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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

CAPITAL CONSULTANTS, LLC, f/k/a
CAPITAL CONSULTANTS, INC., JEFFREY
L. GRAYSON and BARCLAY GRAYSON,

Defendants.

Case No. CV 00-1290-KI

SUPPLEMENTAL DECLARATION OF
THOMAS F. LENNON IN SUPPORT OF
REPLY TO RESPONSES TO RECEIVER'S
MOTION TO APPROVE DISTRIBUTION
PLAN

Date: November 22, 2002
Time: 9:00 a.m.
Dept. 9A
Judge: Hon. Garr M. King

I, Thomas F. Lennon, declare:

1. I am the Court-appointed receiver for Capital Consultants, LLC ("CCL") and all entities under its control in the above captioned matter. The following facts are within my personal knowledge and if called as a witness I would testify to them under oath.

2. The purpose of the motion to approve the distribution plan is to obtain Court approval of the *rules* that will govern distribution. Many of the oppositions filed in response to the motion focus on the results of the rules and the differences in the estimated dividends under pro rata distributions based on the Money-in/Money-out claim approach or the 9/21/00 principal balance claim approach.

3. First and foremost, the estimated dividends contained in Exhibit 1 to the Notice of the Distribution Plan are only estimates. Nevertheless, because so many of the oppositions focused on the differences in the dividends, I re-examined the two alternative pro rata approaches and considered whether I should change my recommendation to the Court. After comparing the results of the two alternative pro rata distribution proposals, and considering a hybrid approach of the two, I am confident that my original recommendation of the Money-in/Money-out approach was correct..

4. Comparing the 9/21/00 principal balance approach to the Money-in/Money-out approach reveals that about half of the clients do better under each approach. Excluding the Wilshire Credit Corp. claim that was released as part of the Related Litigation Settlement, 145 of 286 clients do better under the 9/21/00 approach, while 141 of 286 do better under the Money-in/Money-out approach.

5. The average dividend under either the 9/21/00 principal balance approach or the Money-in/Money-out approach (again, ignoring Wilshire Credit Corp.) is approximately \$502,000. The range is \$0 to \$24.9 million. The average difference in the estimated dividend between the two approaches is about \$63,000, or about 12.5%.

6. For those clients where the difference between the two approaches is material, less than 15% had a difference in the two approaches equaling \$100,000 or more, and only 2%

(7 of 286 clients) had a difference of over \$500,000 (even though 24 clients had dividends totaling over \$1 million). A breakdown of dividend amounts is interesting. Approximately 20% have estimated dividends over \$300,000 under either approach, while approximately 35% have estimated dividends under approximately \$41,000 under either approach. Under the 9/21/00 principal balance approach, 100 clients have estimated dividends over \$163,000 and 100 clients have estimated dividends under \$42,000. Under the Money-in/Money-out approach, 100 clients have estimated dividends over \$142,000 and 100 clients have estimated dividends under \$39,000.

7. In addition to comparing the two methods, I also considered what would happen if each client were assigned the larger estimated dividend resulting from the two approaches, with a necessary downward pro rata adjustment so that total dividends matched the total funds available for distribution. In applying this hybrid approach, 43 clients (15%) did worse than under either approach, and, of course, none of the 286 did as well as if their first choice (in the higher amount) had been utilized.

8. I recommended the Money-in/Money-out approach to claim allowance because, under the circumstances of this case, I believe that approach achieves the most equitable results. After further consideration, I continue to believe it produces the most equitable result. The effects of the Ponzi scheme was not limited to the collateralized note program as contended by certain clients. In fact, the client-swapping activity described in my declaration and the memorandum of points and authorities extended to almost all of the private investment loans, including those secured by real estate. Of the 26 Conventional First Mortgage loans outstanding at the time I was appointed that had more than one client as an investor, all but eight had client swapping activity, four of which were in a substantial amount: on the Homer Williams loan, \$194,000 was traded in a \$1.2 million loan; on the Bowman Family Trust loan, \$75,000 was traded on a \$400,000 loan; on the Josephson loan, \$1.3 million was traded on a \$2.4 million loan; and on the Crossings Aviation loan, \$750,000 was traded on a \$1.2 million loan. In general, this activity was not client directed but was done to meet funding requirements for other

loans and the occasional request of a client to liquidate their investment.

9. The extent of the fraudulent activity at CCL further confirms my view that Money-in/Money-out is the equitable approach. I also remain convinced that there is no principled reason for excluding the real estate from pro rata distributions in the absence of a particular client meeting the narrow exception defined in the proposed plan.

10. In addition to re-examining the Money-in/Money-out approach in response to concerns raised by certain CCL clients, I also expanded the sample of clients for which detailed information regarding the Money-in/Money-out calculation was provided. My attorneys conducted several telephone conferences with the attorneys for the plaintiffs' consortium in an effort to provide additional information about the process used to arrive at the Money-in/Money-out claim amounts. We also agreed to expand the sample and asked that the group provide the names of seven additional clients for which detailed information would be provided. The group only provided six names: Oregon Laborers Employers Pension Trust Fund; Western States Local Union TRFD of the OPEIU Local 11 H&W; Funeral Associates LLC; Sheet Metal Workers Local No. 9 Pension Trust; Carpenters Pension Trust of Northern Nevada; and Sheet Metal Workers Local No. 33 Cleveland District Pension Plan. The same detailed information provided in the appendix with respect to the initial sample of seven was sent to each of the attorneys representing the above clients. That detailed information is also available to other interested parties by contacting my attorneys.

11. Several of the oppositions raise concerns that certain aspects of my proposed distribution plan may prolong the duration of the receivership case. I do not believe this is a valid concern. First, I believe the additional time associated with resolving disputes and questions concerning claim calculation under the Money-in/Money-out approach as compared to the 9/21/00 balance approach will be not more than 30 days. I estimate that additional time will result in less than \$25,000 in additional professional fees. While this is not an insignificant expense, I believe it is worth the expense to apply the correct approach. In addition, I do not believe the additional time will delay closure of the case.

12. I estimate that in order to liquidate the remaining real estate assets, in particular Gresham Square and the remaining SCREH properties, the estate will likely need to remain open an additional year, in any event. Further, I have recently sued the accountants for TMET who provided the financial statements and projections for the underwriting on that loan. That lawsuit may take a year to conclude.

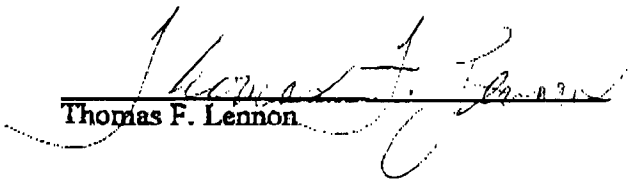
13. In my prior declaration in support of the plan at paragraph 19, I estimated total administrative claims for the life would be approximately \$7.5 million. At paragraphs 50 and 51 of that declaration, I discuss the estimated \$1.3 million in fees incurred in connection with the Related Litigation only. It appears the Bullivant clients misunderstood this information and somehow concluded that I anticipated incurring an additional \$5 million in administering the distribution plan. This is incorrect. In fact, as of August 2002, of the total \$7.5 million estimated in administrative claims, approximately \$5.9 million has already been incurred.

14. Once a distribution plan is approved and all issues relating to claim calculation are resolved, I believe the administrative expenses associated with the receivership will drop dramatically. Attorney time will be significantly more limited as much of the work associated with making distributions will be conducted by para-professionals on my staff and by the staff at CCL.

15. In addition to re-examining my recommendation on the proposed pro rata approach, I have also reconsidered my recommendation with respect to the treatment of third-party recoveries. Although I continue to believe my proposal is legally sound and equitable under the circumstances, to the extent that clients are not sufficiently incentivized to pursue third-party claims, the purpose of the provision may be defeated. Consequently, I have modified my recommendation to reduce the offset associated with third-party recoveries by 50%. The effect of this modification is that the client's overall recovery is increased in an amount equal to 65% of third-party recovery. This impact should properly motivate parties to pursue these claims.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 1, 2002, at La Mesa, California.


Thomas F. Lennon