

Trustee's Newsletter #15

Monday, 01 June 2009

Dear Creditors and Other Interested Parties,

We have made significant progress during the month including the approval by the bankruptcy court of the agreement between the Trustee and the pending class action plaintiffs which I believe will insure the most beneficial and expeditious pursuit of claims on behalf of the victims.

Under the agreement, I and the class action will cooperate and pursue our respective claims as we determine we should. There are three types of recoveries, which will be allocated between the Estates and the Class. (1) \$43 million of recoveries as to certain parties, most of which were reached by me before this agreement, which will be allocated to the Estates, and the Class will only receive enough to pay the Class's attorneys' fees in obtaining approval by the Class Court. (2) Any recoveries from Wachovia allocated 60-40 to the Estates and the Class and from Lockton, 40-60, to the Estates and the Class, respectively. (3) Almost all other recovers will be allocated 50-50.

Dear Creditors and Other Interested Parties,

We have made significant progress during the month including the approval by the bankruptcy court of the agreement between the Trustee and the pending class action plaintiffs which I believe will insure the most beneficial and expeditious pursuit of claims on behalf of the victims.

Under the agreement, I and the class action will cooperate and pursue our respective claims as we determine we should. There are three types of recoveries, which will be allocated between the Estates and the Class. (1) \$43 million of recoveries as to certain parties, most of which were reached by me before this agreement, which will be allocated to the Estates, and the Class will only receive enough to pay the Class's attorneys' fees in obtaining approval by the Class Court. (2) Any recoveries from Wachovia allocated 60-40 to the Estates and the Class and from Lockton, 40-60, to the Estates and the Class, respectively. (3) Almost all other recovers will be allocated 50-50.

Since the members of the class are virtually identical to the members of the bankruptcy estate this will have de minimus effect on most creditors. I will process all of the recoveries for the victims and do the accounting for the allocation of the recoveries and the expenses, which should allow the most efficient process for the distribution. More importantly the agreement provides a united front where we both bring claims, enhancing the chances of settlements, and solving without litigation a number of potentially knotty problems regarding, for example, whether certain claims are owned by the bankruptcy estate or the class.

The attorneys in the class action litigation have agreed to limit their fees in the recoveries achieved. First, with respect to the approximately \$43 million of settlements already reached, the class action attorneys will only charge their hourly rates incurred in obtaining class court approval of those settlements. Second, with respect to matters which had not been settled at the time of the signing of the agreement, the amounts of those fees will be limited to the lesser of actual hourly fees incurred multiplied by a factor of 1.7, or 25 per cent of the amount of recovery allocated to the class.

The class has also agreed to be responsible for approximately \$1 million of expenses related to the cost of Deloitte in developing the litigation data base and analysis, and to share such costs going forward. Here again this will have little effect on the typical victim.

Currently we have reached a settlement with Wachovia (40% of which, under the agreement will be allocated to the Class) and are engaged in active negotiations with Lockton. We are also in negotiation with all of the pre-trustee professionals regarding the fees incurred by them prior to my appointment as well as potential malpractice claims. Since none of the settlements have been totally finalized we are not liberty to discuss the terms or the amounts at this time. Suffice it to say that we are quite pleased with the results being achieved.

One of the difficulties of proceedings such as this is the time required to get to the distribution phase. This can be frustrating, especially when it is clear that distributions will be available for creditors. Virtually all settlements require a confirmed plan and the release of the settling parties from any future litigation. This also entails the approval of the settlements by the class action court.

We have amended the bankruptcy plan and disclosure statement, and will seek approval of the disclosure statement when the Wachovia settlement is finalized. Upon approval of the disclosure statement, we will proceed to circulate ballots for voting on the plan, and will schedule a plan confirmation hearing.

The class action approval process, however, is also essential for settling parties in order to obtain the full protection from future litigation. Based upon my discussions with the class action attorneys, I understand that the class action court approval process will take approximately five months, because it requires a preliminary approval hearing, which must be done on at least twenty days' notice, followed by a final approval hearing, which must be done on at least ninety days' notice to the Class.

No distributions can occur before that is accomplished because the settlements are not final and settlement funds are not available until the settling parties have court approval of their settlement agreements from both courts, and certain injunctions which would prohibit future suits against them arising from the 1031 matters.

We are working hard to move the case along as rapidly as possible and would request your patience. We've come a long way, and are proud of what's been achieved to date, but there's still work to be done.

Lastly, as the two-year time period for filing suits in the bankruptcy occurred during May, we did file approximately 40 adversary proceedings during the month. Many of these are "clawback" type suits against parties who received funds in the 90 days prior to the initial bankruptcy filing; others are against insiders and related parties and still others are lawsuits against lenders, banks and professionals.

I do hope we can get some of the settlements finalized during June so that the results can be shared.

As I'm sure you all appreciate, many of the issues that we are dealing with are quite complex. I do my best to try and make these monthly letters informative and meaningful without unnecessarily getting into the total detail which literally could fill books.

Best regards,
The 1031 Tax Group, LLC
Gerard A. McHale, Jr.
Chapter 11 Bankruptcy Trustee