

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

- against -

STEVEN BYERS, JOSEPH SHERESHEVSKY,  
WEXTRUST CAPITAL, LLC, WEXTRUST  
EQUITY PARTNERS, LLC, WEXTRUST  
DEVELOPMENT GROUP, LLC, WEXTRUST  
SECURITIES, LLC, and AXELA HOSPITALITY,  
LLC.

No. 08 Civ. 7104 (DC)

ECF Case

**FIFTEENTH INTERIM REPORT OF RECEIVER**

TIMOTHY J. COLEMAN  
Receiver for Wextrust Entities

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August 11, 2014

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Timothy J. Coleman, Receiver for the Wextrust Entities and Affiliates (“Receiver”), respectfully submits this Fifteenth Interim Report, pursuant to the Court’s Order Appointing Temporary Receiver, dated August 11, 2008, as amended by order dated September 11, 2008 (the “Receiver Order”) (Dkt. No. 36).

Total receivership cash today is \$21.3 million. In the six months since the filing of the Fourteenth Interim Report, the Receiver has continued to streamline operations, sought to resolve federal tax issues, sold several of the remaining properties, settled various claims, and pursued other avenues for recovery. New brokers engaged in 2013 have marketed the Wextrust properties aggressively, leading to positive results as economic conditions have improved. The Receiver sold four properties in the last six months. Two remaining properties are under contract for sale. Based on the anticipated sales and recoveries from third parties, the Receiver expects to have available for distribution to equity investors and for the administrative expenses more than \$20 million, in addition to the \$5 million already distributed to investors. The actual amount that the Receiver will be able to distribute will depend on the resolution of the Internal Revenue Service (“IRS”) tax claims against the estate, and on future property sales and settlements. The IRS has indicated that it now expects to complete its review of the receivership tax returns in or around September or October 2014.

This Fifteenth Interim Report describes the Receiver’s work since February 11, 2014. Section I reports on the prospect of a future interim distribution to investors. Section II summarizes the status of the liquidation of Wextrust assets. Section III offers an overview of the Receiver’s management of the Wextrust Entities and Affiliates. Section IV reports on the current financial condition of the receivership estate and its administrative costs. Section V discusses the status of Wextrust-related litigation. Section VI summarizes investor relations.

**I. DISTRIBUTION TO THE WEXTRUST VICTIMS**

The work of the Receiver in the last interim period again focused on expediting a distribution to investors and on maximizing the funds available for distribution. The Receiver's ability to make a second distribution depends on resolution of the receivership's tax liability and filing obligations for the Wextrust Entities and Affiliates.

As previously reported, the Receiver has verified and recognized the claims of Wextrust victims totaling \$238 million among 1,221 equity investors and 100 unsecured creditors. The Court approved a first interim distribution of approximately \$5 million in December 2010. A.B. Data, which was hired to manage the logistics of the distribution, was unable to deliver 12 checks totaling \$37,006.93, which remain unclaimed. The Receiver encourages claimants to provide updated contact information (**1-800-985-4155 or wextrustreceiver@abdata.com**). Secured creditor claims against the Wextrust Entities and Affiliates exceeded \$285 million. The Court has limited secured creditors' recoveries to their specific collateral.

As previously reported, the IRS has required a full-scale audit of the receivership's draft federal tax returns, which were submitted in March 2013. The IRS advised in April 2013 that it expected to resolve that audit and other outstanding tax issues in no more than 11 months. The IRS audit began almost immediately after the Receiver submitted the receivership estate's draft federal tax returns. On May 16, 2014, the IRS sent a letter to the receivership's tax preparers stating that it had completed its review of the draft tax returns but would conduct a "limited scope audit" of the signed, final returns when submitted. In that letter, the IRS reserved the right to conduct a full examination of each tax return.

On July 15, 2014, the Court held a hearing for the U.S. Attorney's Office to report on the progress of the IRS. Two days later, the Receiver submitted final federal tax returns as a

Qualified Settlement Fund for tax years 2008 through 2013. The returns reported \$21.7 million in losses and no tax liability during that period. The IRS has promised to conduct an expedited, limited scope review of the final returns for 2008 through 2011, but no assurances have been provided for an expedited review of the 2012 and 2013 returns. The limited scope review of the returns from 2008 through 2011 is expected to take four weeks, plus approximately 30 days for processing the returns, according to the IRS. The Receiver expects to receive a draft closing agreement from the IRS that would clarify that the Receiver has no other US federal tax return filing obligations regarding the Wextrust Entities and Affiliates. Once the limited scope review is completed and a closing agreement has been signed, the Receiver will promptly seek the Court's permission to make a further interim distribution to Wextrust investor victims. The Court has scheduled a status conference for September 10, 2014 for the IRS and the Receiver to report on progress in resolving federal tax issues.

## **II. LIQUIDATION OF WEXTRUST ASSETS**

Since the start of the receivership, the Receiver has sold 24 (not including High Yield properties) properties, resulting in \$83.4 million in gross proceeds. From those sales, \$68.6 million were used to repay secured creditor victims of the Wextrust fraud. The estate benefited from the forgiveness of \$7.3 million in secured debt owed by the estate, and the estate received \$7.4 million in net cash. Three hotels in the Wextrust portfolio have been relinquished, as have 20 properties as to which there was no expectation of a net cash recovery for the estate. The most recent relinquishments were the Tennessee Office Properties located throughout Tennessee in May 2014 (the "TOH Properties"). The relinquishments, all together, have allowed secured creditor victims to obtain the collateral for \$191.6 million of debt and released the estate from

those obligations. The Receiver has recovered \$13 million through the sale of other receivership assets, settlements with third parties, and other recoveries.

In the past six months, the Receiver has been successful in selling the remaining assets in the receivership estate as per the Court's plan of distribution order entered on July 23, 2009 (the "Distribution Order") (Dkt. No. 428). The remaining assets are: commercial real estate property in Clarksville, Tennessee under contract for sale; land in Bethel Park, Pennsylvania under contract for sale; interests in the 13 TOH Properties; and certain other claims.

In March 2014, the Receiver successfully negotiated a short sale of a property located in Clarksville, Tennessee for \$3.7 million that resulted in \$70,000 net cash for the receivership from the sale. In the same month, the Receiver sold the underlying real property collateral from a high yield loan of a Wextrust affiliate in Midlothian, Virginia for \$1.5 million, which generated approximately \$700,000 in sale proceeds. In April 2014, the Receiver sold a property in Corinth, Mississippi for \$4.6 million resulting in approximately \$342,000 to the receivership estate after satisfaction of the mortgage and closing costs. In July 2014, the Receiver sold a residential home in Mine Hill, New Jersey for \$266,000, which represented the collateral on a high yield loan and resulted in net cash to the receivership of more than \$200,000.

### **III. ESTATE MANAGEMENT OPERATIONS**

Since the inception of the receivership, the Wextrust properties have generated \$80.1 million in lease income and approximately \$24.8 million in net cash flow to the receivership estate. The Receiver has executed 80 new leases and 185 lease renewals, representing \$43.2 million in aggregate rental revenue. The overall percentage of leases renewed represents a renewal rate of approximately 70 percent.

**A. U.S. Real Estate Operations**

As directed by the Court, the Receiver assumed control of all Wextrust real estate assets. In the six months ending August 11, 2014, the Receiver collected approximately \$1.5 million in rent. The Receiver negotiated two new and renewal leases during this period. These leases are expected to generate approximately \$833,000 in revenue over their term. Repairs and improvements on the remaining properties have been minimized, where appropriate. For the Commerce Center Property located in Clarksville, Tennessee, which is co-owned by relatives of Defendant Shereshevsky, the Court granted the Receiver's motion to manage and sell the property on February 21, 2014. (Dkt. No. 973). During the interim period, the Receiver renewed a lease with a major tenant of the Commerce Center Property in June 2014. In July 2014, the Receiver successfully transitioned management of the 13 properties in Tennessee owned by Tennessee Office Holdings, LLC to the secured lender, which obtained a state court receiver to manage and sell the properties. Under an agreement with the lender, proceeds above the secured debt will inure to the benefit of the estate.

**B. High Yield Loans**

The Receiver has completed the settlement and sale of properties and interests in the remaining Wextrust high yield loans, nearly all of which had been in default and worth less than the amount that Wextrust had contributed. The high yield loans included some loans that were 100 percent funded by Wextrust, and others which were funded by joint ventures ("JVs") between Wextrust and other entities. Where the Receiver foreclosed on property related to a defaulted loan, Wextrust employees managed day-to-day maintenance, upkeep, and security issues.

**Wextrust direct loans.** At the start of the receivership, there were approximately 13 loans that Wextrust had funded directly. All of those loans were in default. The total amount of principal owed on the loans was approximately \$8.4 million. To date, the Receiver has recovered \$804,000 on four of these loans. In the last interim period, the Receiver sold one of the two remaining active assets, a single family home in Mine Hill, New Jersey, for \$266,000, resulting in \$202,000 in net cash for the estate. The Receiver also entered into a contract for the sale of the remaining asset, vacant land in Bethel Park, Pennsylvania, which is expected to result in a nominal return for the estate given the accrued property taxes unpaid by the debtor. The Receiver is pursuing deficiency claims against guarantors and/or successors related to one of the high yield loans using a local law firm.

**Wexwater, LLC.** Wexwater, LLC (“Wexwater”), was formed in February 2005 between Wextrust Capital, LLC and Stillwater Capital Partners, Inc. (“Stillwater”). Wexwater engaged in high yield lending serviced by Wextrust. Wextrust’s principal exposure in Wexwater loans was approximately \$1.7 million. Between 2010 and 2012, Stillwater transferred its interests in Wexwater to or among Gerova Financial Group and/or Net Five Holdings, each of which has been the subject of lawsuits for fraud. Stillwater has been the subject of an enforcement action by the U.S. Commodity Futures Trading Commission and multiple fraud lawsuits. Stillwater was subsequently subject to bankruptcy proceedings.

In October 2013, the Receiver foreclosed upon land outside Richmond, Virginia (the “Brandermill Property”) owned by Wexwater, and in December 2013 filed a motion with the Court to approve the sale of the property for \$1.5 million and for related relief (Dkt. No. 956). On February 10, 2014, the Court approved the sale (Dkt. No. 970), which the Receiver completed in March 2014. Since closing the sale, the Receiver administered a claims process for



the JV partner, creditors, and the former holders of timeshare interests in the property. The Receiver successfully resolved all legitimate claims to the proceeds and distributed the sale proceeds, pursuant to the Court's February 2014 order. The Receiver has separately pursued litigation related to the JV assets, settled other claims, and may pursue additional claims against the JV partners.

**Wextrust/HPC Mortgage Fund, LP.** In 2006, Wextrust Capital, LLC, various Wextrust affiliates, and HPC US Fund 1, LP ("HPC") formed what is now known as Wextrust/HPC Mortgage Fund, LP ("Wex/HPC"). Wex/HPC engaged in high yield lending serviced by Wextrust. Wextrust's principal exposure in Wex/HPC loans was approximately \$5.5 million; HPC's exposure was substantially higher, participating in most loans at either a 90 percent or 50 percent equity level. On July 16, 2014, the Court approved the Receiver's settlement between the receivership estate entities and HPC (Dkt. No. 1012). As a result, the receivership retained \$775,000 in cash assets of Wex/HPC and transferred approximately \$260,000 to HPC. The Receiver also withdrew from the Wex/HPC partnership, thereby transferring to HPC the administrative and management costs and obligations of the JV, along with the limited Wextrust interest. In 2010, the Receiver recovered \$650,000 related to one of the Wex/HPC loans, bringing total recovery to \$1.4 million.

Prior to the Court's approval of the Wex/HPC settlement, the Receiver engaged in a number of activities to preserve the value of the portfolio and monetize its assets. For example, in July 2014, the Court approved the Receiver's letter motion to sell a Wex/HPC property located in Fountain Inn, South Carolina for \$2.6 million. In March 2014, the Receiver sold a small parcel of vacant land in Jackson, Michigan for approximately \$10,000. Throughout the period, the Receiver negotiated the sale of and for the reduction of tax liabilities related to a

Wex/HPC property located in East Providence, Rhode Island. In March 2014, a bankruptcy court approved a settlement agreement entered into by the Receiver with a borrower related to property in New York that will result in a \$150,000 payment by the borrower from the proceeds of the sale of the collateral, which occurred in February 2014, pending approval of the bankruptcy court. The settlement also resolved competing state court claims between Wex/HPC and the borrower. In addition, the Receiver also negotiated and settled third-party litigation brought in state court against Wex/HPC.

**IV. FINANCIAL CONDITION OF THE WEXTRUST ENTITIES AND AFFILIATES**

As in previous reports, Deloitte Financial (“Deloitte”) assisted in compiling financial information from the financial systems and books and records of the Wextrust Entities and Affiliates. Those financial records reflect the book value of the principal real estate assets, as recorded in the company’s books and records, but not necessarily in accordance with generally accepted accounting principles. As shown in Table 2, the total book value of the remaining Wextrust real estate portfolio is approximately \$5.7 million. This value is based on the accounting records and other information maintained by Wextrust and its accountants and does not represent current market value. Moreover, as discussed in previous reports, these properties were purchased at the height of the commercial real estate market and are heavily leveraged by secured debt. The Receiver contemplates that most of the proceeds of the sales of these properties will be used to repay such debt, pursuant to the Court’s Distribution Order.

**Table 1: Book Value of Wextrust Real Estate Assets**

**Wextrust Capital, LLC, et al.**  
**Net Book Value (1) (2)**  
**as of May 31, 2014**

	<b>Axela (3)</b>	<b>WEP (4)</b>	<b>WDG (5)</b>	<b>Consolidated</b>
Property				
Building / Land	-	21,241,719	-	21,241,719
Loan Payable on Property	-	16,552,680	-	16,552,680
<b>Net Book Value (6)</b>	<b>\$ -</b>	<b>\$ 4,689,039</b>	<b>\$ -</b>	<b>\$ 4,689,039</b>
Capitalized Costs:				
Tenant Improvements	-	484,425	-	484,425
Capital Improvements	-	507,924	-	507,924
<b>Total Capitalized Costs</b>	<b>\$ -</b>	<b>\$ 992,349</b>	<b>\$ -</b>	<b>\$ 992,349</b>
<b>Net Book Value (6)</b>	<b>\$ -</b>	<b>\$ 5,681,388</b>	<b>\$ -</b>	<b>\$ 5,681,388</b>

(1) - Where possible, net book values were obtained from accounting information as of November 30, 2013 provided by Wextrust. However, the cost of the building and the balance of the loan payable on the property were not always recorded in the accounting system. To the extent available, these amounts were obtained from other internal sources as of the most recent date available. In some cases, loan payable amounts include accrued interest and late fees assessed by the lender.

(2) - The amounts shown do not include properties that were sold or where the relinquishment process was initiated or had been relinquished as of May 31, 2014.

(3) - As of August 31, 2009, the United States District Court for the Southern District of New York had entered orders permitting the relinquishment of all hotel properties.

(4) - Commerce Center Holdings, a TIC property, is included at 100% even though the Wextrust interest is less (35%). The balance excludes property owned by: <1> Clarksville Industrial Holdings, LLC that was sold in April 2014, <1> Corinth Industrial Holdings, LLC that was sold in April 2014, and <3> S. Pine Street Holdings, LLC that was relinquished in January 2014.

(5) - All condominium units developed by 47 Dean Street have been sold.

(6) - There may be other payable amounts due upon sale of property, including property taxes, etc.

For the six months ending May 31, 2014, Wextrust had a positive net cash flow of approximately \$1.32 million. Total receipts were \$3.26 million against \$1.94 million in expenses authorized by the Receiver to preserve the status quo of the Wextrust enterprise, as shown in Table 2 below. The vast majority of those expenses were paid in connection with operating the WEP real estate portfolio. As of July 31, 2014, Wextrust had more than \$21.3 million in cash in approximately 15 U.S. bank accounts at one financial institution.

**Table 2: Receipts and Disbursements**

Wextrust Capital, LLC, et al.  
Consolidated Cash Receipts and Disbursements - Rounded (1) (2)  
from 12/01/2013 through 05/31/2014

	Wextrust Capital, LLC and Affiliates	Commodity Funds	Wextrust Equity Partners, LLC and Affiliates	PAM	Wexford Development Group, LLC and Affiliates	Axela Hospitality, LLC and Affiliates	TOTAL
<b>RECEIPTS</b>							
Tenant Receipts (3)	84,000	-	1,583,000	-	-	-	1,667,000
Sale of Receivership Assets (4)	1,052,000	-	349,000	-	-	-	1,401,000
Construction Draws	-	-	-	-	-	-	-
Other Receipts (5)	111,000	-	85,000	-	-	-	196,000
<b>TOTAL RECEIPTS</b>	<b>1,247,000</b>	<b>-</b>	<b>2,017,000</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>3,264,000</b>
<b>DISBURSEMENTS</b>							
Capital Expenditures, Tenant Improvements & Leasing	-	-	-	-	-	-	-
Commissions	-	-	103,000	-	-	-	103,000
Insurance	6,000	-	44,000	-	-	-	50,000
Loan Payments	-	-	707,000	-	-	-	707,000
Management Fees	-	-	84,000	-	-	-	84,000
Ordinary Course Expenses	99,000	-	239,000	-	-	-	338,000
Labor Costs	-	-	141,000	-	-	-	141,000
Professional Expenses - Non-Receiver (7)	269,000	-	16,000	-	-	-	285,000
Taxes	123,000	-	113,000	-	-	-	236,000
Other	-	-	-	-	-	-	-
<b>TOTAL DISBURSEMENTS</b>	<b>497,000</b>	<b>-</b>	<b>1,447,000</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>1,944,000</b>
<b>NET CASH GENERATION / (BURN)</b>	<b>750,000</b>	<b>-</b>	<b>570,000</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>\$ 1,320,000</b>

(1) - The receipts and disbursements in this analysis are cash transactions that are grouped by the entities that initiated the transaction, however, in some cases the cash transactions were executed on behalf of other Wextrust entities. The cash transactions have been categorized by type based on information contained within the books and records of the Wextrust Entities. The sources of cash receipts and disbursements data were a combination of general ledgers and bank transaction data. Not all bank accounts or general ledgers were included in this analysis; entities with no or insignificant transaction activity during the period presented may not have been included.

(2) - This analysis was prepared on a cash basis, therefore the timing of receipts and disbursements are different than what may be contained in accrual based financial reports. For example, receipts may not be matched to related disbursements, or vice versa. In addition, some disbursements included in this analysis had not cleared the bank as of May 31, 2014.

(3) - Approximately \$68,000 was collected, in addition to monthly rent, from tenants for property taxes and insurance.

(5) - The \$1,401,000 in Sale of Receivership Assets represent the net proceeds from the sale of <1> a property owned by Wexwater, LLC for approx. \$1,037,000, net, <2> property owned by Clarksville Industrial Holdings, LLC for approx. \$77,000, net, <3> property owned by Corinth Industrial Holdings, LLC for approx. \$272,000, net, and <4> other property held by other Wextrust affiliates for approx. \$15,000, net.

(6) - The \$196,000 in Other Receipts is mainly comprised of <1> \$66,000 in settlements with third parties, <2> \$85,000 in property management fees and <3> \$28,000 in funds that were frozen from Steve Byers personal bank accounts.

(7) - Receivership professional expenses are not included in this analysis. The payment of Professional Expenses - Non-Receiver represent fees relating to the marketing of properties for sale.

Deloitte also assisted in the preparation of a cash forecast for three three-month periods through August 31, 2014, as shown in Table 3. The net cash flow is projected at \$107,804.

**Table 3: Wextrust Cash Forecast**

Base Cash Flow Projections for Wextrust Capital, LLC and Affiliates, et al. for the Nine Months Ending February 28, 2015 (1) (2)

	WexTrust Capital, LLC, et al. for the 3 - Months Ending August 31, 2014	WexTrust Capital, LLC, et al. for the 3 - Months Ending November 30, 2014	WexTrust Capital, LLC, et al. for the 3 - Months Ending February 28, 2015	Total
Total Effective Income	\$ 558,872	\$ 193,958	\$ 193,958	\$ 946,788 (3)
Total Operating Expenses	145,445	108,671	108,671	362,787
Net Operating Income	413,427	85,287	85,287	584,001
Non Operating Expenses:				
Debt Service - Interest (Including Swap Payments)	173,595	56,106	56,106	285,807
Debt Service - Principal	67,489	13,779	13,779	95,047
Capital Expenditures (4)	-	-	-	- (5)
Tenant Improvements & Lease Commissions	44,551	-	-	44,551
Reserves	14,661	14,661	14,661	43,983
Other Non-Operating Expenses	5,348	-	-	5,348
Total Non-Operating Expenses	305,644	84,546	84,546	474,736
Net Cash Flow (6)	\$ 107,783	\$ 741 (7)	\$ 741	\$ 109,265

(1) - Does not include any distributions under the Plan of Distribution. As of August 31, 2009, the United States District Court for the Southern District of New York approved orders to relinquish all hotel properties.

(2) - Amounts include Commerce Center Holdings, which is a TIC property where Wextrust interest is 35%. Amounts include the the expected cash receipts and disbursements for S. Pine Street Holdings, LLC for the month of December 2013 only as the property was relinquished in December. The cash projections include the expected cash activity for properties that are currently in sale negotiations but do not include the expected net sale proceeds. For information on the expected sale of Receivership assets, please refer to Section I.A.

(3) - Amount includes approx. \$51,000 in tenant rent receipts from approx. 3 tenants who are assumed to renew their leases.

(4) - Net of escrow draws available for capital expenditures.

(5) - In order to better manage cash flow on a per-property basis, Capital Expenditures projects are evaluated on an as-needed basis. Due to that methodology, a minimal amount of Capital Expenditures are projected unless there is a known, necessary repair or replacement imminent.

(6) - Does not include Receivership related professional fees.

(7) - The net cash flow projected for the 3 months ended November 30, 2014 decreases as compared to the 3 months ended August 31, 2014 due to the relinquishment of property that occurred in August 2014.

The above analysis does not include expenses associated with the administration of the receivership, the largest component of which is professional legal fees. These include fees due to the Receiver and receivership counsel, Freshfields Bruckhaus Deringer US LLP (“Freshfields”) (since March 2010). Dewey & LeBoeuf LLP (“D&L”), which is now defunct, has not provided services to the Receiver since December 2010. Since the approval of the Receiver’s last fee application on December 30, 2013 (Dkt. No. 967), the Receiver has not filed a new interim fee application. On August 4, 2014, the Receiver submitted a letter to the Court requesting payment of interim fees for Lattimore Black Morgan & Cain, PC (“LBMC”) in the amount of \$47,688.75.

For all professionals, Wextrust has incurred and paid \$18,033,235.98 in professional fees as of August 5, 2014 as follows: the Receiver, \$474,932.25; Freshfields, \$842,700.47; LBMC, \$250,000; Arent Fox, \$33,216.50; D&L, \$9,423,211.76; Deloitte, \$4,366,383; Hilco Real Estate, \$940,500; various South African professionals, \$338,553; Badger Real Estate Advisors, \$740,000; and other non-ordinary course professionals, \$183,973. However, the Receiver has not filed any new fee applications since the fourteenth interim period, save for the pending LBMC interim fee application which has not yet been approved. Legal fees during the fifteenth interim period were an estimated more than \$300,000 and Deloitte's fees were an estimated \$20,000.

The level of professional administrative costs has been a concern of the Court, the Receiver, and investors. The estate professionals have held back \$5.1 million in fees, which the Court has said may be applied for at the end of the case. In addition, various professionals have applied discounts and write-offs of nearly \$16 million as a reflection of the public service nature of their engagement. Fees have declined precipitously and remained low as the Receiver completed the tasks required by the Receiver Order and successfully defended the numerous appeals of the Court's orders.

The Receiver has also calculated total receipts and disbursements since the start of the receivership on August 11, 2008. Total receipts were \$108.4 million, while total disbursements were \$83.6 million, not including administrative costs described above.

**Table 4: Receipts and Disbursements (Since Receivership Start)**

Wextrust Capital, LLC, et al.  
Consolidated Cash Receipts and Disbursements - Rounded (1) (2) (3)  
from 08/08/11 through 05/31/2014

	Wextrust Capital, LLC and Affiliates	Commodity Funds	Wextrust Equity Partners, LLC and Affiliates	PAM	Wexford Development Group, LLC and Affiliates	Axela Hospitality, LLC and Affiliates	TOTAL
<b>RECEIPTS</b>							
Tenant Receipts	170,000	-	79,970,000	-	-	-	80,140,000
Sale of Receivership Assets	6,790,000	-	3,330,000	-	600,000	-	10,720,000
Construction Draws	70,000	-	-	-	4,220,000	-	4,290,000
Other Receipts	9,680,000	230,000	3,030,000	-	100,000	240,000	13,280,000
<b>TOTAL RECEIPTS</b>	<b>16,710,000</b>	<b>230,000</b>	<b>86,330,000</b>	<b>-</b>	<b>4,920,000</b>	<b>240,000</b>	<b>108,430,000</b>
<b>DISBURSEMENTS</b>							
Capital Expenditures, Tenant Improvements & Leasing	-	60,000	5,760,000	-	4,310,000	110,000	10,240,000
Commissions	33,000	2,000	1,174,000	-	89,000	4,000	1,302,000
Insurance	150,000	20,000	33,370,000	-	360,000	60,000	33,960,000
Loan Payments	10,000	-	3,630,000	-	-	-	3,640,000
Management Fees	640,000	120,000	15,360,000	-	120,000	310,000	16,550,000
Ordinary Course Expenses	1,133,000	554,000	5,031,000	93,000	296,000	202,000	7,309,000
Labor Costs	680,000	240,000	350,000	-	10,000	-	1,280,000
Professional Expenses - Non-Receiver (4)	450,000	10,000	8,310,000	-	50,000	-	8,820,000
Taxes	-	110,000	-	-	380,000	-	490,000
Other	-	-	-	-	-	-	-
<b>TOTAL DISBURSEMENTS</b>	<b>3,096,000</b>	<b>1,116,000</b>	<b>72,985,000</b>	<b>93,000</b>	<b>5,615,000</b>	<b>686,000</b>	<b>83,591,000</b>
<b>NET CASH GENERATION / (BURN)</b>	<b>13,614,000</b>	<b>(886,000)</b>	<b>13,345,000</b>	<b>(93,000)</b>	<b>(695,000)</b>	<b>(446,000)</b>	<b>\$ 24,839,000</b>

(1) - The receipts and disbursements in this analysis are cash transactions that are grouped by the entities that initiated the transaction, however, in some cases the cash transactions were executed on behalf of other Wextrust entities. The cash transactions have been categorized by type based on information contained within the books and records of the Wextrust Entities. The sources of cash receipts and disbursements data were a combination of general ledgers and bank transaction data. Not all bank accounts or general ledgers were included in this analysis; entities with no or insignificant transaction activity during the period presented may not have been included.

(2) - This analysis was prepared on a cash basis, therefore the timing of receipts and disbursements are different than what may be contained in accrual based financial reports. For example, receipts may not be matched to related disbursements, or vice versa. In addition, some disbursements included in this analysis had not cleared the bank as of May 31, 2014.

(3) - The disbursements in this analysis does not include Receivership professional expenses and distributions to investors.

(4) - Receivership professional expenses are not included in this analysis. The payment of Professional Expenses - Non-Receiver represent fees relating to the marketing of properties for sale, etc.

## V. INVESTIGATIONS AND LITIGATION

As directed by the Receiver Order, the Receiver has investigated and prosecuted possible claims against third parties in the United States. He has worked with the SEC and the U.S. Attorney's Office to ensure that recoveries are pursued efficiently and cost-effectively. As described in this Section, the Receiver has engaged in a number of offensive and defensive litigation matters to preserve and enhance the value of the estate.

**Pine Street.** On May 6, 2014, the Court held an evidentiary hearing after which it ruled in favor of the Receiver and denied a \$720,000 claim against the receivership. The dispute arose following the Court's approval of the Receiver's relinquishment of Wextrust Affiliate South Pine Street Holdings, LLC (Dkt. No. 955). C-III Asset Management LLC ("C-III"), on the behalf of

U.S. Bank National Association, as Trustee for the Registered Holders of Credit Suisse First Boston Securities Corp., Commercial Mortgage Trust Pass-Through Certificates, Series 2007-C3, sought leave to intervene in the case and pursue a deficiency claim of more than \$550,000 (later increased to \$720,000). C-III claimed that funds had been mistakenly sent to the Receiver. The Receiver responded in January 2014, contesting intervention and the substance of the underlying claims, noting that C-III failed to identify who made a mistake or what mistake had been made. After negotiations again failed, C-III and the Receiver filed formal motion papers in February and March, respectively. (*See* Dkt. Nos. 974, 975, 979, 980, 987, 988). The Receiver's counsel prepared for and participated in the evidentiary hearing, cross examining C-III's witnesses and preparing to call witnesses on behalf of the Receiver. The Court ruled in favor of the Receiver at the conclusion of the hearing.

**Brandermill.** Following nearly a decade of litigation that pre-dates the receivership, in March 2014 the Receiver successfully closed on the sale of the collateral underlying a high yield loan related to the Brandermill Property in Virginia. On December 6, 2013, the Receiver had filed a motion with the Court to approve the Receiver's sale of the property (Dkt. No. 956). On February 10, 2014, the Court approved the Receiver's motion after the Receiver reached a settlement with the objecting borrower for \$10,000. (Dkt. No. 970). Following the sale, the Receiver conducted a claims process for the numerous creditor and timeshare claims related to the Brandermill Property leading to a distribution of the sale proceeds, pursuant to the Court's February order.

**Tennessee Office.** In May 2014, the Court approved the Receiver's relinquishment of the TOH Properties to Regions Bank (Dkt. Nos. 1004, 1006). The Receiver has since monitored the state court litigation brought by Regions Bank to install a local receiver for the property.



Regions secured an order appointing a state receiver on July 16, 2014 in the Chancery Court of Davidson County, Tennessee. Since that appointment, the Receiver has worked with Regions and its state receiver to ensure a safe and orderly transition. The Receiver will continue to monitor the marketing and sale of the TOH Properties, as the receivership estate will be entitled to any sale proceeds above the secured debt of Regions Bank.

**Mine Hill.** During the interim period, the Receiver continued to work with local counsel in New Jersey to pursue deficiency claims concerning the high yield loan portfolio. In September 2013, the Receiver had successfully foreclosed on a high yield loan related to property in Mine Hill Property, New Jersey and took title to the property. Using local counsel, the Receiver filed a deficiency action in the Superior Court of New Jersey, Law Division, Morris County seeking to enforce the estate's remedies against the guarantors on the loan for a deficiency of approximately \$600,000. Each guarantor raised defenses to the action, which the Receiver believes to be without merit. Last month, each guarantor failed to respond to discovery demands and the Receiver expects to move for default and pursue the guarantors' assets. As described in Section III, the Receiver sold the underlying collateral in July 2014 resulting in net proceeds to the receivership estate of more than \$200,000.

**Commerce Property.** A significant amount of litigation during the interim period has related to the Commerce Center Property, which is partially owned by Peck-Clarksville, LLC, an entity controlled by David and Joshua Peck, relatives of Defendant Joseph Shereshevsky (the "Shereshevsky Relatives"). Over the last year, the Court has repeatedly overruled the Shereshevsky Relatives' objections and denied their requests for relief, which arise from their attempt to prevent proper management and sale of the property at a fair value. For much of the interim period, the Shereshevsky Relatives have refused to cooperate with the Receiver or even

engage in discussions, instead filing numerous letters with the Court. This has had the effect of reducing the eventual return from the sale of the property for both owners.

On February 21, 2014 the Court granted the Receiver's renewed motion for authority to manage and sell the property and rejected the Shereshevsky Relatives' cross-motion to compel arbitration (Dkt. No. 973). The Court found that both Peck-Clarksville, LLC and a bank used by the Shereshevsky Relatives to be in violation of the Court's August 20, 2013 order (Dkt. No. 931). The Court directed the bank to release to the Receiver any funds related to the Commerce Center Property. Despite this, the Shereshevsky Relatives continued to contest the Court's order. After further legal discussions, the Shereshevsky Relatives' bank eventually released all funds.

**56 Walker.** In March 2014, the Receiver settled a longstanding dispute over a series of loans extended by Wex/HPC in connection with a property located at 56 Walker Street in New York City. The property was subject to foreclosure and the owners declared bankruptcy in 2013. While the foreclosure proceedings were stayed, the debtor settled with the Receiver and agreed to an allowed claim of \$150,000 (the "Allowed Claim"). The property was sold in December 2013. The bankruptcy court has confirmed the debtor's plan of liquidation, and the lead creditor's motion to fix and allow secured claims and to authorize distributions from the sale is pending. The Receiver believes that there will be sufficient funds in that estate to satisfy the entirety of the Allowed Claim, which will inure to Wex/HPC, pursuant to the settlement with HPC, approved by the Court in July 2014.

As directed by the Receiver Order, the Receiver and his advisors are periodically required to participate in ancillary litigation that may impact receivership assets and interests. During the past six months, counsel for the Receiver continued to monitor ongoing cases in both state and federal bankruptcy courts that implicate receivership property interests, and to participate as

needed. Counsel will continue to do so in consultation with the SEC in order to preserve and protect the receivership estate's rights.

## **VI. INVESTOR COMMUNICATIONS**

Investor inquiries continue to be handled in the first instance by A.B. Data, which the Receiver engaged in 2010 to handle investor communications and the logistics of distributions to investors. The Receiver's counsel provides support to the A.B. Data professionals who interface directly with investors. Where A.B. Data is unable to handle a question, the question is forwarded to Receiver's counsel. The vast majority of the inquiries during the last interim period have understandably related to the next distribution and the status of the IRS's review.

As a reminder, the Receiver has implemented a system whereby interested investors can be automatically notified when the receivership website is updated. If investors wish to "opt in" and be notified, they should send an email to [wextrustreceiver@abdata.com](mailto:wextrustreceiver@abdata.com) with "Opt-In" in the subject line. The Receiver's contact information is: **1-800-985-4155** and **wextrustreceiver@abdata.com**.

The Receiver anticipates holding a town hall teleconference later this year to discuss distribution of the assets to investors.

## **VII. CONCLUSION**

The receivership estate has approximately \$21 million in cash and the Receiver hopes that by the end of the case, the estate may have additional funds for distribution to investors and for payment of administrative expenses, in addition to the amounts already repaid to secured creditors. The Receiver also hopes to wind up all, or substantially all, property operations by the end of the year. Disputes with the Shereshevsky Relatives over the property they co-own with the estate may prolong this, but that property's income is expected to be sufficient to cover the

management and legal costs related toward monetizing the asset. As ever, the Receiver continues to carry out the directives of the Receiver Order by managing the receivership estate, selling the real estate assets for the greatest return possible, and accomplishing further distributions to victims. The Receiver will continue to report on the financial condition of the receivership estate on a periodic basis, and will continue to take steps to inform investors and other interested parties of significant developments.

\* \* \*

Dated: Washington, DC  
August 11, 2014

Respectfully submitted,

Timothy J. Coleman  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on August 11, 2014 I directed the service of a true and correct copy of the foregoing **FIFTEENTH INTERIM REPORT OF RECEIVER** upon the following individuals in the manner indicated below:

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