

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
WICHITA FALLS DIVISION**

SECURITIES AND EXCHANGE S.A., COMMISSION

Plaintiff,

V.

MILLENNIUM BANK,
UNITED TRUST OF SWITZERLAND S.A.,
UT of S, LLC, MILLENNIUM FINANCIAL GROUP,
WILLIAM J. WISE,
d/b/a STERLING ADMINISTRATION,
d/b/a STERLING INVESTMENT SERVICES
d/b/a MILLENNIUM AVIATION,
KRISTI M. HOEGEL, a/k/a KRISTI M. CHRISTOPHER
a/k/a BESSY LU,
JACQUELINE S. HOEGEL, a/k/a JACQUILINE S.
HOEGEL, a/k/a JACKIE S. HOEGEL,
PHILIPPE ANGELONI, and BRIJESH CHOPRA,

Defendants,

And

UNITED T OF S, LLC, STERLING I.S., LLC,
MATRIX ADMINISTRATION, LLC,
JASMINE ADMINISTRATION, LLC,
LYNN P. WISE, DARYL C. HOEGEL, RYAN D.
HOEGEL, and LAURIE WALTON

Relief Defendants.

RICHARD ROPER, RECEIVER

Plaintiff,

V.

MITCHELL ABBOTT, et al.

Defendants.

Case No.: 7:09-CV-050-0

ANCILLARY CIVIL ACTION
NO. 7:11-CV-00031-O

RECEIVER’S MOTION FOR DEFAULT JUDGMENT

Plaintiff Richard Roper, in his capacity as the Court-appointed Receiver for Millennium Bank, United Trust of Switzerland S.A., UT of S, LLC, Millennium Financial Group, William J. Wise d/b/a Sterling Administration, William J. Wise d/b/a/ Sterling Investment Services, and William J. Wise d/b/a Millennium Aviation (the “Receiver”) requests that a Judgment of Default be entered against certain defendants pursuant to Federal Rule of Civil Procedure 55, respectfully showing the following:

1. On March 1, 2011, the Receiver filed his Complaint against certain winning investors. [Dkt. No. 1]. In the underlying receivership action, *SEC v. Millennium Bank et al*, No. 7:09-CV-050-O, currently pending in the United States District Court for the Northern District of Texas, Wichita Falls Division, the Receiver requested, and the Court entered, an order establishing procedures governing the recovery of assets in third-party litigation. [Dkt. Nos. 149, 156] Under this Order, the Receiver was permitted to serve the Winning Investors by various methods, including certified mail, return receipt requested. [Dkt. No. 149, ¶ 9].

2. The Receiver did serve all Winning Investors against whom he seeks default, either by certified mail, return receipt requested, or by personal service, as demonstrated in his Request for Entry of Default Against Certain Defendants and accompanying appendix in this action. [Dkt. No. 109].

3. On November 23, 2011, the Receiver sent a letter, both by first-class mail and by certified mail return receipt requested, to all Defendants that had been properly served and had been in contact with the Receiver in some fashion, but had failed to file answer or other responsive pleadings, stating that the deadline to file an answer had passed and that the failure to file such an answer by December 7, 2011 would be considered an indication that the Defendants

had no intent to defend the lawsuit. A true and correct copy of the letter sent to the Default Winning Investors is attached hereto and incorporated herein at Appendix 1–49.

4. The following Defendants, though properly served with summons under this Court’s order, have still failed to file an answer and have made no other attempt sufficient to show that they intend to Defend this lawsuit (the “Defaulting Winning Investors”):

<u>Last Name</u>	<u>First Name</u>	<u>Investor ID Number</u>
<u>Anderson</u>	<u>Charles Wayne</u>	<u>000022</u>
<u>Bailey</u>	<u>John A.</u>	<u>000037</u>
<u>George & Adelle Baker Trust</u>		<u>000042</u>
<u>Barrow</u>	<u>John</u>	<u>000058</u>
<u>Bedingfield</u>	<u>Jon D. & Virginia A.</u>	<u>000065</u>
<u>Blakeman</u>	<u>Irene & Donald</u>	<u>000085</u>
<u>Bristow</u>	<u>Dave</u>	<u>000105</u>
<u>Buck</u>	<u>Jim</u>	<u>000125</u>
<u>Caito</u>	<u>Thomas & Jane</u>	<u>000140</u>
<u>Cavness</u>	<u>Wade & Lisa</u>	<u>000167</u>
<u>Chason</u>	<u>Trent S.</u>	<u>000171</u>
<u>N. J. Fulmer LLC</u>		<u>000325</u>
<u>Gallaway</u>	<u>Michael James</u>	<u>000331</u>
<u>Green</u>	<u>Gary L.</u>	<u>000387</u>
<u>Gupta</u>	<u>Sachin & Rina</u>	<u>000395</u>
<u>Hankey</u>	<u>Seth & Deborah M.</u>	<u>000411</u>
<u>Hoegel</u>	<u>Daryl C. & Jackie S.</u>	<u>000443</u>
<u>Horgan</u>	<u>Maureen</u>	<u>000451</u>
<u>Fowler</u>	<u>Samuel R, III</u>	<u>000464</u>
<u>The Jaboro Family Trust</u>		<u>000469</u>
<u>Johnson</u>	<u>Mark & Monica</u>	<u>000491</u>
<u>Jones</u>	<u>Carol S.</u>	<u>000497</u>
<u>Kendrick</u>	<u>Dionne</u>	<u>000522</u>
<u>Klotz</u>	<u>Robert & Angelia</u>	<u>000544</u>
<u>Koziol</u>	<u>Joseph</u>	<u>000561</u>
<u>Larson</u>	<u>Lora</u>	<u>000580</u>
<u>Makam</u>	<u>Surendraih</u>	<u>000640</u>
<u>Manta</u>	<u>Bianca</u>	<u>000650</u>
<u>McQueen</u>	<u>Sean</u>	<u>000675</u>
<u>McCoy</u>	<u>Gervase & Melekia Renee</u>	<u>000678</u>
<u>Mueller</u>	<u>Daniel & Cleo</u>	<u>000719</u>
<u>Nevins</u>	<u>Carolyn</u>	<u>000742</u>
<u>Nguyen</u>	<u>Long</u>	<u>000745</u>
<u>Nielson</u>	<u>Beryl</u>	<u>000748</u>
<u>Owens</u>	<u>Jewel</u>	<u>000770</u>

<u>Papandreou</u>	<u>Vassilis & Ioanna</u>	<u>000777</u>
<u>Ramon</u>	<u>Virginia</u>	<u>000827</u>
<u>Ruble</u>	<u>Russell L. & Bettie J.</u>	<u>000870</u>
<u>Schahrer</u>	<u>Roy D.</u>	<u>000890</u>
<u>Smith</u>	<u>Charles & Betty</u>	<u>000953</u>
<u>Smith</u>	<u>Christina</u>	<u>000954</u>
<u>Strates</u>	<u>Theodora</u>	<u>000986</u>
<u>Struck</u>	<u>Earl & Marian</u>	<u>000989</u>
<u>Sutherland</u>	<u>Douglas</u>	<u>000994</u>
<u>Telfort</u>	<u>Modeline</u>	<u>001009</u>
<u>Thai</u>	<u>Vi</u>	<u>001011</u>
<u>Thomson</u>	<u>Bruce & Barbara</u>	<u>001019</u>
<u>Torres</u>	<u>Jesus & Maria Alicia</u>	<u>001023</u>
<u>Torseth</u>	<u>James</u>	<u>001024</u>
<u>Varvisotis</u>	<u>Nicki</u>	<u>001042</u>
<u>Walters</u>	<u>Tim & Ruthann</u>	<u>001061</u>
<u>Watt</u>	<u>Jake</u>	<u>001076</u>
<u>Wang</u>	<u>Xiaobin Gao & Weihang</u>	<u>001083</u>
<u>Whitman</u>	<u>Matthew</u>	<u>001097</u>

5. On January 23, 2012, the Receiver requested that the Clerk of the Court docket an Entry of Default as to each of the Defaulting Winning Investors. [Dkt. No. 109]. The request is currently pending. The Receiver brings this motion in advance of defaults actually being entered in order to comply with the Court's existing deadline for all dispositive motions, but recognizes that default judgment is only appropriate once default has been entered by the clerk.

6. Plaintiff's Motion for Default Judgment has been filed less than thirty days after the Clerk's entry of the Order of Default against the Defaulting Winning Investors. And, as of the date of the filing of Plaintiff's Motion for Default Judgment, none of the Defaulting Winning Investors have appeared.

7. The Receiver contends that a default judgment is warranted on all of its claims against the Defaulting Winning Investors pursuant to Federal Rule of Civil Procedure 55.

8. The Receiver's Complaint against the Defaulting Winning Investors seeks to claw back certain amounts that the Defaulting Winning Investors received from the Millennium Entities under the theories of Actual Fraudulent Transfer, Constructive Fraudulent Transfer, Unjust Enrichment, and Constructive Trust. Complaint [Dkt. 1]. The Receiver is entitled to recover the amounts received by the Defaulting Winning Investors from the Millennium Entities in excess of the amounts transferred to the Millennium Entities by those same investors. *Donell v. Kowell*, 533 F.3d 762, 770 (9th Cir. 2008) (“[T]he general rule is that to the extent innocent investors have received payments in excess of the amounts of principal that they originally invested, those payments are avoidable as fraudulent transfers . . .”).

9. The amounts sought by the Receiver are liquidated and can be readily computed in compliance with Federal Rule of Civil Procedure 55(b)(1). Databases seized by the Receiver from the Millennium Entities' offices recorded all of the alleged investments for persons and entities that believed that they were investing with the Millennium Entities. *Declaration of Richard Roper* (“Roper Declaration”), Appendix at 107–108. The databases also included the dates that the alleged investments were either paid out to the investors or rolled-over into a new investment. *Roper Declaration*, Appendix at 108. Accordingly, the Receiver has been able to determine the amounts received by the Defaulting Winning Investors in excess of the amounts transferred to the Millennium Entities by those investors based on the Millennium Entities' records. A list of the individual investments from the seized databases for each of the Defaulting Winning Investors is attached at Appendix 50–104. A summary table of these amounts is also attached. Appendix 109–111.

10. As required by 50 U.S.C. app. § 521(b)(1), attached at Appendix 112–256 is a military affidavit for each of the Defaulting Winning Investors, evidencing that none of the Defaulting Winning Investors is in military service.

11. Finally, proper venue and jurisdiction exist allowing this Court to enter a default judgment against the Defaulting Winning Investors pursuant to this Court’s most recent Order Reappointing Receiver, in which this Court required that all ancillary litigation “to impose a constructive trust, obtain possession, and/or recover judgment with respect to persons or entities who received assets or records traceable to the Receiver Estate” was to be brought in this Court. Order Reappointing Receiver, ¶ 5(c), Appendix at 261..

12. Based on these allegations and in light of Defaulting Winning Investors’ default, the Receiver respectfully requests an entry of Judgment by this Court against the Defaulting Winning Investors for the amounts pleaded in his Complaint and detailed in the Appendix at 50-104 and 109-111.

PRAYER

13. For these reasons, the Receiver respectfully requests that the Court enter Judgment against the Defaulting Winning Defendants for the amounts listed in the summary table attached to this motion, and for any further relief to which he may be justly entitled.

Dated: January 24, 2012

Respectfully submitted,

THOMPSON & KNIGHT, LLP

/s/ Jennifer Ecklund

William L. Banowsky
State Bar No. 01697125

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COUNSEL TO THE RECEIVER, RICHARD B. ROPER

CERTIFICATE OF SERVICE

On January 24, 2012, 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 Ecklund

Jennifer Ecklund