



### **Additional Record Citations**

In the Ninth Reply, the Receiver described the substantial work performed during the third quarter of 2020, citing to the record showing the nature and benefits of such work, including without limitation with respect to asset preservation, property sales, and the claims process. That description is equally applicable for the fourth quarter of 2020. In addition to the record cites set forth on pages 2-3, 7-9 of the Ninth Reply, the Receiver references the following record cites supporting the same points for the current period: *see, e.g.*, Dkt. Nos. 930 (at 2-10, 15-20), 823, 828, 854, 858, 869, 882, 884, 845, 889, 895, 902, 911, 921, 928; *see also* Case: 20-3114 (7th Cir.), App. Ct. Dkt. 14, 15, 21; Case: 20-3155 (7th Cir.), App. Ct. Dkt. 10)<sup>1</sup>

In the Ninth Reply, the Receiver also discussed and pointed to the continuing efforts of certain institutional lenders to stop, slow, and delay the Receiver from his efforts to efficiently and expeditiously accomplish the aims of the receivership. In addition to the record cites set forth on page 6 of the Ninth Reply, the Receiver references the following record cites supporting the same points for the period covered in the current application: *see, e.g.*, 814, 817, 818, 820, 822, 823, 831, 832, 833, 834, 845, 849, 854, 858, 862, 866, 870, 884; *see also* Case: 20-3114 (7th Cir.), App. Ct. Dkt. 2, 15, 21, 22.

### **UPDATED DISCUSSION POINTS**

By the end of December 2020, the Receiver had closed on the sales of 65 properties sold for an aggregate amount of \$61,296,500.00 and generating net proceeds of \$54,110,265,91, including sales of 15 properties for an aggregate gross amount of \$15,193,500.00 and net deposits of \$13,896,003.25 in the fourth quarter of 2020. (*See* Dkt. No. 930, at 4-7 & Ex. 1) In addition,

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<sup>1</sup> Although some docket references relate to items that were filed after the fourth quarter (*e.g.*, Dkt. Nos. 921, 928), they involved work performed during the period that is the subject of this fee application.

in this same quarter, the Receiver entered into a contract to sell the property at 1102 Bingham, Houston, Texas, for the amount of \$892,500.00.

With respect to the discussion of invoices, fees, and efficiencies achieved, *see* Dkt. No. 945, Exs. F-K. The average billing rate achieved for Receiver and his firm for the fourth quarter of 2020 was \$271 per hour (including the Receiver's time) and \$250 per hour (not including the Receiver's time). Cash on hand in the Receiver's accounts totaled \$ \$975,800.21, as of March 31, 2021.

The SEC has supported and approved the Receiver's fee applications, including this one. (*See* Dkt. No. 970)

In their objection to the Receiver's tenth fee application, the objecting lenders have resurrected an argument that disputes involving the allegedly competing secured claimants and properties ought to be handled as foreclosures. (Dkt. 960, at 4) This argument has been repeatedly addressed by the Receiver, opposed by the SEC, and rejected by the Court. *See, e.g.*, Dkt. No. 790 (at 6-11); Dkt. No. 800 at 6-7; Dkt. No. 474, at 5; Dkt. No. 444, 4/23/19 Tr. at 14:3-16 ("priority determinations must take place in the course of an 'orderly claims process'"); Dkt. No. 514, Ex. 1, at 10 ("This is not a foreclosure situation. ... We are doing what we can to balance the interest of everyone involved."); Dkt. No. 540, at 5-6 (same). The objecting lenders also ignore that the Court and the Receiver have fashioned a claims process to address their claims and those of others, accounting for their input, requests, and interests in the process (*e.g.*, Dkt. Nos. 638, 720, 940, 941); and their counsel have participated in the design and implementation of the process (*e.g.*, Dkt. Nos. 799, 911, 928, 953). Moreover, while they argue that the Receiver should not be involved with priority issues in the claim process, the Court has rejected this argument (*e.g.*, Dkt. No. 801), the SEC has opposed it (*e.g.*, Dkt. No. 718, at 10-13), and these lenders themselves have

argued for a comprehensive approach to claims and issues the Receiver may raise within the same process (e.g., Dkt. No. 708, at 7-10). Moreover, the objectors previously opposed the far more streamlined and cost-effective process for addressing claims and distribution that the Receiver originally proposed (e.g., Dkt. No. 477, at 9-13).

The objectors also have overstated the amounts actually sought by the Receiver's sixth through tenth fee applications by \$256,579.50. It appears that not only have they failed to deduct amounts that the Receiver indicated would be deducted from the amounts sought (relating to payments received for title examination work and in connection with the closing on the Naples house), but they have added those amounts on top of the gross amounts actually described by the Receiver's fee applications. (See Dkt. No. 960, at 9-10) The following chart shows the overstatement by the objectors:

Iteration of Fee Application	6th	7th	8th	9th	10th	
Quarter	4Q 2019	1Q 2020	2Q 2020	3Q 2020	4Q 2020	
Receiver	\$61,698.00	\$79,092.00	\$98,982.00	\$93,678.00	\$87,438.00	
RDP	\$245,649.01	\$277,478.16	\$378,388.47	\$291,759.43	\$318,955.81	
BrookWeiner	\$18,246.40	\$6,975.50	\$7,067.50	\$8,118.00	\$10,335.00	
Prometheus	\$550.00	\$577.50	\$577.50	\$1,017.50	\$990.00	
Axos		\$3,031.25	\$4,507.50	\$128.75	\$120.00	
Whitley Penn				\$37,470.80		
Roetzel	\$3,415.00					
Kraus		\$1,050.00				
Miller Kaplan					\$5,603.20	
<b>Totals Before Deductions</b>	\$329,558.41	\$368,204.41	\$489,522.97	\$432,172.48	\$423,442.01	
Agency Fee Deduction	(\$31,767.00)	(\$6,102.25)	(\$37,578.00)	(\$29,108.00)	(\$44,054.00)	
Roetzel Deduction (paid at Naples closing)	(\$3,415.00)					
<b>Totals After Deductions</b>	\$294,376.41	\$362,102.16	\$451,944.97	\$403,064.48	\$379,388.01	
Objecting Lenders' numbers	\$361,325.41	\$374,306.66	\$527,100.97	\$461,280.48	\$423,442.01	<b>Total Overstatement</b>
<b>Overstatement</b>	\$66,949.00	\$12,204.50	\$75,156.00	\$58,216.00	\$44,054.00	<b>\$256,579.50</b>

**CONCLUSION**

For the foregoing reasons, as well as those set forth in the Receiver's ninth and tenth fee applications, the supporting briefs filed by the SEC and the Receiver, and in the Receiver's motion for approval to pay certain previously approved fees and costs, the Receiver respectfully requests that the Court exercise its discretion to:

(i) find that the Receiver has preserved, enhanced, or otherwise benefited the properties and the claimants in connection with the work performed and expenses incurred as reflected in the tenth fee application;

(ii) approve the Receiver's tenth fee application and payment of all fees and expenses described therein out of the funds in the Receiver's account, including as to any such future funds that come into the Receiver's account;

(iii) impose a first priority receiver's lien on the properties and proceeds of sale to satisfy the receivership expenses; and

(iv) grant such other relief as the Court deems equitable and just.

Dated: April 16, 2021

Kevin B. Duff, Receiver

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 16, 2021, I electronically filed the foregoing **Receiver's Reply in Support of His Tenth Interim Application and Motion for Court Approval of Payment of Fees and Expenses of Receiver and Receiver's Retained Professionals** with the Clerk of the United States District Court for the Northern District of Illinois, using the CM/ECF system. A copy of the foregoing was served upon counsel of record via the CM/ECF system.

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