

SEC v. MILLENNIUM BANK, ET AL.
June 29, 2011 Status Report and Update

DEFAULT JUDGMENT AGAINST WILLIAM WISE

On February 18, 2011, the Securities and Exchange Commission (“SEC”) filed a motion for default judgment against William Wise in the underlying receivership action. The United States District Court for the Northern District of Texas, Wichita Falls Division (“the Receivership Court”) granted the SEC’s motion for default judgment and entered a Final Judgment by Default Against Defendant Wise on March 15, 2011 (“the Final Judgment”). Under the Final Judgment, Wise is restrained and enjoined from numerous activities governed by the Securities Act of 1933 and the Securities Exchange Act of 1934. Further, Wise was ordered to repay \$75,544,722.03 in disgorgement of ill-gotten profits and \$120,000 in civil penalties.

Although the Receivership Court entered the Final Judgment against Wise, it is still unpaid, and Wise is still at large. The Receiver continues to provide assistance to the criminal authorities to aid their efforts in locating and criminally prosecuting Wise.

RECOVERY OF INTEREST FROM NET WINNERS

In the last Status Report and Update, the Receiver noted that the largest remaining source of material funds available to the Receivership Estate was the fraudulent interest payments made to investors who received more from the Millennium Entities than they invested. Accordingly, on July 28, 2010, the Receiver sent letters to more than 300 of these “Net Winners,” requesting that they repay the “interest” that they received.

The Receiver collected approximately \$628,000 in response to these letters. After a reasonable time, however, the Receiver found that it was necessary to file litigation to attempt to collect the remaining “interest.” Although the Receiver did not relish bringing suit against the Net Winners, he believes that it was necessary to fulfill his duties both to the Court and to the remaining investors.

Accordingly, on March 1, 2011, the Receiver filed a clawback proceeding against approximately 312 investors in the Receivership Court. The complaint seeks to recover the interest transferred to the Net Winners under both the California Uniform Fraudulent Transfer Act and for other equitable reasons. A copy of this complaint is available through the Receiver’s website: http://tklaw.com/millennium_bank_receivership.cfm.

The complaint seeks to recover \$5,214,354.13 from those Net Winners that had not previously settled their claims. To date, the Receiver has recovered \$252,691.98 from these Net Winners. This amount is exclusively from Net Winners who have agreed to settle their claims rather than force the Receivership to engage in protracted litigation. For the remaining Net Winners, the Receiver will continue to pursue the litigation to collect the unpaid amounts and will continue to update investors on the status of this litigation. The settling Net Winners will be removed from the lawsuit, and the Receiver continues attempts to settle the remaining claims.

ANCILLARY LITIGATION AGAINST ATLANTA NORTHSIDE AVIATION

In addition to the clawback proceeding against the Net Winners, on March 1, 2011, the Receiver filed suit against Atlanta Northside Aviation (“ANA”), Cause No. 7:11-cv-00034-O. A copy of the complaint is available on the Receiver’s website.

Based on his review of the Millennium Entities’ accounting records, the Receiver believes that two loans made by Millennium Bank to ANA in late 2008 and early 2009—\$300,000 and \$500,000 respectively—were made in furtherance of the operation of the Ponzi Scheme and were fraudulent as to Millennium Bank’s creditors under Georgia’s enactment of the Uniform Fraudulent Transfer Act (“the GUFTA”). The Receiver seeks to avoid the \$800,000 in transfers under the GUFTA, unjust enrichment, and constructive trust.

Atlanta Northside Aviation contends that the loans were legitimately made to fund the construction of an airplane hangar at the request of William Wise. It further contends that portions of the loans have been repaid and that it is owed offsets from the Millennium Entities.

This litigation is still in its initial phases, and the Receiver will update investors on the status of the litigation as it progresses.

ANCILLARY LITIGATION AGAINST BROKERS

Finally, on March 1, 2011, the Receiver also brought suit against David Jones, Robert Kelty, and Scott Christopher (“the Brokers”), Cause No. 7:11-cv-00036-O. Each of the Brokers received significant commissions from their respective sales of the Millennium Entities’ fraudulent certificates of deposit to investors. The total commissions paid to the Brokers is believed to be more than \$2,000,000. The Receiver’s lawsuit against the Brokers, which is available on the Receiver’s website, seeks to recover those commission payments from the Brokers under the California Uniform Fraudulent Transfer Act and for other equitable reasons.

Two of the Brokers, Kelty and Christopher, have filed answers denying the claims. The third Broker, Jones, has filed bankruptcy, which has stayed the action against him. The Receiver intends to continue to protect the Receivership’s interest in the commissions against Jones in the bankruptcy court. This litigation is still in its initial phases, and the Receiver will update the investors on the status of the litigation as it progresses.

CLAIMS PROCESS

Once the Receiver is satisfied that he has collected all available assets, he will begin the process of preparing a distribution plan for claimants. This process, which must be approved by the Receivership Court, will attempt to equitably distribute available funds of the Receivership Estate, if any, to investors and other claimants. The Receiver’s goal throughout his administration of the Receivership has been to maximize the amount available to distribute to investors.