

Trustee's Newsletter #12

Thursday, 22 January 2009

Dear Victims, Creditors and Other Interested Parties,

Although December seems like a short month because of the holidays, there was quite a bit of activity in the case. As we all know, recovery in this case is virtually hundred percent dependent on successful litigation. I will use this opportunity to bring us all up to date on the status of litigation as of the current time.

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Litigation

08-01604(MG)(McHale v. Wachovia Bank, N.A., et al.

This lawsuit seeks recovery of more than \$43 million of conveyances allegedly made to Wachovia in the form of cash and mortgage liens, as well as the imposition of equitable liens and construction trusts on several properties in which Wachovia continues to hold liens, or the proceeds therefrom. The complaint also asserts that Wachovia aided and abetted breaches of fiduciary duty against the 1031 Debtors, and seeks to recover more than \$140 million of damages arising from such conduct. The Trustee filed a response to Wachovia's motion to dismiss on January 9, 2009, and oral argument is scheduled for February 4, 2009. The cutoff for fact discovery is May 22, 2009 and the cutoff for expert discovery is August 7, 2009.

08-01042 (MG) McHale v. JPS NH, LLC, et al.

This lawsuit seeks, in essence, to impose equitable liens and constructive trusts in the amount of \$5.1 million on the two parcels of real property, and the proceeds thereof, owned by Okun located on Aaron Road, Wolfeboro, New Hampshire. This relief is also sought against Wachovia in the complaint against it described above. The defendants assert liens or other interests in the Aaron Road property. The Trustee has recently entered into an agreement with all claimants to the property, and with Okun, to sell the property and transfer all claims to the cash proceeds, and, we await a decision on JPS's motion to dismiss, which we believe will be denied.

08-01644 (MG) McHale v. Alvarez, et al.

This lawsuit seeks to temporarily enjoin various creditors (the "Alvarez Plaintiffs") of the 1031 Debtors from pursuing claims in Colorado State Court against certain former employees of the 1031 Debtors (the "Colorado Case"). On December 10, 2008, the Court granted a preliminary injunction for 90 days.

On December 22, 2008, the Alvarez Plaintiffs filed a notice of appeal from the Court's order granting the preliminary injunction. The Trustee responded by filing a cross-appeal and motion to dismiss the Alvarez Plaintiff's appeal on December 31, 2008.

Claims Against Pre-Trustee Professionals

Dreier LLP

As a result of the implosion and bankruptcy of the Dreier firm, we cannot directly sue the Dreier firm. We are nevertheless moving forward from the standpoint of potential recovery against insurance companies and/or individual partners.

Huron, Mesirov and Greenberg Traurig

We currently intend to object to the fee requests of these firms, and are proceeding with discovery of those firms to determine if affirmative claims should be brought against them. We have served subpoenas in this respect.

Settlement Discussions

Virtually all of the settlement discussions and negotiations are confidential and preclude open discussions. This being the case, let me assure you that we continue to move forward on settlement discussions with the Crime Policy carriers, remaining owners of the qualified intermediary companies who sold to Okun, and significant others.

Settlements Executed

E & O Carriers.

\$4.6 million out of \$5.5 million in policies, with a reserve of \$250,000 for other insureds under the policies. This reserve must be approved by the Court and QI sellers who have claims under the policies who do not settle with us and assign those claims and the policies will dispute this.

McCabe Group

\$1.2 million cash, plus waiver and assignment to us of their claims under multiple E & O policies. They are also waiving

their claims of \$2,000,000 for balance of purchase price and \$1,000,000 for breach of employment agreement

Criminal Matters

Lara Coleman has now pleaded guilty and in a plea agreement with the government has agreed to a 10 year sentence. Sentencing for all of the defendants who have entered plea agreements is now scheduled for May. Mr. Okun continues remain incarcerated. Currently his trial is scheduled to begin on March 2, 2009. He has recently filed a motion in the Virginia court for a hearing on his assertion that the Government's request for the search warrant contained false statements, and to strike all evidence obtained therefrom.

Plan of Reorganization

We are working on the final draft of the proposed plan of reorganization, key provisions of which would establish a trust into which all litigation claims and other assets would be transferred. The trust would continue the litigation effort, and would be responsible for the ultimate liquidation of the assets and distributions to the victims and creditors. As part of that trust, an oversight committee would be established and certain decisions of the liquidation trustee reviewed by that committee. I am taking all steps to provide for the earliest possible preliminary distribution, but the timing and amounts are dependent on the settlements that could be achieved between now and the effective plan date as well as a number of other circumstances.

We are hopeful of getting this plan and disclosure statement filed with the court shortly (hopefully within 30 days).

Agreement with Class Action

We are discussing an agreement with the class representative in the class action lawsuit pending in Federal District Court in San Jose to coordinate and cooperate on the pursuit of claims. If we execute such an agreement, we and the Class Representative will shortly be filing a motion for approval thereof in our respective courts.

Real Estate

The last remaining real estate parcel in the Okun portfolio was the Salina Mall in Salina, Kansas and the JC Penny's building in Houston, Texas contiguous to the West Oaks Mall property.

On the Salina property while Okun did pay in excess of \$40 million for the property we have been unsuccessful in finding a buyer who would even pay the amount of the mortgage (\$ 32,745,000). This being the case we are agreeing to not fight a foreclosure on the property by the lender, Wachovia. The same applies for the JC Penny's building which has been vacant for a number of years now. Okun had originally purchased the property for \$ 4,000,000 and obtained financing from Wachovia of \$3,000,000.

Other matters

In December, the Court approved payment of administrative fees and expenses totaling \$2,403,529.18. These fees were for services performed only after the appointment of the trustee, and no pre-trustee professional fees were paid in conjunction with this. Also, for those professionals who are submitting fee applications for the first time, these were generally limited to 60% of the total amounts incurred by them. For those who have previously received fees in the case generally fees under this payment were limited to 35% of less than half of the current fees incurred.

The estate currently has \$7.3 million cash on hand, approximately \$2 million of which is required to be maintained in escrow.

Best regards,

The 1031Tax Group LLC, et al.

/s/

Gerard A. McHale, Jr.

Chapter 11 Bankruptcy Trustee.