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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

FOURTH INTERIM REPORT OF THE
RECEIVER

I. INTRODUCTION

The Receiver submits this Fourth Interim Report¹ to update the Court and creditors on the status of various aspects of the Receivership cases and to provide an explanation of the first interim distribution. The information contained herein is the most current information available. Certain matters, in particular matters for which reserves were set in connection with making distributions, are continuing to evolve, which may cause the Receiver to modify the contents of this report.

II. DISTRIBUTIONS

As described in more detail below, the Receiver has successfully liquidated CCL's assets, and pursued claims against third parties. These liquidation and litigation proceeds are the source from which distributions will be made to CCL's investor creditors. The Receiver's Distribution Plan was approved by the Court on December 5, 2002. Several parties brought motions for clarification and/or reconsideration with respect to discrete provisions of the Distribution Plan. Most of these motions were resolved by the Order Implementing Approved Second Amended Distribution Plan ("Implementation Order"), signed by the Court on February 28, 2003. Certain disputes remain with certain creditors over the correctness of the Receiver's claim calculations. In addition, certain creditors and the Department of Labor have appealed the order approving the Distribution Plan and the order implementing the Distribution Plan. On June 11, 2003, the Receiver filed a Motion for Approval of First Distribution of Dividends from Estate Assets. The Court granted the Receiver's motion on July 1, 2003, clearing the way for the Receiver to make this first interim distribution. ***First dividend checks will be mailed the week of July 21, 2003.*** Each investor creditor will receive a statement reflecting their individual dividend calculation.

The Distribution Plan provides for distributions from two sources: i) the Receiver Assets, comprised of the Private Investment Liquidation Proceeds and other Receivership Recoveries, and ii) the Settlement Funds, amounts recovered from the Related Litigation and Mediation after

¹ The Receiver's First, Second and Third Interim Reports may be accessed at CCL's website: <http://www.capitalconsultantsllc.com>.

deduction of Court-approved attorneys' fees and costs. This first interim distribution is made *only* from the Receiver Assets because certain conditions imposed under the settlement agreements to the release of Settlement Funds have not yet been satisfied. The Receiver anticipates that the conditions to the release of the Settlement Funds may be satisfied within approximately 90 days, permitting the Receiver to make another interim distribution shortly thereafter.

Among other things, the Distribution Plan takes into account third-party recoveries and management fees, exceptions to pro rata distributions for those who are eligible for and elected to receive a "traced" dividend, reserves for future third-party recoveries and pending disputes, and credits for prior in-kind dividends. Additional dividend distributions will be made as additional funds are freed up and/or disputes are resolved such that certain reserves are no longer necessary.

Dividend amounts to investor creditors are calculated, on an individual basis, using the rules established by the Plan. With certain exceptions, each investor creditor's Money-in/Money-out ("MIMO") claim amount is used as the basis for calculating that investor creditor's pro rata share of the assets available for distribution from the Receiver Asset Pool and Settlement Fund Pool. Once "gross dividend" amounts have been calculated for each investor creditor on a pro rata basis, certain deductions or credits are made as provided in the Distribution Plan and certain holdback amounts are deducted to account for contingencies as further described below. After deduction of these amounts and holdbacks, and after taking into account any prior in-kind distributions (e.g., real estate), a net amount is determined as the amount of cash dividend to be paid to each investor creditor at this time from the Receiver Assets.

A. Distributions From Receiver Assets

The Receiver estimates that ultimately there will be a total of approximately \$145 million of Receiver Assets available for distribution, including the \$26 million in real estate distributions already made. The treatment of the real estate assets is, however, the subject of an appeal, the ultimate disposition of which could affect the total dollar value of assets distributed under the

Distribution Plan. Of the \$119 million remaining to be distributed, the following approximate amounts cannot yet be distributed at this time:

- \$10 million which was advanced for distribution to the American Funeral Plaintiffs (and which will be reimbursed with interest from the Settlement Funds);
- \$15 million for the 15% holdback for potential additional third party recoveries;
- \$13.5 million holdback pending resolution of tracing election disputes, claim calculation disputes, and a dispute with certain American Funeral Plaintiffs over disgorgement of settlement funds related to tracing;
- \$1.5 million deduction for management fees owed under the Plan (which will be used first to satisfy administrative claims); and
- \$3.0 million reserve for additional administrative expenses and unpaid trade claims.

Accordingly, this first distribution of cash dividends to investor creditors will total approximately \$76 million, including traced dividends. This amount, in addition to the \$26 million in real estate distributions already made, and the approximate \$10 million American Funeral payment previously made, will bring total distributions to investor creditors to approximately \$112 million by July 31, 2003, an approximate average dividend of 34% based on the aggregate adjusted MIMO claim amount.

B. Distributions From Settlement Funds

As of June 30, 2003, there are \$106,004,406 of Settlement Funds in "disbursement trust accounts" at U.S. Bank. In addition, there are \$5,161,432 of Settlement Funds in "defense trust accounts" at U.S. Bank. All accounts are earning interest at the current rate of 1.16% per annum. The funds in the disbursement trust accounts will be available for distribution at such time as it is agreed by each of the Settling Defendants or determined by the Court that all conditions to the release of such funds have been satisfied. At this time, certain of the Settling Defendants contend that not all of the conditions for release of the funds have been met.

The issues raised include the adequacy of legal opinions, the finality of the claims bar order given the pendency of certain appeals, the adequacy of releases, and the issue raised by

American Funeral Plaintiffs with respect to the disgorgement of Settlement Funds in the event they receive a traced dividend. The Receiver anticipates that all of these disputes will be consensually resolved, or judicially determined, in the next 60-90 days. In addition, all CCL investor creditors that participated in the mediation through the Receiver must sign an Acknowledgment Agreement in order to receive a distribution from the Settlement Funds. Those investor creditors that are required to sign this Agreement will receive a copy under separate cover and are asked to sign it and return it immediately.

Before distributions to investor creditors are made from the Settlement Funds, certain deductions will be made as provided in the Distribution Plan. First, the Court has approved requests on behalf of various investor creditors for reimbursement of legal fees and costs incurred in connection with the creation of the Settlement Funds. Although two requests are not yet resolved, the aggregate fees and costs likely to be approved will be approximately \$12.3 million. Accordingly, for purposes of estimating the dividends, the Receiver has assumed a holdback of \$12.3 million from the Settlement Funds.

In addition, as noted above, the American Funeral Plaintiffs were paid a preferred, early distribution of Settlement Funds in the amount of \$10,009,800 including interest. Because the Settlement Funds were not yet available for distribution at the time the American Funeral Plaintiffs payment was made, with Court approval an advance of \$10,009,800 was made from the Receiver Assets. Thus, when the Settlement Funds are released for distribution, a payment from those funds must be made to reimburse the Receiver Assets in the amount of \$10,009,800, plus interest. Of course, that amount will then be disbursed to investor creditors through dividends from Receiver Assets.

After these deductions, dividends from the Settlement Funds are calculated based on the relative adjusted MIMO claim amount of each investor creditor entitled to share in the remaining Settlement Funds. This group excludes the American Funeral Plaintiffs, those who receive traced dividends from the Receiver Asset Pool, and certain other creditors who have waived or assigned their claims to the Settlement Funds by agreement. A minor adjustment will then be made to the gross dividend amounts to account for each investor creditor's contribution to the

preferred amount of the Settlement Funds (the amount in excess of their pro rata share based on MIMO claim amounts) paid to the American Funeral Plaintiffs.

Determining what the aggregate distributions will be is difficult and depends upon, among other things, the outcome of the pending appeals and the amount of third-party recoveries. Notwithstanding these uncertainties, the Receiver estimates that the ultimate percentage distributions to CCL investors on their MIMO claim amounts will be between 65% and 70%.

III. CLAIM DISPUTE RESOLUTION

There are approximately five remaining investor creditors with unresolved disputes over the calculation of their MIMO claim amount. As discussed above, holdbacks or reserves from the first interim distribution have been set in order to preserve these investors' right to object until the dispute is consensually resolved or determined by the Court. The Receiver anticipates that all such disputes will be resolved within the next 45 to 60 days.

IV. ASSET DISPOSITIONS

The Receiver has successfully liquidated or distributed most of CCL's assets. The Receiver anticipates liquidating the balance of the assets before the end of this calendar year.

CCL's largest group of assets, the Loan Portfolio and Private Equities, were sold on January 25, 2002. The Court conducted an overbid auction which, at the conclusion of the auction, resulted in a \$60 million sales price. The sale to MTGLQ Investors, an affiliate of Goldman Sachs, closed on February 6, 2002.

In addition to the sale of the Loan Portfolio and Private Equities, the Receiver has sold or distributed as interim dividends most of CCL's real estate assets. CCL's office building, Capital Center, was sold in August of 2001 for \$2,950,000, with net proceeds of \$562,000 after the payment of secured debt and costs of sale. The liquidation of that property allowed the Receiver to make a significant payment to Bank of West, CCL's secured creditor that held a security interest in CCL's interest in the property.

In December 2002, the Receiver sold the 50 condominium units CCL owned in the Legends condominium project. The Receiver had been marketing the property for a number of

months and had entered into an agreement to sell the property. During the buyer's due diligence, it was discovered that certain water intrusion issues existed. The Receiver negotiated with the buyer as well as the Homeowner's Association regarding all outstanding issues and was able to effectuate a sale which netted approximately \$2.2 million for the Receivership estate.

In October 2001, the Court approved the Receiver's proposal to distribute certain real property as an interim distribution to the CCL clients whose funds were used to acquire the assets. Pursuant to that motion, the Receiver distributed the real properties known as AT&T Cellular One Building, One Technology Square, Two Technology Square, and Crimson Corner. The effected clients chose not to receive a distribution of Gresham Square and the six real properties acquired as a result of investments in the Smith Consolidated Real Estate Holdings ("SCREH").

Subsequently, the Receiver has successfully liquidated four of the six SCREH properties and has received offers on the remaining two. In addition, the Receiver has just received Court approval of the sale of Gresham Square. The net proceeds of the first four SCREH properties is approximately \$3.89 million. The Receiver estimates an additional \$3 million in net proceeds from the sale of Gresham Square, SCREH Silverdale, and SCREH Lacey.

The remaining significant unliquidated asset is CCL's interest in a group of assets known as Costa Pacific. The Receiver anticipates seeking Court approval of a sale of those assets within the next 30 days. The net proceeds from the Costa Pacific sale will be approximately \$1,250,000.

V. RECEIVER CLAIMS AGAINST THIRD PARTIES

As described above, the plaintiffs in the Hazzard, Chilia, and Madole actions, along with the Receiver on behalf of the receivership estate and the otherwise unrepresented CCL private investment clients, have successfully pursued claims against a number of named and unnamed defendants, including CCL insiders, attorneys and accountants that had provided services to CCL, and certain borrowers of CCL. These claims were mediated before the Honorable Edward Leavy, Judge of the United States Court of Appeals. As described above, settlements of over \$111 million were approved by the Court on June 19, 2002.

The Receiver has not and does not anticipate reaching a settlement with Jeffrey Grayson. Mr. Grayson's assets, however, are still frozen pursuant to Court order and all payments made from those assets have been made pursuant to Court order or Court-approved budgets. To date, approximately \$640,000 in Receivership expenses or obligations have been paid from Mr. Grayson's assets. At this time, Mr. Grayson's assets have been reduced to miscellaneous personal property, an interest in a shopping center, and his former personal residence in which very little equity exists. With Mr. Grayson's permission, the Receiver has entered into a sale of the personal residence. The Receiver will continue to pursue the turnover and liquidation of the remaining assets for the benefit of the receivership estate and its creditors.

Finally, the Receiver is pursuing three remaining claims: two fraudulent transfer claims and a claim against the former accountants for a borrower of CCL. The Receiver anticipates resolving the two fraudulent transfer claims in the next several months. The claim against the accountants is expected to go to trial in March 2004, unless a settlement is reached before that date. The proceeds of these efforts will be used to offset administrative expenses.

VI. CLOSING THE ESTATE

Once all assets are liquidated and the pending appeals are determined, the Receiver will make a final distribution and file a final report and accounting with the Court. Although the Receiver anticipates that all assets will be liquidated by the end of the year, it is possible that the determination of the pending appeals will not take place until well into 2004. The Receiver will, however, consistent with Court orders and economic practicalities, maximize the distributions to creditors and investors in the interim.

Dated: July 18, 2003

/s/ David L. Osias
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