

## **February 11, 2014 Status Report and Update**

### **CIVIL AND CRIMINAL SUITS AGAINST WILLIAM WISE AND JACQUILINE HOEGEL**

The SEC obtained a judgment against William Wise in the underlying receivership action for \$75,544,722.03. 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.

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 currently scheduled for March 5, 2014.

After the arrest and initial appearance of Jacqueline Hoegel, she was released on bond. The Receiver has been informed that the charges against Jacqueline Hoegel have been dismissed based on improper venue. This means that the U.S. Attorney's office for the Northern District of California will not be prosecuting the case, because the Government has determined that proper venue for the tax counts actually lies in the Eastern District of California. At this time, the Receiver has no information about when or whether the U.S. Attorney's office for the Eastern District of California will pursue the charges.

The criminal charges against Wise and Hoegel are separate from the civil suit filed by the Receiver in the United States District Court for the Northern District of Texas. The Receiver is only involved in the government's investigation when requested by the U.S. Attorney's office and federal agents and cannot comment on the status of the criminal case against Wise or Hoegel because the Receiver is not privy to such information. The Receiver is also not ordinarily apprised of court dates in the criminal trial. If you have questions regarding the criminal charges, please contact the U.S. Attorney's office in San Francisco.

### **ANCILLARY LITIGATION AGAINST THE NET WINNERS**

At the commencement of the Receivership, the Receiver determined that a number of investors actually received more from the Millennium Entities than they invested as "Net Winners." The Receiver contacted more than 300 Net Winners, seeking return of the "interest" they received, which was actually just the principal belonging to other investors. Following these contacts, the Receiver filed a clawback proceeding against over 200 Net Winners, seeking more than \$5,000,000 in net winnings.

The Receiver effectively completed settlement of the claims against 104 of the Net Winners. The Court granted default judgment against 58 of the Net Winners and summary judgment against 16 of the Net Winners, which the Receiver will pursue in execution. To date, the Receiver has collected \$2,296,018.67 from a number of the Net

Winners. The Receiver is still in the process of collecting on the default and summary judgments.

To review the Receiver's November 5, 2013 Status Report to the Court for additional information, please [click here](#).

### **ANCILLARY LITIGATION AGAINST BROKERS**

On March 1, 2011, the Receiver also brought suit against David Jones, Robert Kelty, and Scott Christopher ("the Brokers"). Each of the Brokers received significant commissions from their respective sales of the Millennium Entities' fraudulent certificates of deposit to investors. Defendant Robert Kelty and the Receiver reached a settlement agreement, and Defendant Robert Kelty completed the settlement terms and was dismissed from the suit on November 29, 2012.

The Receiver filed his Motion for Summary Judgment against the remaining Brokers on March 18, 2013. On August 2, 2013, the Court granted the Receiver's Motion for Summary Judgment against both the Brokers. 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. 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. The Receiver thereafter obtained final judgments against both Christopher and Jones. Broker David Jones filed bankruptcy, but the bankruptcy court determined that the \$800,000 liability to the Receivership Estate was not dischargeable. Now the Receiver is moving forward to collect both judgments against the Brokers.

To review the Court's August 2, 2013 Orders Granting Summary Judgment Against the Brokers, please [click here](#).

### **DISTRIBUTION PROCESS**

The Receiver is still in the process of clawing back monies that were distributed from the Ponzi scheme to the Net Winners and Brokers. To date, the Receiver has recovered a total of \$4,851,749.47. As was detailed in the Receiver's Reports, the forensic accounting firm Litzler, Segner, Shaw & McKenney LLP performed work that revealed that investor funds were deposited into one primary account, and that the money was spent by William Wise and his associates to fund a lavish lifestyle and little more. No investment of funds was apparent from the Millennium bank records. Wise literally spent 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 regularly paid to his wife and various escorts, among other things.

Many of the investors have raised questions about why the victims of the Madoff Ponzi scheme were able to recover more of their investments than the victims of the Millennium scheme. There are several significant differences between the cases. First,

Madoff actually invested some of the victims' funds in various securities with large institutional banks and money managers. Approximately 60% of the principal lost by investors was recoverable because it was present in those vehicles, and had not yet been spent or misappropriated by Madoff in the scheme. In contrast, Wise and his associates did not invest any of the victims' monies—they simply spent the money, both on their personal expenses and lifestyle and in paying off prior investors with new investors' money. Therefore, the only avenues available to the Receiver to recover the funds were through the clawback of monies that were fraudulently transferred to others. Second, in the Madoff Ponzi scheme, the Government just obtained significant criminal penalties against JPMorgan for its role in facilitating the scheme despite knowledge of facts that should have alerted the bank (and authorities) to the fraud. Those penalties will be paid into the Receivership Estate for distribution to the victims. Here, in the Millennium scheme, no such criminal penalties have been obtained, and private civil suits against the banks involved have been unsuccessful to date. Therefore, no criminal or civil penalties have been assessed that could be restored to the Receivership Estate.

The Receiver must always weigh the likelihood for success and/or recovery with the costs to the Estate before undertaking expensive avenues and litigation in his attempts to recover assets. Unfortunately, the forensic accounting in this case strongly suggests that there are no additional assets to be obtained—because the money has simply been spent by the fraudsters involved in the scheme. Likewise, the cases against the banks with whom Millennium and Wise transacted business have not proven successful, further limiting the likelihood that the Receiver could recover funds in that way. The Government has not instituted actions to obtain criminal penalties against those associated with the Millennium scheme. Based on these facts, the Receiver simply does not have the same opportunities or tools available in the Madoff case to obtain the same type of recoveries.

Once the Receiver is satisfied that he has collected all available assets, he will distribute the remainder of the funds to the net-losing investors. The Receiver cannot yet project when the next and final distribution will be made, but the Receiver expects it to be similar in size to the original distribution.

On November 29, 2012 with his Receiver's Report, the Receiver submitted a Request for Interim Distribution. 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. The distribution process, which was approved by the Receivership Court, sought to equitably distribute available funds of the Receivership Estate to investors and other claimants. The amount that a net-losing investor received was dependent on proceeds received from the sale of assets under the control of the Receiver and the amount of claims received against those proceeds. Based upon this information, 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.

To review the Receiver's November 29, 2012 Report and Request for Interim Distribution, please [click here](#).

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, on January 30, 2013 the Receiver filed his Amended Request for Interim Distribution to account for the additional 103 Net Losing Investors, which brought the total number of Net Losing Investor Claims to 565.

To review the Receiver's Amended Request for Interim Distribution, please [click here](#).

On January 31, 2013, the Court approved the distribution of 2.24% of the total allowed claims to 565 Net Losing Investors. 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.

To review the Court January 31, 2013 Order approving the distribution, please [click here](#).

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.

To review the Receiver's Motion to Approve Supplemental Distribution and the Court's Order approving the supplemental distribution, please [click here](#).

The Receiver's goal throughout his administration of the Receivership has been, and continues to be, to maximize the amount available to distribute to investors.