Request for Interim Distribution.

Since that time the Receiver and his counsel, agents, and representatives have spent a considerable amount of time making distributions to Net Losing Investors and answering various inquiries regarding the distribution process. Again, although the Court granted the Receiver's requests and the Receiver had begun the interim distribution, additional investors reached out to the Receiver, prompting the Receiver to file his Motion to Approve Supplemental Distribution List and Close the Claims Process [Doc. 226]. In his Motion to Approve Supplemental Distribution, the Receiver requested authority to make a supplemental distribution equal to 2.24% to the remaining 39 additional and amended investors total investments, for a balance of \$93,230.78. On September 12, 2013, the Court approved the Receiver's Motion to Approve Supplemental Distribution and ordered that the claims process be closed [Doc. 227]. The Receiver has since proceeded with the supplemental distribution process.

B. BROKERS

After conducting additional discovery, the Receiver filed his Motion for Summary Judgment against Defendants Scott Christopher and David Jones on March 18, 2013 [Doc. 45]. The Receiver asserted that as to both Defendants the payment of "commissions" to them constituted actual fraudulent transfers. On August 2, 2013, the Court granted the Receiver's Motion for Summary Judgment against both Defendants [Docs. 65 and 66]. Specifically, the Court granted the Receiver's Motion for Summary Judgment against Defendant Scott Christopher as to actual fraudulent transfer and ordered that the Receiver is entitled to recover \$358,803.39 [Doc. 65]. The Court also granted the Receiver's Motion for Summary Judgment against Defendant David Jones as to actual fraudulent transfer and ordered that the Receiver is entitled to recover

\$800,000.00 [Doc. 66]. On August 22, 2013, the Court entered final judgments against Defendant David Jones for \$800,000 and Defendant Scott Christopher for \$358,803.39 [Doc. 69].

Now the Receiver is moving forward to collect both judgments against Defendants. The Receiver has obtained a certified copy of the Final Judgment against Defendant Scott Christopher and is working to abstract that judgment in California. The Receiver has amended his Complaint in the ongoing bankruptcy proceeding with Defendant David Jones and is seeking to ensure that the Final Judgment is nondischargeable.

C. NET WINNING INVESTORS

The Receiver and his counsel still spend significant time corresponding with investor defendants and working to resolve the claims against them.

The Receiver has collected over \$2,282,641.42 from the Net Winning Investors. The Receiver is still in the process of collecting on the default and summary judgments.

D. WILLIAM WISE & JACQUILINE HOEGEL

On February 21, 2012, a federal grand jury returned a 23-count indictment, charging William Wise and Jacqueline Hoegel with conspiracy, mail fraud, and wire fraud. After the arrest and initial appearance of Jacqueline Hoegel, she was released on bond. On April 17, 2012, Wise turned himself in and appeared in court in San Francisco. On September 13, 2012, Wise plead guilty in federal court to one count of conspiracy to commit mail and wire fraud, twelve counts of mail fraud, three counts of wire fraud, one count of money laundering, and one count of tax evasion. The sentencing of Wise is

scheduled for December 11, 2013. The trial of Jacqueline Hoegel is scheduled for April 2014.

III. REMAINING TASKS

The primary tasks facing the Receiver to complete his duties are collecting upon the ancillary litigation and distributing the funds to defrauded investors and other creditors. Specifically, the Receiver will:

- Continue collections in the Broker litigation and Net Winners litigation; and
- Distribute the remaining funds.

Concerning the ancillary litigation, the Receiver will continue pursuing the judgments against the Net Winning Investors and the Brokers. The Receiver's goal is to determine the most efficient means of collection given the scarce resources of the Receivership Estate.

IV. CONCLUSION

The Receiver has devoted the bulk of his time since his last report to this Court to attempting to recoup assets paid out to third parties as fraudulent transfers in order to restore additional funds to the Receivership Estate. The analysis contained in this Report represents the best possible picture of Millennium Bank's financial affairs in light of the extremely poor recordkeeping of the Defendants, the limitations of the bank records provided in response to the Receiver's subpoena, and the unavailability until now of the master of the scheme, William Wise. The Receiver will continue to undertake those tasks required to faithfully and most efficiently administer the Estate. The Receiver asks for

such other and further relief, general or special, at law or in equity, to which he may otherwise be entitled.

Respectfully submitted,

THOMPSON & KNIGHT, LLP

/s/ Jennifer Rudenick Ecklund _____

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CERTIFICATE OF SERVICE

On November 5, 2013, I electronically submitted the foregoing document to the Clerk of the Court for the United States District Court for the Northern District of Texas using the electronic case filing system of the Court.

/s/ Jennifer Rudenick Ecklund _____
Jennifer Rudenick Ecklund