

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

SEVENTEENTH INTERIM REPORT OF RECEIVER

TIMOTHY J. COLEMAN
Receiver for Wextrust Entities

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August 11, 2015

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Timothy J. Coleman, Receiver for the Wextrust Entities and Affiliates (“Receiver”), respectfully submits this Seventeenth 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).

In 2015, the Receiver has distributed more than \$17.1 million to qualified investors and unsecured creditors. During the last interim period, the Receiver continued steps to wind up the receivership and to ensure that distribution checks reached the intended beneficiaries. The Receiver continues to settle claims, reduce administrative costs, respond to the Court’s requests, and negotiate the sale of the remaining receivership property he controls. Based on the potential remaining recoveries and anticipated administrative expenses, the Receiver expects that some additional funds may eventually be available for a modest final distribution to investors and unsecured creditors.

This Seventeenth Interim Report describes the Receiver’s work since February 11, 2015. Section I reports on the second interim distribution to investors. Section II summarizes the status of the liquidation of the Wextrust assets. Section III describes 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 covers investor relations.

I. DISTRIBUTION TO THE WEXTRUST VICTIMS

On January 26, 2015, the Court approved the Receiver’s motion (Dkt. No. 1082) for a second interim distribution of \$17,146,022.30 to qualified investors and unsecured creditors (Dkt. No. 1077). Checks were mailed shortly thereafter.

Earlier in the case, the Receiver 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. The Receiver was unable to deliver nine checks totaling \$32,977.76, which remain unclaimed from the original distribution. By early May 2015, 138 checks from the second distribution totaling \$1.38 million were not cashed or undeliverable. The Receiver worked with A.B. Data , which managed the distribution, to contact investors and identify updated address information, which resulted in 83 checks totaling \$914,000 being reissued. The Receiver will continue to try to reach claimants with uncashed or undelivered checks and he encourages all claimants to provide updated contact information (**1-800-985-4155 or wextrustreceiver@abdata.com**).

II. LIQUIDATION OF WEXTRUST ASSETS

The Receiver has disposed of almost all of the assets in the receivership estate, pursuant to the Court's order of July 23, 2009 (the "Distribution Order") (Dkt. No. 428). Since 2008, the Receiver has sold 26 properties, resulting in \$85.2 million in gross proceeds (not including high yield assets). From those sales, \$68.6 million was used to repay secured creditors. The estate benefited from the forgiveness of \$7.3 million in secured debt owed by the estate, and the estate received \$8.9 million in net cash. A total of 27 properties have been relinquished based on the Receiver's determination that there was no expectation of a net cash recovery for the estate. The relinquishments have, cumulatively, allowed secured creditor victims to obtain the collateral for more than \$211.8 million of debt, and released the receivership estate from those obligations. The Receiver has recovered more than \$13 million through the sale of other receivership assets, settlements with third parties, and additional recoveries.

In July 2014, the Court lifted the litigation stay as to the 13 properties owned by Tennessee Office Holdings, LLC located in Tennessee (the "TOH Properties"). A different receiver appointed by a Tennessee state court took control of these properties and has sold two.

The 11 remaining properties generate approximately \$152,000 in monthly gross rents, which is used to pay operating expenses and pay down the secured debt on the properties. The Receiver maintains an interest in sale proceeds in excess of the debt on the properties, and is monitoring the state court receiver's marketing of them. The secured debt is now less than \$10 million and appraisals conducted of the properties indicate there is value above the debt.

The remaining real property asset in the estate is the Commerce Center Property, a commercial property located in Clarksville, Tennessee, which remains for sale.

III. ESTATE MANAGEMENT OPERATIONS

The Wextrust properties have generated \$81 million in lease income and approximately \$25 million in net cash flow for the receivership estate. The Receiver has executed 81 new leases and 188 lease renewals, representing \$43.5 million in aggregate rental revenue. The overall percentage of leases renewed represents a renewal rate of approximately 70 percent.

As directed by the Court, the Receiver assumed control of all the Wextrust real estate assets. In the six months ending August 11, 2015, the Receiver collected approximately \$317,000 in rent. Pursuant to an order of the Court, the Receiver has assumed the management of and authority to sell the Commerce Center Property.¹ The Receiver has entered into long-term leases with two existing tenants and two new tenants, representing 73 percent of the property's 81,000 square feet. During the last interim period, the Receiver entered into a new lease with a vending machine operator for 19 percent of the property and executed a lease extension with the State of Tennessee for 17 percent of the property. The property is now 100 percent leased.

During the last interim period, the Receiver entered into a settlement related to one of the Wextrust high yield loans, nearly all of which had been in default and worth far less than the

¹ The property is partially owned by Peck-Clarksville, LLC, an entity controlled by David and Joshua Peck, relatives of Defendant Joseph Shereshevsky.

amount that Wextrust had contributed. The Receiver is continuing to pursue a deficiency claim against a guarantor related to one of the high yield loans. The guarantor has filed bankruptcy and collection is expected to be minimal.

Document Storage. On April 1, 2015, the Receiver requested that the Court authorize him to continue efforts to wind up the case and reduce costs by reducing the amount of documents and materials stored offsite. On May 1, the Court issued an order (Dkt. No. 1087) instructing the Receiver to review document storage indices and submit a report detailing his findings. The Receiver filed his report on June 17 (Dkt. No. 1094) recommending that a substantial amount of materials should be destroyed, consistent with the practice of other receiverships. The matter remains pending.

IV. FINANCIAL CONDITION OF THE WEXTRUST ENTITIES AND AFFILIATES

As in previous reports, Deloitte Financial Advisory Services LLP (“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 \$1.01 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 heavily leveraged by secured debt. The Receiver contemplates that most of the proceeds of the sales of the remaining property 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, 2015

	Axela (3)	WEP (4)	WDG (5)	Consolidated
Property				
Building / Land	-	3,987,182	-	3,987,182
Loan Payable on Property	-	3,584,110	-	3,584,110
Net Book Value (6)	\$ -	\$ 403,072	\$ -	\$ 403,072
Capitalized Costs:				
Tenant Improvements	-	567,293	-	567,293
Capital Improvements	-	38,681	-	38,681
Total Capitalized Costs	\$ -	\$ 605,974	\$ -	\$ 605,974
Net Book Value (6)	\$ -	\$ 1,009,046	\$ -	\$ 1,009,046

(1) - Where possible, net book values were obtained from accounting information as of November 30, 2014 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

(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, 2015.

(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) - The balance represents Commerce Center Holdings, a TIC property, that is included at 100% even though the Wextrust interest is less (35%).

(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, 2015, Wextrust had a negative net cash flow of approximately \$311,000, due in large part to the distribution of approximately \$274,000 to a secured creditor pursuant to Court approval. (Dkt. No. 1072) Total receipts were \$434,000 million against \$745,000 million in expenses, which the Receiver authorized to preserve the status quo of the Wextrust enterprise, as indicated in Table 2 below. The vast majority of those expenses were paid in connection with operating the Wextrust Equity Partners real estate portfolio. As of July 31, 2015, Wextrust had more than \$2.1 million in cash in approximately seven 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 12/01/2014 through 05/31/2015

	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
RECEIPTS							
Tenant Receipts (3)	35,000	-	313,000	-	-	-	348,000
Sale of Receivership Assets	-	-	-	-	-	-	-
Construction Draws	-	-	-	-	-	-	-
Other Receipts (4)	16,000	-	70,000	-	-	-	86,000
TOTAL RECEIPTS	51,000	-	383,000	-	-	-	434,000
DISBURSEMENTS							
Capital Expenditures, Tenant Improvements & Leasing	-	-	-	-	-	-	-
Commissions	-	-	47,000	-	-	-	47,000
Insurance	-	-	3,000	-	-	-	3,000
Loan Payments	-	-	136,000	-	-	-	136,000
Management Fees	-	-	9,000	-	-	-	9,000
Ordinary Course Expenses	23,000	-	99,000	-	-	-	122,000
Labor Costs	14,000	-	47,000	-	-	-	61,000
Professional Expenses - Non-Receiver (5)	23,000	-	35,000	-	-	-	58,000
Taxes	-	-	35,000	-	-	-	35,000
Other (6)	274,000	-	-	-	-	-	274,000
TOTAL DISBURSEMENTS	334,000	-	411,000	-	-	-	745,000
NET CASH GENERATION / (BURN)	(283,000)	-	(28,000)	-	-	-	\$ (311,000)

(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, 2015.

(3) - Approximately \$18,000 was collected, in addition to monthly rent, from tenants for property taxes and insurance.

(4) - The \$86,000 in Other Receipts is mainly comprised of: <1> \$15,000 in property management fees and <2> \$56,000 in insurance proceeds related to Commerce Center Holdings LLC.

(5) - 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.

(6) - The \$274,000 in Other payments represent the final payment made to Regions bank related Tennessee Office Holdings LLC.

Deloitte also assisted in the preparation of a cash forecast for three three-month periods through August 31, 2015, as shown in Table 3. The net cash flow is projected at (\$21,233).

Table 3: Wextrust Cash Forecast

Base Cash Flow Projections for Wextrust Capital, LLC and Affiliates, et al. for the Nine Months Ending February 28, 2016 (1) (2)

	Wextrust Capital, LLC, et al. for the 3 - Months Ending August 31, 2015	Wextrust Capital, LLC, et al. for the 3 - Months Ending November 30, 2015	Wextrust Capital, LLC, et al. for the 3 - Months Ending February 28, 2016	Total
Total Effective Income	\$ 172,761	\$ 166,261	\$ 166,261	\$ 505,283
Total Operating Expenses	91,176	90,851	90,851	272,878
Net Operating Income	81,585	75,410	75,410	232,405
Non Operating Expenses:				
Debt Service - Interest (Including Swap Payments)	56,106	56,106	56,106	168,318
Debt Service - Principal	13,779	13,779	13,779	41,337
Capital Expenditures (3)	-	-	-	- (4)
Tenant Improvements & Lease Commissions	-	-	-	-
Reserves	14,661	14,661	14,661	43,983
Other Non-Operating Expenses	-	-	-	-
Total Non-Operating Expenses	84,546	84,546	84,546	253,638
Net Cash Flow (5)	\$ (2,961)	\$ (9,136)	\$ (9,136)	\$ (21,233)

(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 only include Commerce Center Holdings, which is a TIC property where Wextrust interest is 35%, and general corporate overhead expenses. 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) - Net of escrow draws available for capital expenditures.

(4) - 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.

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

The above analysis does not include expenses associated with the administration of the receivership, the largest component of which is professional legal fees, including those of the Receiver and his counsel, Freshfields Bruckhaus Deringer U.S. LLP (“Freshfields”).

For all professionals, Wextrust has incurred and paid \$22,449,565.53 in professional fees as of August 10, 2015 as follows: the Receiver, \$491,811.69; Freshfields, \$2,497,022.13; Arent Fox, \$33,216.50; Badger, \$751,179.49; D&L, \$9,423,211.76; Deloitte, \$4,422,102.50; Hilco Real Estate, \$940,500.00; Kasowitz, Benson, Torres & Friedman, \$1,776,698.00; LBMC, \$345,377.50; South African professionals, \$338,553.04; Sheldon Liebb, \$144,821.93; and other ordinary course professionals, \$1,430,809. Legal fees during the seventeenth interim period were an estimated at approximately \$100,000 and Deloitte’s fees were an estimated \$5,000.

The level of professional administrative costs has been a concern of the Court, the Receiver, and investors. Various professionals have applied discounts and write-offs of approximately \$16 million as a reflection of the public service nature of their engagement in addition to the denial of fee requests outlined above. Fees declined precipitously after the initial phases of the case and have remained relatively low as the Receiver completed the tasks required by the Receiver Order.

The total receipts and disbursements since the start of the receivership (on August 11, 2008) are outlined below. Total receipts were \$110 million, while total disbursements were \$85 million, not including the 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 08/11/08 through 05/31/2015

	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
RECEIPTS							
Tenant Receipts	240,000	-	80,820,000	-	-	-	81,060,000
Sale of Receivership Assets	7,180,000	-	3,330,000	-	600,000	-	11,110,000
Construction Draws	70,000	-	-	-	4,220,000	-	4,290,000
Other Receipts	9,710,000	230,000	3,150,000	-	100,000	240,000	13,430,000
TOTAL RECEIPTS	17,200,000	230,000	87,300,000	-	4,920,000	240,000	109,890,000
DISBURSEMENTS							
Capital Expenditures, Tenant Improvements & Leasing	-	60,000	5,830,000	-	4,310,000	110,000	10,310,000
Commissions	-	60,000	5,830,000	-	4,310,000	110,000	10,310,000
Insurance	33,000	2,000	1,180,000	-	89,000	4,000	1,308,000
Loan Payments	150,000	20,000	33,800,000	-	360,000	60,000	34,390,000
Management Fees	10,000	-	3,700,000	-	-	-	3,710,000
Ordinary Course Expenses	690,000	120,000	15,590,000	-	120,000	310,000	16,830,000
Labor Costs	1,147,000	554,000	5,183,000	93,000	296,000	202,000	7,475,000
Professional Expenses - Non-Receiver (4)	750,000	240,000	420,000	-	10,000	-	1,420,000
Taxes	450,000	10,000	8,380,000	-	50,000	-	8,890,000
Other	580,000	110,000	-	-	380,000	-	1,070,000
TOTAL DISBURSEMENTS	3,810,000	1,116,000	74,083,000	93,000	5,615,000	686,000	85,403,000
NET CASH GENERATION / (BURN)	13,390,000	(886,000)	13,217,000	(93,000)	(695,000)	(446,000)	\$ 24,487,000

(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, 2015.

(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

V. INVESTIGATIONS AND LITIGATION

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 receivership estate.

Tennessee Office. On December 22, 2014, the Court granted (Dkt. No. 1072) Regions Bank's ("Regions") request for certain funds of the TOH Properties. The Receiver moved for the Court to reconsider the amount based on the record evidence, which would have reduced payment to Regions and benefited the estate by \$253,497.33. On May 4, 2015, the Court denied the Receiver's request.

Capital Bank. On April 3, 2015, the Court issued an order (Dkt. No. 1085) in response to a motion by Capital Bank, N.A. and Avenue Bank. The banks sought to clarify the Court's March 18, 2014 order (Dkt. No. 981) and questioned its application to claims against a Wextrust employee. The Court clarified that the litigation stay applies to Wextrust employees employed by the Receiver, and the banks' other claims were not ripe for review.

Mine Hill. After successfully foreclosing in September 2013 on a high yield loan related to property in Mine Hill, New Jersey, the Receiver initiated proceedings against the guarantors. 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 the deficiency of approximately \$600,000. On April 28, 2015, the Receiver entered into a settlement agreement with one of the two guarantors, Ari Becher. Becher admitted liability and agreed to repay the estate a portion of the amount due. The Receiver continues to pursue claims against the other guarantor, Frank Mariconda.

The Court's May 12, 2015 Order (Dkt. No. 1089). The Court issued an order on May 12, 2015 in response to several *ex parte* inquiries. The order addressed two points. First, the

Court again directed that any communications with the Court “must be copied, at a minimum, to the Receiver and the SEC.” Dkt. No. 1089 at 1. Second, the Court concluded that “its permission is not required to pursue legal action against the Receiver” and invited the Receiver and the SEC to respond if either disagreed, which both did. The Receiver and the SEC each submitted a response to the Court’s May 12, 2015 order. The SEC supported the Receiver’s response. Dkt. Nos. 1090, 1092.

During the past six months, counsel for the Receiver continued to monitor ongoing cases in both state and federal bankruptcy courts that implicate the receivership’s property interests. 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

The Receiver engaged A.B. Data 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. The majority of investors’ inquiries during the last interim period (approximately 382 calls and 276 emails) related to requests for second distribution payments, updated contact information, and inquiries about a possible third distribution.

The Receiver implemented a system whereby interested investors can be notified automatically when the receivership website is updated (approximately 24 times in the last interim period). If investors wish to “opt in” and be notified, they should send an email to wextrustreceiver@abdata.com with “Opt-In” in the subject line. The Receiver’s contact information is: **1-800-985-4155** and **wextrustreceiver@abdata.com**.

VII. CONCLUSION

To date, more than \$22 million has been distributed to investors and unsecured creditors by the Receiver. As ever, the Receiver continues to carry out the directives of the Receiver Order by managing the receivership estate, marketing and selling the remaining real estate asset 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, 2015

Respectfully submitted,

Timothy J. Coleman
Receiver for Wextrust Entities

s/ Jonathan W. Ware

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 11, 2015 I directed the service of a true and correct copy of the foregoing **SEVENTEENTH INTERIM REPORT OF RECEIVER** upon the following individuals in the manner indicated below:

Via First Class Mail

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