

1 DAVID L. OSIAS (CA BAR NO. 091287)
JEFFREY R. PATTERSON (CA BAR NO. 126148)
2 ALLEN MATKINS LECK GAMBLE & MALLORY LLP
501 West Broadway, Ninth Floor
3 San Diego, California 92101-3577
Telephone: (619) 233-1155
4 Facsimile: (619) 233-1158
E-mail: dosias@allenmatkins.com

5
6 PAUL B. GEORGE (BAR NO. 99009)
CARTER M. MANN (BAR NO. 96089)
FOSTER PEPPER & SHEFELMAN LLP
7 101 S.W. Main Street, 15th Floor
Portland, Oregon 97204-3223
8 Telephone: (503) 221-0607
Facsimile: (503) 221-1510
9 E-mail: georp@foster.com

10 Attorneys for Receiver
Thomas F. Lennon

11
12 UNITED STATES DISTRICT COURT
13 DISTRICT OF OREGON
14

15 **In Re Consolidated Capital
Consultants Litigation**

Case No. CV 00-1290-KI

**RECEIVER'S REPORT REGARDING
PROPOSED SETTLEMENTS WITH
DELOITTE & TOUCHE LLP AND
PRICewaterHOUSECOOPERS LLP**

16
17
18
19
20
21 **I. INTRODUCTION**

22 **A. Proposed Settlements With Deloitte & Touche LLP and**
23 **PricewaterhouseCoopers LLP**

24 On May 14, 2002, the Receiver filed a lawsuit on behalf of
25 the entire receivership estate against the accounting firms
26 Deloitte & Touche LLP ("Deloitte") and PricewaterhouseCoopers LLP
27 ("PWC"). As described below and in the Receiver's complaint,
28 (which can be reviewed at the Court or on the Receiver's website

1 www.capitalconsultantsllc.com), the Receiver has alleged that by
2 their actions and omissions, Deloitte and PWC caused substantial
3 damages to Capital Consultants, LLC ("CCL") and its investors and
4 other creditors.

5 On May 31, 2002, through a mediation presided over by Ninth
6 Circuit Judge Edward Leavy, proposed settlements were reached
7 with Deloitte and PWC, whereunder Deloitte will pay \$1.8 million
8 and PWC will pay \$200,000 in exchange for a release of all claims
9 against them by the Receiver and all CCL investor plaintiffs.
10 Such settlements would represent the liquidation of the last
11 major asset to be administered by the Receiver for the benefit of
12 creditors. At the mediation, the Receiver agreed to these
13 settlements.

14 Since all creditors were not represented in the mediation,
15 this report is intended to provide the necessary information to
16 all creditors so that they may make an informed decision as to
17 whether they wish to support or oppose the proposed settlements.
18 All creditors have standing to support or object to the proposed
19 settlements. Representatives for investor creditors who together
20 comprise 80% - 85% of the outstanding principal invested in the
21 CCL private investment portfolio strongly support the
22 settlements. The Receiver seeks for all clients and creditors to
23 be fully informed and have an opportunity to express their
24 positions. A majority vote of the creditors does not necessarily
25 govern or control the Court's decision on whether to approve the
26 proposed settlements. At the same time, no creditor has the
27 power to veto approval of the settlements. Therefore, each
28 creditor needs to evaluate for itself the pros and cons of the

1 proposed settlements with Deloitte and PWC and make their views
2 known should they wish to do so.

3 **B. Standards for Court Approval of Settlements**

4 In considering whether to approve a settlement, the Court
5 must consider a four-factor test pursuant to Ninth Circuit law:

- 6 1. The probabilities of success in the litigation;
- 7 2. The difficulties to be encountered in collection;
- 8 3. The complexity, expense, inconvenience and delay of
9 litigation; and
- 10 4. The paramount interest of creditors and a proper
11 deference to their reasonable views.

12 No one factor is controlling, nor must the Court find that
13 all four factors weigh in favor of a settlement in order for it
14 to be approved. The Court must employ a balancing of these
15 factors in order to determine whether, in its discretion, the
16 settlement is reasonable under the circumstances. Therefore,
17 each client and creditor should also consider these factors in
18 deciding whether to support or oppose the proposed settlements
19 with Deloitte and PWC.

20

21 **II. Receiver's Lawsuit Against Deloitte and PWC**

22 **A. Deloitte & Touche.**

23 The single most significant transaction leading directly to
24 the collapse of CCL, investor losses, and ultimately appointment
25 of the Receiver, was the large cash sums CCL lent to the Wilshire
26 Group in 1994-1996. The amounts lent, not including interest,
27 were approximately \$160 million, none of which has been repaid.
28 The resulting damages to CCL and its investors amounted to over

1 \$200 million. The Receiver has alleged that from approximately
2 1987 through 1996, when CCL evaluated whether and how much to
3 lend to the Wilshire Group, Deloitte was the Wilshire Group's
4 auditor and tax-preparer.

5 The Receiver, in his complaint against Deloitte, has alleged
6 that the work of and clean audit letters by Deloitte were
7 knowingly, materially false. The complaint alleges that had
8 Deloitte performed properly, the Wilshire Group's financial
9 statements would have revealed the Wilshire Group to be a
10 bankrupt group of interconnected entities from before the
11 inception of CCL's loans, and would have highlighted many
12 millions of dollars diverted from the Wilshire Group by its two
13 owners with no documentation and no intent to replace the funds.

14 Deloitte denies any liability to the Receiver, CCL or its
15 creditors.

16 **B. PricewaterhouseCoopers.**

17 The proposed settlement with PWC contemplates a \$200,000
18 payment by PWC in consideration for a dismissal of the Receiver's
19 lawsuit and a release of all claims by Claimants.

20 In 1999, CCL engaged PWC to analyze and prepare reports on
21 the performance of funds under its management during the years
22 1993-1998. The complaint alleges that PWC knew the purpose of
23 this engagement was to allow CCL management to maintain investor
24 confidence, not lose existing investors who were becoming
25 concerned, and stave off regulators such as the SEC and DOL.

26 PWC issued a report dated January 5, 2000. In that report,
27 it stated the historic performance of the investments in the so-
28 called collateralized notes (principally money lent to the

1 Wilshire Group) had achieved returns between ten and fourteen
2 percent every year for the period of 1993-1998. The complaint
3 alleges that PWC's report was not correct, at best was performed
4 in a negligent manner, but did help CCL stay in business up to a
5 year and a half longer than it otherwise would have.

6 PWC denies any liability to the Receiver, CCL or its
7 creditors.

8 **III. CONSIDERATIONS FOR AND AGAINST SETTLEMENT**

9 While always impossible to predict the outcome of
10 litigation, the following factors should be considered in
11 deciding whether the proposed settlements are advisable under the
12 circumstances:

- 13 • Deloitte's and PWC's combined \$2.0 million settlement
14 may represent significantly less than the present
15 value of the recovery were the Receiver to pursue the
16 litigation to judgment.
- 17 • The outcome of the litigation is uncertain as Deloitte
18 and PWC will aggressively defend and assert numerous
19 defenses to the Receiver's claims, and may prevail.
- 20 • The cost of the litigation may reach \$2 to \$5 million.
- 21 • If the Receiver were to obtain a judgment against
22 Deloitte and PWC as sought in his complaint, it is
23 believed, but it is not certain, that Deloitte and PWC
24 would have the resources to satisfy the judgment,
25 either directly or through insurance.
- 26 • The Receiver's lawsuit against Deloitte and PWC may
27 take a year or more to bring to trial, and any appeal
28 from that trial could last another 2 years.

- 1 • If the Deloitte and PWC settlements are not approved,
2 Deloitte and PWC will object to the settlements
3 reached with the other defendants, totaling
4 approximately \$108.5 million.
- 5 • If the other settlements are approved over Deloitte's
6 and PWC's objections, then Deloitte and/or PWC may
7 appeal the court's decision.
- 8 • The outcome of such an appeal is uncertain.
- 9 • Such an appeal may take up to 2 or more years to be
10 resolved.
- 11 • The cost of defending such an appeal could be in the
12 \$200,000 to \$500,000 range.
- 13 • The Receiver will not be able to distribute the funds
14 from the other settlements until the appeal is
15 resolved.
- 16 • Pending resolution of the appeal, the funds from the
17 other settlements, will be held in an interest-bearing
18 trust account, which may earn interest at a lower rate
19 than creditors could earn if the money were in their
20 control.

21

22 Investor creditors who comprise approximately 80% - 85% of
23 the outstanding principal invested in the CCL private investment
24 portfolio, endorse and strongly encouraged the Receiver to enter
25 into the proposed settlement with Deloitte and PWC. These
26 Claimants have advised the Receiver that they believe the
27 proposed \$2 million settlement with Deloitte and PWC is in the
28 best interest of the receivership estate.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IV. CONCLUSION

All creditors of the Receivership estate should consider the foregoing factors in determining whether to support or object to the proposed settlements with Deloitte and PWC. If you have no objection, you do not need to respond. However, if any creditor wishes to express a position, either for or against the settlements, he/she/it must do so, in writing. Such written materials must be filed with the Court: Clerk of Court, U.S. District Court, 1000 SW 3rd Avenue, Portland, Oregon 97204 Ref: In Re Consolidated Capital Consultants Litigation CV 00 1290 KI and submitted to the Receiver c/o Jeff Patterson, Allen Matkins Leck Gamble & Mallory LLP, 501 W. Broadway, 9th Floor, San Diego, California 92101-3547, and to Stephen F. English, Bullivant Houser Bailey PC, 888 SW Fifth Avenue, Portland, Oregon 97204, and to Robert A. Meyer, Loeb & Loeb, 10100 Santa Monica Blvd., Los Angeles, California 90067-4164, and to Michael Rugen, Heller Ehrman White & McAuliffe LLP, 333 Bush Street, San Francisco, California 94104-2878, no later than June 14, 2002.

1 If you wish to obtain any further information regarding the
2 proposed settlements with Deloitte and PWC you may contact:

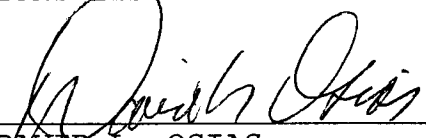
3 David L. Osias
4 Allen Matkins Leck Gamble & Mallory LLP
5 501 West Broadway, Ninth Floor
6 San Diego, CA 92101
7 (619) 233-1155

8 and/or

9 Stephen F. English
10 Bullivant Houser Bailey PC
11 888 SW Fifth Avenue, Suite 300
12 Portland, OR 97204
13 (503) 228-6351
14 (503) 499-4411 (direct)

15 Dated: June 7, 2002

ALLEN MATKINS LECK GAMBLE &
MALLORY LLP

16 By: 
17 DAVID L. OSIAS
18 (CA Bar No. 91287)
19 Attorneys for Receiver
20 Thomas F. Lennon