

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 21-cv-60462-BLOOM/Valle

CCUR AVIATION FINANCE, LLC and
CCUR HOLDINGS, INC.,

Plaintiffs,

v.

SOUTH AVIATION, INC. and
FEDERICO A. MACHADO,

Defendants.

TEMPORARY RECEIVER'S SECOND STATUS REPORT

I. INTRODUCTION

The Court-appointed Temporary Receiver, Barbara Martinez, Esq. (the “Temporary Receiver”) for South Aviation, Inc. (“South Aviation”) and its respective affiliates, subsidiaries, successors, and assigns (excluding Defendant Federico A. Machado (“Machado”) individually) (collectively, the “Receivership Estates”) hereby files this Second Status Report to inform the Court in addition to Plaintiffs CCUR Aviation Finance, LLC (“CCURA”) and CCUR Holdings, Inc. (“CCURH” and, collectively with CCURA, the “Plaintiffs”); WBIP Aviation One, LLC and WBIP Aviation Two, LLC (“WBIP Intervenors”), Metrocity Holdings, LLC (“Metrocity Intervenor”), and all parties who have appeared in this action, of her activities to date, as well as her conclusions and next steps going forward. This report is part of the Temporary Receiver’s ongoing efforts to provide timely information to the Court and interested creditors of the Receivership Estates.

II. PRELIMINARY STATEMENT

The Temporary Receiver sincerely appreciates the courtesy that the Court and creditors demonstrated during her surgery and continued recovery. Over the approximately past ninety (90) days, the Temporary Receiver and her counsel have worked diligently to further marshal and liquidate assets in the Temporary Receiver's control both in the United States and Guatemala. Additionally, the Temporary Receiver, with the help of her team at Holland & Knight LLP ("H&K"), uncovered various foreign assets, namely a dozen corporations or entities, several plots of land, a development real estate project, and licenses or license applications to two mines in Guatemala presumably funded by the Receivership Estates. Based on preliminary reports in relation to the forthcoming mine and processing plant appraisal, *see* section IV. 1) i), the gross value of the current Guatemala assets may be in excess of millions of dollars.

Acting as steward of the Receivership Estates remains demanding. The situation in Guatemala changes almost daily. The Temporary Receiver is in constant communication with counsel and experts to take the appropriate steps for the preservation of assets for the benefit of the Receivership Estates and ultimate maximization of value for the benefit of all creditors.

The Temporary Receiver's investigation continues to reveal additional avenues of recovery for the Receivership Estates. The Temporary Receiver anticipates that witness interviews will reveal if there are net winners and ensure that creditors are repaid in a fair and equitable manner. Most recently, the Temporary Receiver located two aircraft in Guatemala that had not been previously identified. Aside from tangible assets, the Temporary Receiver's team is preparing an investigation that will result in a proposed litigation recovery strategy for the Receivership Estates. In particular, it is believed that South Aviation is a major creditor of Wright Brothers and may be entitled to insurance policies and litigation claim proceeds of that estate. Moreover, there are

initial indications of significant, collectible litigation prospects in the United States in the 9-figure range against a variety of insured targets. To assist in these efforts, the Temporary Receiver has received a commitment from a forensic accounting and insolvency firm skilled in Ponzi scheme analysis to commit roughly \$500,000 of services towards a comprehensive report of the fraud, the net winners, net losers, and those who may have aided and abetted the same.

Recently, we have gained access to the South Aviation email server, which will shed substantial light on the workings of South Aviation and related entities, as well as the relationship between South Aviation and the various stakeholders and purported stakeholders.

Lastly, the Temporary Receiver has created a claims process to identify which claimants hold claims against the Receivership Estates, and to gain a more complete picture of the creditor body of the Receivership Estates. The claims process will initially yield a procedure where a representative group of stakeholders that pledge to act for the estate as a fiduciary will be compiled as a sounding board for the Receivership plans and process. The claims process will be filed shortly.

A detailed summary of the Temporary Receiver's activities over the last ninety (90) days and recommendations are set forth below.

III. DOMESTIC RECOVERY

1. Aircraft - Serial Number 3064 and N-registration N28FM

The Temporary Receiver and HV Pal Holdings, LLC ("HV Pal") have engaged in, *inter alia*, extensive, good faith negotiations, motion practice and discovery, which resulted in a mutually beneficial resolution of their dispute, [*See* D.E. 49, D.E. 57, D.E. 70, D.E. 77, D.E. 104]. The terms of the agreement are in the process of being memorialized to conduct a public sale of the Aircraft, a 1986 Bombardier Challenger CI-601-2A12, bearing N-registration N28FM

(“N28FM Aircraft”) registered in the name of JF Aircorp, Inc. The agreement will be presented to the Court for approval upon finalization. This effort required significant time and resources.

On August 17, 2021, the Court entered the *Order on Stipulation and Request for Court Order Modifying Order Temporary Receiver’s Agreed Emergency Motion to Expand the Receivership to Include Recently Discovered Assets*, [D.E. 106]. As a result, the Temporary Receiver and HV Pal are working closely with third parties to conduct the necessary repairs on the N28FM Aircraft, update the log books, and conduct all inspections necessary to prepare the N28FM Aircraft for marketing and a commercially reasonable sale, pursuant to Article 9 of the Uniform Commercial Code and compliant with Federal Aviation Administration (“FAA”) requirements. The Temporary Receiver anticipates that a finalized stipulation and motion regarding the public sale of the N28FM Aircraft will be filed in the coming weeks.

2. Search for Additional Domestic Assets

In attempt to identify potential additional domestic assets for recovery, as well as potential third party claims for the benefit of the Receivership Estates, the Temporary Receiver’s team retained a midsize forensic and restructuring firm that specializes in evaluation and recovery of Ponzi schemes and other frauds to perform roughly \$500,000 of forensic work. Their work and analysis continues, however they requested express Court approval for their retention.

IV. FOREIGN RECOVERY

The Temporary Receiver and her team have continued to work on identifying foreign assets for recovery, as well as assessing and preserving their value. A significant amount of the Receivership Estates’ funds were diverted to assets located in Guatemala, as detailed below.

1) Update on Identified Entities in the Receivership’s Control.

a) Minas del Pueblo, S.A. (“MDP”).

In April 2021, the Temporary Receiver and her team identified MDP as an asset of the Receivership Estates. A substantial amount of funds were transferred by Receivership Estates to MDP’s accounts in Guatemala and presumably invested in MDP’s assets and operations.

On August 12, 2021, the Temporary Receiver’s appointment as the legal representative and sole administrator of MDP, in her capacity as a receiver, was registered in the Guatemalan Corporate Registry (*Registro Mercantil*). As a result, the Temporary Receiver’s authority to make decisions on behalf of the entity, including the sale of its assets, is now known to third parties under Guatemalan law. This registration will facilitate the Temporary Receiver’s compliance with the duties and exercise of powers pursuant to the Court’s Order appointing the Temporary Receiver (the “Appointment Order”), [D.E. 43].

The value of MDP is being currently assessed by Broadlands Mineral Advisory Services Ltd. (“Broadlands” or the “Mining Experts”), after a site visit to the mine on August 16, 2021 (*see section i*) below). Some equipment of MDP has been sold and as a result the Receivership has liquidated assets for a total of USD 150,000 (*see section ii*) below). The funds obtained from the sale of equipment are primarily being used to preserve the property and fund the independent assessment of MDP (*see section iii*) below), as well as to address two incidents that have occurred at the mine during this time, namely, a violent episode at MDP’s property in July 2021 and a landslide as a result of a monsoon storm in August 2021 (*see sections iv*) and *v*) below). Other legal issues involving MDP are being assessed at this time with the assistance of Legalsa—the Temporary Receiver’s local counsel in Guatemala—including six complaints that have been filed

against MDP by former employees for past wages and Guatemala Ministry of Labor and Social Welfare (*see* section *vi*) below).

i) The Assessment of MDP's Value by Broadlands Mineral Advisory Services, Ltd.

In or around June 2021, the Temporary Receiver began discussions to engage Broadlands to obtain an independent assessment of MDP's value.

Broadlands was founded in 2012 by Bernard Guarnera, who has more than 40 years of experience with mining and consulting firms in the mineral industry and specializes in the valuation of mineral properties and mining companies, ore reserve analyses, and the feasibility of mineral deposit development. His expertise includes base and precious metals, coal and lignite, industrial minerals, and ferrous metals.

The original scope of Broadlands' work included the assessment of both MDP and El Pato GT, S.A. in two separate site visits, and the Mining Experts estimated their fees would be around USD 60,000. They agreed to defer the payment of their fees until up to 90 days of receipt of the final valuation report. The commercial terms may need to be revised based on the Temporary Receiver's conclusions involving El Pato GT, S.A., which value assessment is on hold (*see* section IV. 1) b) below).

By the end of June 2021, it became clear that the Mining Experts would not be able to provide an assessment of MDP without visiting the site. In early July 2021, ensuring that Broadlands would be able to safely visit the property became a priority of the Temporary Receiver and her team. Because of lack of funding (*see* sections *iii*) and *iv*) below) the Receivership was unable to send funds to the mine during most of July 2021, a circumstance that hindered the Temporary Receiver's efforts to secure a safe site visit. By the end of July 2021, the Temporary Receiver was able to liquidate a few of MDP's assets, resume the sending of funds to the mine,

and address a violent episode that ensued as a result. *See* section *iv*) below. After further dialogue with the communities (*id.*), the situation at the mine stabilized, and the Temporary Receiver's team resumed efforts to bring Broadlands' representatives to MDP.

In the first week of August 2021, the Temporary Receiver's team had multiple meetings to coordinate the logistics of the site visit, including the engagement of a reputed, independent laboratory that could seal, transport and analyze the samples of stockpile material that would be obtained at the site. Following Broadlands' recommendation and upon independent analysis, the Temporary Receiver's team contacted and retained SGS, S.A. ("SGS"), a world's leading testing, inspection and certification company. SGS has offices in Guatemala and available laboratories in Peru and Denver, Colorado. They confirmed they could (i) send an SGS employee to MDP the day of Broadland's visit to attest to and certify the sealing of the samples; (ii) ship the samples to their laboratory in Peru; (iii) analyze the samples as requested by Broadlands.

On August 16, 2021, Mr. Guarnera and Mark Jorgensen, of Broadlands, visited MDP with the ultimate goal of preparing an independent expert report that will include a value assessment of (i) the processing plant, laboratory, and equipment at MDP; and (ii) the quality of MDP's mineral.

In particular, the Broadlands' representatives flew to Guatemala City from Nevada on August 15, 2021. They were flown by helicopter¹ from Guatemala City to MDP on August 16, 2021. During their visit they inspected MDP, including its plant, laboratory, mineral stockpiles,

¹ The drive from Guatemala City to MDP is around seven (7) hours and the road conditions may be unsafe. The Temporary Receiver and her team determined that the safest cause of action was to transport the two Broadlands' representatives, a Temporary Receiver's team member and a member of the security detail by air, and the rest of the security detail, together with the trucks that would be used to bring back to Guatemala City the sealed samples, by car.

and equipment. Thirty samples were taken and sealed by an SGS employee, transported to Guatemala City, and are currently on their way to Peru for analysis.

A detail of the expenses incurred by the Receivership as a result of this site visit is in section *iii*) below.

The Temporary Receiver expects to receive a report from the Mining Experts within two weeks after SGS results are received.

ii) Liquidation of MDP's Assets

On July 26, 2021, the Temporary Receiver and her team sold an excavator of MDP for a total of USD 40,000. The details of the excavator are below:

Excavator Brand	Model	Serial Ref.	Year	Price (\$)
Hyundai	210 E08	Robex/210 LC7A	2018	40,000

On August 12, 2021, the Temporary Receiver and her team sold two more excavators of MDP for a total of USD 110,000. The details of the excavators are below:

Excavator Brand	Model	Serial Ref.	Year	Price (\$)
Hyundai	330 E03	Robex/330LC 9S	2018	60,000
Hyundai	330 E02	Robex/330LC 9S	2018	50,000

As a result, the Receivership has liquidated assets of MDP for a total of USD 150,000 as of the date of this report.

Jeffrey Bremermann² brokered the deal and obtained a customary 2.5% commission for it.

The Temporary Receiver and her team continue to make efforts to identify potential buyers and sell MDP's equipment. There are assets that may be sold without compromising the value of

² Jeffrey Bremermann is a former consultant for MDP in Guatemala City who has been retained by the Temporary Receiver to assist with the operations of MDP. *See Temporary Receiver's First Application for Reasonable Fees and Reimbursement of Incurred Costs for April 16, 2021 – June 30, 2021*, [D.E. 89 pg. 10].

MDP as a whole, and the Temporary Receiver's team is confident that some of them may be liquidated in the upcoming weeks. This is necessary to fund the Temporary Receiver's efforts in Guatemala.

iii) MDP's Expenses

Generally, the Temporary Receiver and her team have made extensive efforts to protect and preserve MDP while the value of the property is being assessed. As of the date of this report, these efforts have cost around USD 66,185 as specified below. In addition, the Temporary Receiver secured the visit of Broadlands representatives to the mine, for which the Receivership has incurred an additional USD 31,489.25 expense.

On or around May 17, 2021, USD 8,000 were sent to MDP to keep the lights on at the property and preserve its value.³ In particular, the funds were generally used to pay for (a) food and basic needs of (i) the three engineers that were still left at the mine and who know how to operate the mine's equipment (Angel Romero, Johny Fornos, and Gerbert Oliverio); (ii) another former employee of MDP who has been cooperating with the Receivership by sending periodic updates and protecting the assets (Vinicio Perez); and (iii) several members of the indigenous communities who graciously protect the property and its assets; (b) diesel to run the mine's electricity generator, gasoline, and other necessary expenses; and (c) the lease of a warehouse in Guatemala city, where documents and other property of MDP were stored until on or around June 21, 2021. H&K lent the funds in full at a zero interest rate.

³ Initially, the Temporary Receiver contacted known putative creditors to secure funding to preserve the asset. The putative creditors declined to provide funding without financing terms that the Temporary Receiver found unreasonable.

On or around May 24, 2021, Jeffrey Bremermann loaned USD 8,000 at a zero interest rate to cover similar expenses. He was reimbursed on July 26, 2021, with Receivership's funds.

On or around June 14, 2021, H&K lent USD 8,000 at a zero interest rate to cover similar expenses.

On or around June 21, 2021, Jeffrey Bremermann loaned USD 7,649 at a zero interest rate to cover similar expenses. The weekly expense was reduced from USD 8,000 to USD 7,649 because MDP's warehouse in Guatemala City was emptied and the documents stored therein were kept at a different location. Mr. Bremermann was reimbursed for this expense on July 26, 2021, with Receivership's funds.

Due to lack of funding, from June 28 through July 26, 2021, no funds were sent to the mine.

On or around July 27, 2021, the Receivership sent USD 8,000 to the property to cover similar expenses. The amount increased to USD 8,000 again to cover the additional expenses incurred as a result of the violent episode that took place at the mine (*see* section *iv*) below).

On or around August 2, 9, 16 and 23, 2021, the Receivership sent USD 6,634 to the property to cover similar expenses. The weekly expense was further reduced to USD 6,634 after the Temporary Receiver's team set up and participated at a meeting with several community leaders (*see* section *iv*) below).

As of today, the Receivership has spent USD 66,185 in preserving the value of MDP, an amount that does *not* include the urgent measures adopted to contain the damage caused by the recent monsoon storm that impacted MDP (*see* section *v*) below).

Further, a detail of the expenses incurred by the Receivership as a result of Broadlands' site visit is below. *See* section *iii*) above for further detail on Broadlands' work.

Description	Amount (USD)
Expenses incurred by Broadlands representatives during site visit (excluding SGS laboratory).	9,724.05
Helicopter to transport Broadlands experts from Guatemala City to MDP.	2,256.20
Other expenses incurred by the Receivership in connection with the site visit.	6,249.00
SGS Analysis as of today (Broadlands will pay for it and the Receivership will reimburse).	13,260.00
Total	31,489.25

iv) Violent Incident at the Mine

From June 28, 2021, through July 26, 2021, no funds were sent to MDP due to the Receivership's lack of funding. As a result, during this period of time, MDP lost power and running water and the three engineers on site, Vinicio Perez, and the members of the communities who are assisting to keep the asset secured, had to purchase food on credit.

On July 26, 2021, the Receivership received USD 40,000 for the sale of an excavator (*see* section *ii*) above).

On, July 27, 2021, Mr. Perez entered MDP's property to deliver food, gas, diesel and funds to restore water and cover basic needs for the first time in four weeks. The total value of what was delivered was around USD 5,000.

When several community leaders learned that the amounts delivered were only enough to cover the expenses for one week and not past weeks, a violent episode ensued. Some community members attempted to pin Mr. Perez down. Mr. Perez tried to run away, and shots were fired into the air. The three engineers at the mine at the time came to try to help Mr. Perez, but they were hit and beaten. One of them was hurt and bleeding from a head wound. Mr. Perez managed to escape

using his car, and the three engineers were expelled by the communities out of the mine, some of their personal property was stolen, including computers and cell phones.

The three engineers sought refuge outside of the mine at the property of another community with Mr. Perez's help. The Temporary Receiver's team had a Zoom meeting with some of the community leaders that same day. Some of them explained that they opposed the revolt and are willing to continue to support the Receivership's efforts to preserve the asset. Another community leader stated the communities are extremely frustrated, hungry and desperate for support, resources and a clear path to reactivate the mine. The three engineers on site also connected to the Zoom call and explained they wanted to leave MDP.

Two members of the Temporary Receiver's team, with experience in dealing with Guatemalan indigenous communities, spoke at the Zoom meeting and generally addressed how this violent episode could hinder the Receivership's efforts to assess the value of MDP. They encouraged the community members to be patient, understand the Temporary Receiver has an obligation to preserve the value of the asset and asked everyone for their cooperation, in particular, a solid commitment from all the community leaders that this would not happen again.

On July 28, 2021, the community leaders held a round of meetings with a member of the Temporary Receiver's team. The goal of the meeting was to obtain a joint commitment from the communities to remain peaceful and allow access to the mine.

On July 29, 2021, the thirteen leaders of the indigenous communities delivered a video in which they agreed to continue to abstain from damaging, looting, or vandalizing the property, and to allow and facilitate access to the mine. They also agreed to return any stole item to the engineers on site and to allow them to reenter the property to provide maintenance to MDP's equipment and verify the property is not looted or vandalized.

A member of the Temporary Receiver’s team informed the police of Alta Verapaz of the incident.

v) *Monsoon Storm and Landslide*

On Tuesday, August 24, 2021, a landslide occurred in Alta Verapaz, Tucuru, where the mine is located, due to a monsoon storm. A 14-year-old boy died and a few more people are missing. Upon information and belief, they were all members of the “Sepacay” indigenous community, one of the thirteen communities present at MDP. The event was reported on Guatemalan national TV and the fire department was on site most of the week.

An evaluation of MDP’s premises, including the processing plant and the laboratory, confirmed that the structure has not sustained damage. Heavy rain continued throughout the week and the mine’s tailings dam (an embankment dam used to store byproducts of mining operations) was close to overflowing. This high level of byproduct could completely rupture the dam’s liner—which was already ruptured and has not been repaired for lack of funding. *See* picture below.



The Temporary Receiver and her team took immediate action to prevent the dam from overflowing, including the pumping of water out of the tailings dam to avoid further damage. The

cost of this preservation measure is still unknown. Mr. Bremermann is lending funds to cover this expense, which has not been paid by the Receivership yet.

vi) Other Legal Issues Involving MDP

The Temporary Receiver has recently learned that at least five former employees of MDP have filed suits in Guatemalan courts for past wages for an undetermined amount. The Guatemalan Ministry of Labor and Social Welfare has also filed a suit in a Guatemalan court against MDP for USD 2,556.32 in fines for MDP's past failure to file employment related forms with the Guatemalan authorities.

The Temporary Receiver's team is currently working with Legalsa in this and other legal matters to determine the best cause of action to address them. *See also* sections IV 2) and 3) *below*.

b) El Pato

On August 5, 2021, a member of the Temporary Receiver's team had a call with Charles Ross, President of Goldex Resources Corporation ("Goldex"). Goldex is a Canadian TSX-listed entity which files audited financial statements. Goldex claims to be the real owner of the El Pato mine since 2000, and the founder and current owner of El Pato GT, S.A., an entity that was constituted in 2016.

On August 13, 2021, the Temporary Receiver received a 120-page memorandum and exhibits from Goldex's attorneys addressing Goldex's ownership claim over El Pato GT, S.A. The Temporary Receiver's team is currently reviewing the memorandum and plans to schedule interviews with Goldex's attorneys and other people referred to in the memorandum.

c) Desarrollos Inmobiliarios Izabal, S.A. ("DII")

There have been no relevant updates involving DII. The Temporary Receiver is the majority owner, sole administrator and legal representative of the entity. Her appointment as sole

administrator and legal representative is being registered in Guatemala, but this registration has not been completed yet due to a pandemic related backlog in the Registry.

The Temporary Receiver's priority has been MDP, and now that the situation seems stable at the mine, the Temporary Receiver will make additional efforts to sell assets in Guatemala to fund the Receivership, including the plot of land and blueprint of DII.

2) Aircraft Located in Guatemala

The Temporary Receiver and her team have also identified two aircraft in Guatemala, which details are below:

Manufacturer	Serial Number	N-Number	Owner of Record
CESSNA	18503997	195AZ	Aircraft Guaranty Corp Trustee
Hawker Beechcraft Corp	TH-2245	584LU	JF Aircorp Inc.

The 195AZ aircraft was seized by Guatemala's Attorney General's Office in April 2021 as a result of MDP's alleged illegal activities at the mine, even if the aircraft is not under MDP's name. The Temporary Receiver's team is currently working with Legalsa to determine the legal authority, if any, to secure the release of the aircraft.

The 584LU aircraft is in Guatemala at a location known to the Temporary Receiver and her team. It appears to be subject to a purported lien in the name of Sterling Point, Inc. Although records show that the aircraft was paid with South Aviation's funds, a purported security agreement between JF Aircorp, as the debtor, and Sterling Point, as the secured party, was filed with the FAA (the "Security Agreement"). Under the Security Agreement, a security interest was allegedly granted to Sterling Point on the 584LU aircraft for a USD \$400,000.00 loan. The Temporary Receiver and her team are in contact with Sterling Point's counsel.

3) Legalsa's Legal Assistance in Guatemala

The Temporary Receiver's team is currently working with Legalsa in most of the legal issues addressed above to determine the best cause of action. As of July 31, 2021, Legalsa has incurred a total of USD 14,505 in legal fees. Legalsa has not received payment yet.

V. RECEIVERSHIP'S ACCOUNTING

As explained above, the Receivership has sold a few assets belonging to MDP and also spent some of the funds on protecting the asset and covering the expenses of the U.S. Mining Experts' visit to MDP on August 16, 2021. Below is a summary of the funds the Receivership has received and spent as of the date of this report.

Date	Source of Funds/Reason for Disbursement	Funds Received	Funds Disbursed	Funds Balance
26-Jul-21	Sale of excavator	40,000.00		40,000.00
26-Jul-21	Reimbursement to J. Bremermann, MDP's weekly expenses, week of 2021/05/28		8,000.00	32,000.00
26-Jul-21	Reimbursement to J. Bremermann, MDP's weekly expenses, week of 2021/06/21		7,639.00	24,361.00
5-Aug-21	Reimbursement to J. Bremermann, MDP's weekly expenses, week of 2021/07/26		8,000.00	16,361.00
5-Aug-21	Reimbursement to J. Bremermann, MDP's weekly expenses, week of 2021/08/02		6,634.00	9,727.00
11-Aug-21	Reimbursement to J. Bremermann, MDP's weekly expenses, week of 2021/08/09		6,634.00	3,093.00
13-Aug-21	Sale of excavator	50,000.00		53,093.00
13-Aug-21	Sale of excavator	60,000.00		113,093.00
16-Aug-21	Payment to Helicopteros de Guatemala (experts' site visit)		2,256.20	110,836.80
17-Aug-21	Payment to Broadlands Mineral Advisory Services Ltd. as an advance for expenses to be incurred by the Mining Experts' visit to MDP on Aug 16, 2021		10,000.00	100,836.80
17-Aug-21	Wire fee for payment to Broadlands Mineral Advisory Services Ltd.		40.00	100,796.80
26-Aug-21	Reimbursement to J. Bremermann, MDP's weekly expenses, week of 8/16/21		6,634.00	94,162.80
26-Aug-21	Reimbursement to J. Bremermann, MDP's weekly expenses, week of 8/23/21		6,634.00	87,528.80

30-Aug-21	Reimbursement to J. Bremermann, U.S. Mining Experts' site visit		6,249.00	81,279.80
30-Aug-21	J. Bremermann's commission for sale of excavators		3,750	77,529.80
Total:		150,000.00	72,470.20	77,529.80

VI. SOUTH AVIATION DOMAIN/ACCOUNT

Pursuant to the Appointment Order and to further her investigation, the Temporary Receiver has obtained access to the South Aviation e-mail domain portal. The entire domain/account has been turned over to the Temporary Receiver for access to all @southaviation.com email addresses. The review of the content is ongoing.

VII. CONCURRENT PROCEEDINGS

1. Bankruptcy Proceeding Update

On April 19, 2021, the Plaintiffs and Metrocity Intervenor filed an involuntary chapter 7 bankruptcy petition with respect to Wright Brothers Aircraft Title, Inc. ("WBAT"), commencing Case 21-10994 (the "WBAT Bankruptcy") before the United States Bankruptcy Court of the Western District of Oklahoma (the "Bankruptcy Court"). *See* WBAT ECF 1.⁴ WBAT is the Escrow Agent detailed in the underlying Complaint as part of the alleged Ponzi scheme.

Prior to filing as petitioners in the WBAT Bankruptcy, Plaintiffs and Metrocity Intervenor contacted the Temporary Receiver for approval to file. During this time, the Temporary Receiver and her counsel were in the midst of drafting a motion to expand the Receivership to include WBAT. Based on the petitioners' representation that the automatic stay and related relief could immediately preserve the Wright Brother's insurance claims for the benefit of the Receivership Estates, the Temporary Receiver approved the filing.

⁴ For ease of reference, docket entries on the WBAT Bankruptcy will be referred to herein as "WBAT ECF."

Thereafter, the Plaintiffs and Metrocity Intervenor engaged in numerous communications with the Temporary Receiver and her counsel in which they expressed strong support for consolidating both matters. Accordingly, the Temporary Receiver advised both the federal prosecutor in the Texas criminal proceedings and this Court that she anticipated filing a motion for an order to expand the receivership over WBAT, [*See* D.E. 52].

On May 18, 2021, after the bankruptcy proceeding had been pending for over a month, putative creditors who are not parties to this case entered appearances through counsel in the bankruptcy proceeding. *See In re Wright Brothers Aircraft Title, Inc.*, No. 21-10994-JDL, ECF 22 (Bankr. W.D. Okla.) (Notice of Appearance and Request for Notice filed on behalf of CMG DHC8Escrow7, LLC, CMG 777Escrow5, LLC, CMG 777Escrow4, LLC, CMG 777Escrow3 LLC, Chemtov Mortgage Group Corp., BOE 25014, LLC, BOE 34432, LLC, BOE 30874, LLC, BOE 30875, LLC, BOE 30868, LLC, Dash 4555, LLC, Dash 4554, LLC, Dash 4542, LLC, Montcler Motors, LLC, DaRusty Corp., RustyPop Corp., Hopop Corp., DavidPop Corp., Rusty115 Corp., Bryn & Associates, PA, Bayside Support Services, LLC). The Temporary Receiver and her counsel have communicated regularly with multiple attorneys, including some from Boies Schiller Flexner LLP (“Boies”), on behalf of some of these entities since the Receivership’s inception. However, these putative creditors have not yet provided details of their individual claims. Moreover, the list of supposed “creditors” represented by Boies and, more recently, Homer Bonner, has grown significantly over the last few months and the Receivership does not have evidence yet to substantiate each respective claim.

While counsel for WBAT filed a creditor matrix on June 4, 2021, it explicitly noted that the principal of WBAT had asserted Fifth Amendment rights, and had not executed the Verification of the Creditor Matrix. WBAT ECF 36.

In June 2021, counsel for Plaintiffs and counsel for the Metrocity Intervenor requested that the Temporary Receiver devise a creative plan to combine the Receivership and WBAT. The Temporary Receiver duly complied and prepared a highly creative plan that received support from all stakeholders, the United States Trustee in Oklahoma, and the United States Attorney's office. Fully formed draft motions were circulated to the interested parties. The Temporary Receiver stated she would only act and seek to consolidate with unanimous support. A group of Boies represented purported stakeholders and the Metrocity Intervenor, together, then determined to negotiate the issue of their demands for "unanimous" support. This group demanded that (i) the Temporary Receiver not engage in a "Net Winners" analysis, (ii) the Temporary Receiver refrain from pursuing tort litigation recoveries from critical defendants that could well yield 8-9 figure recoveries to the Receivership Estates, and (iii) the Temporary Receiver refrain from seeking any form of payout or collection as a stakeholder in the WBAT Bankruptcy where both litigation claims and \$50M of crime insurance policies for the corpus of that significant estate. The Temporary Receiver was willing to not enjoin parallel tort proceedings or parallel insurance proceedings, but believed that an agreement to additional requests made by Boies represented putative creditors and the Metrocity Intervenor would be in contravention of her duties as a court-appointed official with respect to the Receivership Estates.

Shortly thereafter, on July 27, 2021, the following putative creditors filed a joinder in the WBAT Bankruptcy: Bryn & Associates, PA; Rusty115 Corp.; DavidPop Corp.; Hopop Corp.; RustyPop Corp.; DaRusty Corp.; Moncler Motors LLC; BOE 30868, LLC; BOE 30874, LLC; BOE 30875, LLC; BOE 34432, LLC; CMG 777Escrow3 LLC; CMG 777Escrow4 LLC; CMG 777Escrow5, LLC; and CMG DHC8Escrow7, LLC (the "Joining Creditors"). *See* WBAT ECF 46.

Counsel for the Temporary Receiver entered appearances and were approved for pro hac vice admission on August 2, 2021. *See* WBAT ECF 55, 57.

Given certain concerns regarding the most prudent path forward for the WBAT Bankruptcy, including the funding of the administration of the WBAT estate, the Bankruptcy Court held several status conferences on the matter, including one on August 18, 2021, which was attended by counsel for the Temporary Receiver. There were several material developments at the August 18 status conference, including:

- a. Counsel for a group of creditors represented by Boies/Gable Gotwals, including the Joining Creditors, offered to provide initial funding for the administration of the WBAT Bankruptcy in the amount of \$250,000, for which counsel indicated it would seek to obtain treatment as an unsecured administrative claim, subordinated in priority to the administrative claim of the United States Trustee. The Bankruptcy Court did not rule on the proposed financing arrangement, but indicated that any such arrangement would be negotiated by the chapter 7 trustee and submitted to the Bankruptcy Court for approval.
- b. WBAT withdrew any objection with respect to the entry of an order for relief.

On August 20, 2021, the Bankruptcy Court entered an order for relief, and appointed Douglas N. Gould, panel trustee for the Western District of Oklahoma, as interim chapter 7 trustee with respect to the WBAT Bankruptcy.⁵ *See* WBAT ECF 75, 76. The meeting of the creditors pursuant to 11 U.S.C. § 341 has been scheduled for September 28, 2021, and counsel for the Temporary Receiver will attend and participate telephonically.

⁵ The Temporary Receiver's counsel is in contact with Mr. Gould and will be offering resources and the same third party financing sources already in communication with the Temporary Receiver's team to arrive at a successful result.

No bar date has been set for submission of creditor claims in the WBAT Bankruptcy. Upon receipt of information on the claims process from the chapter 7 trustee, the Temporary Receiver is considering potential claims on behalf of South Aviation in connection with the harms South Aviation has suffered as a result of WBAT's wrongful conduct, and work proactively with the WBAT Trustee. The Temporary Receiver's analysis of the precise nature and specific amount of the claims South Aviation holds against WBAT remains ongoing.

Further, given the recent entry of the order for relief and appointment of the chapter 7 trustee, no information has yet been disseminated regarding assets in the WBAT estate available for ultimate distribution to creditors. The Temporary Receiver is aware, however, that WBAT is the beneficiary of certain valuable insurance policies that could provide meaningful coverage and recovery as a result of WBAT's unlawful conduct with respect to the fraudulent scheme, and therefore believes there may be assets available for distribution to creditors, including South Aviation. Further updates will be provided in due course as additional information becomes available regarding the status of the WBAT Bankruptcy and administration of the WBAT estate.

2. Texas Proceeding Update

Since the Temporary Receiver's First 30-Day Report, there have been no material updates in the pending criminal proceeding before the United States District Court for the Eastern District of Texas, Sherman Division styled "*United States of America v. Deborah Lynn Mercer-Erwin, et al.*," Case No. 4:20-CR-212, Judge Mazzant presiding (the "Texas Proceeding"), which began at or around August 12, 2020.

To note, the arraignment hearing of Defendant Machado was terminated on August 3, 2021 because Machado is still not in the United States' custody.

The Temporary Receiver has continued to remain in communication with Assistant United States Attorney Robert Wells to ensure the Receivership's efforts do not include retention any of the identified assets in the Indictment as part of the Receivership Estates.

VIII. COMMUNICATION WITH INTERESTED PARTIES

Emails, Phone Calls, and Status Conferences

The Temporary Receiver and her counsel have continued to confer with the creditors on a regular basis via email and phone. Additionally, status phone conferences for all parties and known putative creditors were held on May 21, 2021, June 10, 2021, and August 13, 2021, to provide detailed and comprehensive updates regarding the WBAT Bankruptcy and the Temporary Receiver's efforts in the United States and Guatemala.

IX. THIRD PARTY CLAIMS

1. Creditor Claims Process

The Temporary Receiver's motion for an order approving the Temporary Receiver's proposed noticing and claims administration procedures and the form of the notice to be sent to potential claimants is forthcoming (the "Claims Process").

The Legal Notice will apprise the potential claimants of how the Claims Process was created, who is eligible to submit a claim in order to receive a monetary distribution from Receivership Estates upon the administration and liquidation of assets, the process by which eligible claimants can submit a claim, and the process by which the Temporary Receiver will determine which eligible claimants have "Allowed Claims" and thus are entitled to receive a distribution from the Receivership Estates.

The Proof of Claim and Release Form will ask potential creditors to provide, among other things: (i) the nature of the claim; (ii) a copy of the agreement(s) or other document evidencing or

giving rise to the claim; (iii) the amount of the claimant's asserted claim against South Aviation; and (iv) the amount of any transfer of funds that the claimant or any of its representatives received from South Aviation, Machado, or any of their affiliates, or any persons or entities on behalf of the foregoing, in connection with this claim. The Proof of Claim and Release Form also will require the claimant to, *inter alia*, certify the accuracy of the information provided and certify that each of the three factors of an Allowed Claim, set forth above, are satisfied.

To facilitate the Temporary Receiver's processing of claims, all creditors of and investors of the Receivership Estates are encouraged to begin assembling all documents that support their claim (including but not limited to invoices, contracts, bank statements, wire transfers, account statements, email updates and correspondence).

2. Third Party Discovery

In an effort to more fully understand how the Receivership Estates participated in this alleged Ponzi scheme, the Temporary Receiver will begin interviewing individuals with relevant knowledge and issuing additional subpoenas to finalize the investigation of potential third party claims.

3. Stakeholders Sounding Board

The Temporary Receiver is amenable to the establishment of a stakeholder sounding board comprising an appropriate cross section of the creditor body. At the stakeholders' status update meeting on August 13, 2021, counsel to the Temporary Receiver encouraged those in attendance to contact the Temporary Receiver if they had an interest in serving on such a stakeholder sounding board. The members of the board will need to sign joint interest and NDA agreements, and further undertake to act as fiduciaries on behalf of South Aviation.

X. OTHER PENDING ISSUES

1. Expansion of Receivership to Include JF Aircorp

On June 12, 2021, the Temporary Receiver filed the *Temporary Receiver's Response to Non-Party, HV Pal Holdings, LLC's, Objection to Expand Receivership and Motion to Expand the Receivership to Include JF Aircorp, Inc.*, [D.E. 70] (the "Temporary Receiver's Response").

On June 18, 2021, HV Pal filed the *Reply of HV Pal Holdings, LLC to Temporary Receiver's Response to Non-Party, HV Pal Holdings, LLC's, Objection to Expand Receivership and Motion to Expand the Receivership to Include JF Aircorp., Inc.*, [D.E. 77] ("HV Pal's Reply").

On July 30, 2021, the Temporary Receiver filed the *Supplemental Notice of Additional Facts to Support the Expansion of Receivership to Include JF Aircorp*, [D.E. 91]. The Court is fully briefed on the indivisible relationship and operation of South Aviation and JF Aircorp.

Given the mutual settlement between the Temporary Receiver and HV Pal regarding the N28FM Aircraft, the Temporary Receiver anticipates that HV Pal will, in short order, withdraw its objection to the requested expansion.

2. Temporary Receiver's Application for Fees and Objection to Fees by Putative Creditors and Metrocity Intervenor

In compliance with the Appointment Order, the Temporary Receiver submitted her First Application for Payment of Reasonable Fees and Reimbursement of Actual Incurred Costs for April 16, 2021 through June 30, 2021 (the "Application"), [D.E. 89.] The Temporary Receiver's Application accounted for the Temporary Receiver's retention of counsel at H&K to assist in the fulfillment of her duty to this Court, namely, the identification and recovery of assets, in the United States and abroad, for the benefit of the Receivership Estates.

On July 30, 2021, certain putative Creditors⁶ filed an Opposition to the Temporary Receiver's Application (the "Opposition"), [D.E. 92].

On August 19, 2021, the Temporary Receiver and her counsel submitted a response to the Opposition, [D.E. 108], which reduced its rates for all timekeepers above \$750/hour, with the exclusion of the Temporary Receiver and undersigned counsel, Warren Gluck. Additionally, all timekeepers who dedicated less than 4.0 hours to this matter were removed from the requested fee amount. Lastly, some timekeepers' rates, who were replaced over the last four months, were reduced. Therefore, the new requested amount of H&K's services, not including the Temporary Receiver, was reduced from \$719,237.00 to \$520,494.50. The Temporary Receiver is requesting \$121,893.00. As undersigned counsel has stated, it is the Temporary Receiver's position that the requested fees are reasonable due to the unique nature of this Receivership and the required expertise across subject matters, practice specialties, and even borders, [D.E. 108].

XI. THIRD PARTY FUNDING

The Temporary Receiver has considered third party funding for the benefit of the Receivership. The Temporary Receiver and her counsel are in contact with multiple possible lenders as they consider all viable options to adequately and properly fulfill receivership duties. The Temporary Receiver and her team are seeking offers for bridge liquidity financing for

⁶ As defined in the Opposition, the "Creditors" are Rusty 115 Corp., Hopop Corp., Davidpop Corp., Rustypop Corp., Darusty Corp., Moncler Motors LLC, BOE 25014 LLC, BOE 30868 LLC, BOE 30874 LLC, BOE 30875 LLC, BOE 34432 LLC, Dash 4542 LLC, Dash 4554 LLC, Dash 4555 LLC, Chemtov Mortgage Group Corp., CMG 777 Excrow3 LLC, CMG 777 Escrow4 LLC, CMG 777 Escrow5 LLC, CMG DHC8 Escrow 7 LLC, Metrocity Holdings LLC, and Bryn and Associates, P.A. The foregoing entities will be referred to herein as the "Putative Creditors and Metrocity."

stakeholder financing and Court review shortly. The Temporary Receiver has advised all parties of these efforts.

XII. RECOMMENDATIONS AND NEXT STEPS

The Temporary Receiver will continue to marshal and liquidate the assets of the Receivership Estates, and plans to continue to work through the core identified work streams: Guatemalan entities and assets, aircraft and creditor disputes, determination of the true and just stakeholders of South Aviation, identification of the “net winners” of the Ponzi scheme and recoverable assets, follow-up investigations and interviews, and preparation of a funding, recovery and litigation plan.

Dated: August 30, 2021

Respectfully submitted,

By: s/Sydney B. Alexander

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of August, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system. I also certify that the foregoing document is being served on this day on counsel identified on the attached Service List via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

Sydney B. Alexander _____
Sydney B. Alexander

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