

I. FACTUAL BACKGROUND

1. On March 27, 2009, the United States Securities and Exchange Commission (“SEC”) initiated this lawsuit and, in connection therewith, requested the appointment of a Receiver. On the same day, the Court issued an Order Appointing Receiver, naming Richard B. Roper, III as Receiver for the above-named Defendants and Relief Defendants (the “Millennium Defendants and Relief Defendants”).

2. The Amended Order Appointing Receiver states that the Receiver is “specifically directed and authorized” to “[i]nstitute such actions or proceedings 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 Receivership Estate.” Amended Order Appointing Receiver, at ¶ 5(c), pg. 4.

3. The Receiver has identified, and continues to identify, potential persons and entities from which assets traceable to the Receivership Estate can be recovered.

4. After a detailed review of the banking records of the Millennium Defendants and Relief Defendants, the Receiver’s forensic accountants have thus far been unable to locate any significant source of funds in a financial institution for recovery into the Receivership Estate. Instead, their results show that William Wise, the chief architect of the Millennium Ponzi scheme, spent most of the investors’ funds to perpetuate the fraud and support his lavish lifestyle. No money was ever invested and no interest was ever earned on the behalf of the investors. Like any Ponzi scheme, Wise continued the fraud by using the deposits of funds from new investors to return principal and purported interest to old investors. Accordingly, the “interest” paid to these older investors was not interest at all; it was simply made up of deposits from more recent investors.

5. Although most investors lost money in the fraud, some of the investors received more in principal and “interest” than they invested with the Millennium Defendants and Relief Defendants (the “Winning Investors”). Current accounting analyses estimate that the Winning Investors received a total of \$7.1 million in “interest” payments. The “interest” paid to the Winning Investors represents the largest known source of funds available to be recovered by the Receiver for the benefit of all investors. Thus, while the Receiver does not wish to demand the “interest” paid to investors be repaid to the Estate, he finds it necessary to fulfill his obligations as the Receiver, specifically his duty to “[c]ollect, marshal, and take custody, control, and possession of all the . . . assets traceable to assets owned or controlled by the Receivership Estate, wherever situated” Amended Order Appointing Receiver, at ¶ 5(b), pg. 4.

6. Other individuals and entities also apparently received funds from the Defendants without consideration of reasonably equivalent value. Where gifts or unfounded payments were made, the Receiver will attempt to recover those monies into the Estate for the benefit of defrauded investors. Likewise, where sham loan transactions were made, the Receiver intends to bring the recipients of those funds before the Court for the purposes of recovering those amounts that were fraudulently transferred. The Receiver anticipates filing a series of complaints of this nature in order to attempt to recover funds into the Estate.

7. The Receiver hereby requests that the Court adopt procedures for conducting the proceedings brought by the Receiver under ¶ 5(c) of the Amended Order Appointing Receiver for the recovery of assets traceable to the Receivership Estate (“the Recovery Actions”), including actions brought against the Millennium Net Winners.

II. PROPOSED PROCEDURES AND AUTHORITY

8. Commencing Actions - The Receiver intends to commence the Recovery Actions by filing complaints, as needed, in the Northern District of Texas, which cases will be assigned to the Receivership Court pursuant to the Order Appointing Receiver.

9. Service of Process - Under 28 U.S.C. §§ 754 and 1692, after certain filings are made in the judicial district in which a defendant resides, personal jurisdiction is obtained over that defendant in a receivership action by serving a copy of the summons and complaint under Rule 4 of the Federal Rules of Civil Procedure. *Haile v. Henderson Nat. Bank*, 657 F.2d 816, 824 & 826, n. 11 (6th Cir. 1981). Under Rule 4, service of process can be completed by any method permitted by the state in which the court sits. FED. R. CIV. P. 4(e)(1). Texas permits service of process on defendants by certified mail, return receipt requested. TEX. R. CIV. P. 106(a)(2), 108. Texas also permits substitute service on defendants that cannot be served with personal service or service by certified mail. TEX. R. CIV. P. 106(b). Specifically, Rule 106(b) permits service in “any other manner that . . . will be reasonably effective to give the defendant notice of the suit.” TEX. R. CIV. P. 106(b)(2). Accordingly, the Receiver requests that he be permitted to serve process on the defendants in the Recovery Actions (the “Recovery Defendants”) by sending a copy of the summons and complaint via certified mail, return receipt requested, or any other method permitted by the Court or the federal rules. If service cannot be completed in this manner, the Receiver requests that he be permitted to submit to the Receivership Court a method of service that will be reasonably effective to give the Recovery Defendants notice of the suit. Service would then be made under this substitute service method after it has been approved by the Court.

10. Responsive Pleadings – The Federal Rules give defendants 21 days from the date of service to file their answer. FED. R. CIV. P. 12(a)(1)(a)(i). The Receiver understands that some of the Recovery Defendants may have limited access to representation and may appear pro se. In the interest of justice, the Receiver requests that the Court treat any form of responsive statement from the Recovery Defendants as an answer required by the Federal Rules. The Receiver requests that those Recovery Defendants that fail to file a responsive statement within 21 days from the date of service be subject to a default judgment, pursuant to FED. R. CIV. P. 55.

11. Discovery – The Receiver requests that discovery in the Recovery Actions be limited only to the bank records and other documentary evidence directly related to the recoverable funds. A court has the discretion to restrict discovery available to the parties:

[T]he court must limit the frequency or extent of discovery otherwise allowed by these rules or by local rule if it determines that: . . . (iii) the burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues.

FED. R. CIV. P. 26(b)(2)(c). The Receiver has conducted an extensive investigation of the Millennium Bank Ponzi scheme and has accumulated substantial documentation related to the fraud. Further, the Receiver has limited funds with which to pursue recoverable assets. Prolonged discovery battles with each of the Recovery Defendants regarding their right to discovery of the Receiver's investigative materials would only further drain the Receivership Estate of the few funds it possesses. Accordingly, the Receiver requests that the Court limit discovery in the Recovery Actions to requests for the production of bank records and other documentary evidence directly related to the recoverable funds sought from a particular Recovery Defendant. Further, the Receiver requests that interrogatories and requests for admission be

permitted only to the extent that they directly relate to the recoverable funds sought from a Recovery Defendant. Finally, the Receiver requests that no depositions be permitted, unless good cause is shown by motion to the Court. Because in certain circumstances more extensive discovery may be required, the Receiver requests that additional discovery be permitted upon a showing of good cause.

12. Trial Settings - The Receiver requests that the Recovery Actions be set for trial on an expedited basis.

13. Bench Trials - The Receiver requests that the Recovery Actions be conducted as bench trials. The right to a jury trial found in the Seventh Amendment and Rule 38 of the Federal Rules of Civil Procedure does not attach to equitable proceedings in the administration of a receivership. *See Bien v. Robinson*, 208 U.S. 423, 428 (1908); *United States v. Arizona Fuels Corp.*, 739 F.2d 455, 460 (9th Cir. 1984); *Burnham v. Todd*, 139 F.2d 338, 342 (5th Cir. 1943); *accord Katchen v. Landy*, 382 U.S. 323, 336-38 (1966) (no right to jury trial in equitable action in administration of bankruptcy estate). Actions for disgorgement of improper profits are equitable in nature. *See Chauffeurs, Teamster & Helpers, Local No. 391 v. Terry*, 494 U.S. 558, 570 (1990); *SEC v. Rind*, 991 F.2d 1486, 1493 (9th Cir. 1993) (holding that defendant is not entitled to a jury trial where the Commission sued for disgorgement of illicit profits); *United States v. Arizona Fuels Corp.*, 739 F.2d 455, 460 (9th Cir. 1984). The Recovery Actions will include equitable proceedings to recover funds into the Receivership Estate. These cases will primarily rely on equitable causes such as equitable disgorgement, unjust enrichment, constructive trust, and the equitable remedies available under the Texas Uniform Fraudulent Transfer Act. Because these actions will be equitable proceedings in the administration of a

receivership, there is no right to a jury trial and the Receiver requests that the Recovery Action be conducted as bench trials.

14. A proposed Order Approving Procedures for Recovery of Receivership Assets is attached as Exhibit A.

III. RELIEF REQUESTED

The Receiver requests that, upon final hearing and consideration of this Motion, the Court approve these proposed procedures for the recovery of Receivership assets, and for such other and further relief, general or special, at law or in equity, to which he may show himself justly entitled.

Respectfully submitted,

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/s/ Jennifer Rudenick Ecklund

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CERTIFICATE OF SERVICE

On November 22, 2010, 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