

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,

Defendants,

- and -

ELKA SHERESHEVSKY,

Relief Defendant.

No. 08 Civ. 7104 (DC)

ECF Case

EIGHTH INTERIM REPORT OF RECEIVER

TIMOTHY J. COLEMAN
Receiver for Wextrust Entities

FRESHFIELDS BRUCKHAUS DERINGER US LLP
701 Pennsylvania Avenue, NW
Washington, DC 20004
Tel. (202) 777-4500

February 11, 2011

Attorneys for Receiver

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

In the six months since the filing of the Seventh Interim Report, the Receiver has continued to carry out the directives of the Receiver Order while reducing estate expenses and administrative costs. He has overseen and expedited the first interim distribution of more than \$5 million to qualified victims. He has continued to manage and liquidate receivership assets, and to inform victims of case developments. Additionally, the Receiver has managed ongoing litigation at the district and appellate levels and has managed various tax, accounting, insurance, and ancillary regulatory matters for the estate.

This Eighth Interim Report describes the Receiver’s efforts since August 11, 2010. Section I summarizes the status of the liquidation of Wextrust assets. Section II reports on the first interim distribution. Section III provides an overview of the Receiver’s continuing management of the Wextrust Entities and Affiliates, including the management of Wextrust real estate operations and other business and financial aspects of the Wextrust enterprise. Section IV reports on the current financial condition of the receivership estate and the estate’s administrative costs. Section V discusses the status of Wextrust-related litigation in the United States, including the Receiver’s handling of affirmative claims against third parties.

I. LIQUIDATION OF WEXTRUST ASSETS

A. Liquidation of U.S. Assets

Over the past six months, the Receiver has continued efforts to liquidate the assets of the receivership estate in accordance with the Court’s plan of distribution order entered on July 23,

2009 (the “Distribution Order”) (Dkt. No. 428).¹ Wextrust’s U.S. assets consist principally of commercial real estate properties owned and operated by Wextrust Equity Partners (“WEP”). The Receiver also manages two high yield loan portfolios and residential real estate formerly owned by Byers and Shereshevsky personally.

During the past six months, the Receiver has continued to manage fifteen commercial real estate assets located in Alabama, Illinois, Mississippi, Tennessee, and Wisconsin. The marketing of these commercial properties has been carried out by the Receiver’s real estate advisors, The Hilco Organization (“Hilco”) and Badger Real Estate Advisors, LLC (“Badger”).

In the past six months, the Receiver has completed the sale of one large property and entered into six condominium sales contracts. On December 17, 2010, the Receiver closed on the sale of the Hammond Industrial property in Louisiana for \$25.75 million. *See* November 11, 2010 Order Confirming Sale of the Hammond Property (Dkt. No. 681). The secured debt on this property exceeded \$23.4 million. After fees and related expenses, the sale satisfied the outstanding secured debt and contributed more than \$1.26 million to the receivership estate. In addition, since October 2010, the Receiver has entered into sales contracts totaling approximately \$6.2 million for the sale of six individual residential units in the 47 Dean Street property (the “Dean Street property”), a luxury condominium building in Brooklyn, pursuant to the process approved by the Court in its July 9, 2010 Order Granting Receiver’s Motion to Implement the Sale of the 47 Dean Units (“Order Granting Sale of 47 Dean Units”) (Dkt. No. 656). These efforts are described more fully in section III.A.1 below.

The Receiver has also continued ongoing efforts, as described in prior interim reports, to maximize the value of the commercial properties by making certain improvements, renewing profitable leases, and negotiating new leases. Specifically, the Receiver has renewed twenty

¹ The Distribution Order is reported at *SEC v. Byers*, 637 F. Supp. 2d 166 (S.D.N.Y. 2009).

leases and negotiated five new leases on properties over the past six months. The Receiver estimates that these leases will produce revenues of approximately \$3,546,000 over the life of the leases, thereby enhancing the value of the properties and the expected proceeds of their liquidation.

To diminish the ongoing expense of managing multiple properties, the Receiver is also negotiating with lenders and tax authorities. For example, he is exploring a potential transaction with the lender on the Peoria Office Holdings property, a multi-tenant office building in Peoria, Illinois. The Receiver is also working with the lender on the Park Village property to restructure the debt. Additionally, the Receiver is pursuing a property tax appeal to the State of Alabama to lower the operating expenses of the Interstate Park property.

Finally, the Receiver continues to explore cost-effective ways to realize value for the victims by liquidating the residential real estate assets formerly owned by Byers and Shereshevsky in their personal capacity. As discussed in the last interim report, the Receiver reached an agreement with a secured lender that holds mortgage interests in five residential residences owned by Shereshevsky and/or his wife. These residences are heavily leveraged and, based on market conditions and projected maintenance costs, cumulatively represent little to no value to the receivership estate. Through the settlement agreement, however, the Receiver was able to secure a minimum cash payment of at least \$125,000. The parties expect to file a joint motion to obtain court approval of the terms of the settlement within the next few weeks.

During the past six months, the Receiver has also explored similar agreements with other secured lenders holding mortgage interests in the remaining residential real estate assets in the receivership estate. The Receiver is in advanced discussions with two of the lenders, and hopes

to secure the cooperation of the remaining lenders in order to realize additional value for the estate.

B. Liquidation of Wextrust Interests in Africa

As previously reported, the Receiver is participating in various liquidation proceedings in South Africa and Namibia involving the Wextrust Entities and Affiliates' interests in diamond mining ventures in those countries. The mining interests are owned or controlled by an interlocking group of companies affiliated with Pure Africa Minerals (Pty) Ltd. ("PAM"), a South African entity. Those companies are referred to collectively as the "PAM Syndicate." Wextrust is the largest creditor of PAM and other PAM Syndicate entities.

On September 11, 2008, a liquidation (or "winding-up") proceeding was commenced against PAM in South Africa by individuals that the Receiver has reason to believe participated in the misappropriation of Wextrust assets in Africa. The Receiver, standing in the shoes of Wextrust, the largest creditor of PAM, has been able to exert substantial influence over the activities of the court-appointed liquidators of PAM ("Liquidators"). Most expenses associated with the liquidation proceedings, including the fees of local counsel in South Africa and Namibia, and expenses incurred by the court-appointed liquidators, have been paid by the Liquidators from the liquidation estates in Africa.

The Receiver and the Liquidators have conducted an extensive investigation into the activities of the PAM Syndicate. Among other things, the Liquidators obtained search and seizure warrants authorizing them to recover paper and electronic records from various PAM Syndicate entities and related individuals. The investigation has included oral examinations of approximately a dozen witnesses in both Africa and the United States. In the United States, the Receiver conducted depositions of Thomas Lewis, the former Chief Financial Officer of PAM,

and Lawrence Costa, a former director of Deva Investments (Pty) Ltd., a Wextrust affiliate with operations in Namibia.

The Receiver has also requested assistance from several government authorities in both Africa and the United States to pursue individuals for whom there is evidence of possible misappropriation of assets belonging to the Wextrust Entities and Affiliates. For example, during two trips to South Africa and Namibia, the Receiver met with senior advocates at the National Prosecuting Authority of South Africa and with agents of the South African Police Service, Serious Economic Offences Unit, in connection with their investigation of the Wextrust fraud in South Africa. The Receiver also met with officials from the Namibian Ministry of Mines and Energy regarding Wextrust's interests in Namibia. Although the officials acknowledged that there appeared to be violations of law by certain South African nationals, they were not prepared to proceed with law enforcement activity unless the Receiver agreed to finance those endeavors.

Likewise, the Receiver consulted at length with the U.S. Attorney's Office about the possibility of bringing criminal charges in the United States against certain South African nationals as a mechanism for obtaining a parallel monetary recovery for the Wextrust victims. Ultimately, however, serious questions persisted regarding the success of such actions in light of evidentiary and extradition issues.

The Liquidators have identified several potential claims that may be brought against third parties in Africa. As previously reported, the Receiver requested that the Liquidators and their counsel provide an analysis of the costs and benefits of pursuing such claims, based on the likelihood of recovery, the cost of litigation, and other relevant factors. The Liquidators recently reported that the proceeds of earlier asset sales in the liquidation proceedings will not be

sufficient to independently fund the expense of pursuing these claims to judgment. Accordingly, they have requested that the Receiver finance the pursuit of third party claims in Africa from available cash in the United States.

In consultation with the Securities and Exchange Commission (“SEC”), the Receiver has determined that it would not be in the best interest of the receivership estate to fund additional third-party litigation in Africa. Under the terms of his appointment, the Receiver is obligated to determine whether the pursuit of such claims would produce a net economic benefit to the estate. Regrettably, the Receiver has concluded that funding such efforts would not produce a net benefit. Although the Receiver will not fund additional litigation in Africa, he will continue to monitor the liquidation proceedings to protect the estate’s interest in members of the PAM Syndicate. Based on the information presently available to the Receiver, he does not expect a substantial recovery from the African liquidation proceedings.

II. DISTRIBUTION TO THE WEXTRUST VICTIMS

Following the Court’s approval of the Receiver’s plan of distribution on July 23, 2009, and after an extensive claims process, the Receiver sought permission to distribute receivership assets to qualified victims. One Wextrust investor, Martin Malek, moved for a stay of distributions to all victims pending the outcome of his appeal of the plan of distribution. Malek’s request was granted by the U.S. Court of Appeals for the Second Circuit (“Second Circuit”) on February 4, 2010. Accordingly, pursuant to court order, the Receiver was unable to make distributions to any victims until after the Second Circuit issued a ruling on the merits of Malek’s appeal.

As detailed in Section V.C below, the Second Circuit resolved Malek’s appeal in favor of the Receiver on October 25, 2010. Shortly thereafter, the Receiver filed an unopposed motion in

the Second Circuit requesting that it expedite issuance of the mandate for the appeal.² The SEC had advised the Receiver that no distribution could be made to victims until the mandate issued. The Second Circuit granted the Receiver's motion to expedite issuance of the mandate on November 16, 2010.

Following issuance of the mandate, the Receiver filed a motion with the district court requesting that it re-approve a first interim distribution of approximately \$5 million to qualified victims. The motion was approved on November 22, 2010. Over the next three weeks, the Receiver worked with a third party claims administrator, AB Data, Ltd., to coordinate the processing and mailing of distribution checks on an affordable, fixed-cost basis. All first interim distribution checks were mailed by December 13, 2010.

The timing and amounts of future distributions will be based on sales of Wextrust assets and other recoveries and subject to court approval. In the meantime, the Receiver encourages victims to provide any updated contact information to the Receiver's claims administrator by calling the Wextrust Hotline at 1-888-518-2410 or by sending an email to wextrustreceiver@dl.com. This will ensure that the Receiver's records reflect the most recent mailing address information for each victim so that future checks can be mailed to the appropriate location.

III. ESTATE MANAGEMENT OPERATIONS

A. Management of Remaining Real Estate Properties

1. U.S. Real Estate Operations

As directed by the Court, the Receiver has assumed control of all U.S. real estate assets of the Wextrust Entities and Affiliates, which, as previously mentioned, now consist primarily of

² A "mandate" is an order from an appeals court to a lower court instructing it to comply with the appeals court's ruling.

the WEP commercial properties. In the six months ending February 1, 2011, the Receiver collected approximately \$8.5 million in rent. As discussed in Section I.A above, the Receiver has renewed twenty leases and negotiated five new leases on properties during this period.

The Receiver continues to manage the development, construction, and sales efforts for the Dean Street property, a residential condominium in the Boerum Hill neighborhood of Brooklyn. The Dean Street property construction is approximately 95% complete. Six of the ten units are already under contract at, or close to, the offering price. The final surface finishes and appliances have been delivered and installed and final touches are being made for occupancy, which is expected to begin in March 2011.

Since obtaining approval from the New York Attorney General's Office and pursuant to the Court's Order Granting Sale of 47 Dean Units, sales efforts have progressed through Halstead Property, LLC. In November 2010, a website promoting the property, <http://www.47dean.com/>, became active. Soon thereafter, a completed model unit was opened to potential purchasers. On February 8, 2011 the property received an inspection for a Temporary Certificate of Occupancy from City of New York, one of the final steps towards project completion. The inspection identified only minor concerns that are being remediated promptly.

The sales history of the six units under contract is as follows: Unit 1A in October 2010 at the full asking price of \$1.46 million; Units 5A and 1B in November 2010 at the full asking price of \$981,000 and \$1.55 million, respectively; Unit 5B in December 2010 at near full asking price of \$981,000; and Units 4B and 3B in January 2011 at or very near the full asking price of \$1.125 million and \$1.2 million, respectively. Based on current market conditions, the remaining units are expected to sell at or near the offering prices.

2. High Yield Loans

The Receiver continues to manage the two Wextrust high yield loan portfolios. The Wexford High Yield Debt Fund I, LLC (“High Yield I”) consists of 5 loans, in which Wextrust has an aggregate direct and joint-venture participation interest of approximately \$1.75 million, all of which are in default. The Wexford High Yield Debt Fund III, LLC (“High Yield III”) and its offshore participant, Wexford High Yield Debt Offshore Fund, Ltd. (“Offshore Fund”), presently include 10 loans for which Wextrust has a combined direct and joint-venture participation interest of approximately \$6 million. The loans in those portfolios are secured by a variety of commercial and residential real estate assets. In the last six months, the Receiver has continued his efforts to obtain value from the high yield loan portfolios, and is engaged in preliminary conversations with its joint venture partners on both portfolios to sell the receivership’s interests in each portfolio.

B. Other Business and Financial Management

The Receiver has continued to emphasize cost reductions across all professionals and within the Wextrust Entities and Affiliates. In comparison to the first six months of 2010, legal fees were cut by an estimated 10 percent in the last six months of 2010. During this latter period, the Receiver continued to shift administrative work from law firm paralegals to lower-cost Wextrust employees. The Receiver has also pursued cost-saving measures in the management of its real estate operations. In an effort to control real estate operating costs, the Receiver solicited service contract bids in order to ensure that any possible expense savings were recognized. During 2010, the Receiver achieved at least \$85,000 in operating cost savings, such as landscaping, janitorial, utility, and other administrative expenses. In addition, through appeals to local tax authorities, at least another \$165,000 per year is being saved on property taxes for multiple assets.

Similarly, at the federal tax level, the Receiver's tax counsel has taken several steps to mitigate the estate's income tax liabilities. For example, the Receiver's tax counsel has had several meetings and engaged in written correspondence with the Bankruptcy and Insolvency Unit of the Internal Revenue Service ("IRS"), which is responsible for the IRS' interests in this case. The Receiver's tax counsel has also had ongoing discussing with the IRS' Office of Chief Counsel.

Most recently, on December 23, 2010, the Receiver's tax counsel submitted a letter to the IRS summarizing the Receiver's position with respect to the federal income tax obligations of the Wextrust Entities and Affiliates. In this correspondence, the Receiver's tax counsel requested that the IRS work with the Receiver to resolve the estate's federal tax obligations as soon as possible and afford the most favorable tax status to the receivership for the benefit of its many victims. The Receiver believes that his position is well-supported in law and fact.

Should the IRS choose to adopt an alternative approach to taxing the receivership estate, however, the estate's tax burden could increase substantially. Under one approach being considered by the IRS, the resulting tax treatment would effectively wipe out any future recovery for victims and jeopardize the receivership's ability to continue operating.

IV. FINANCIAL CONDITION OF THE WEXTRUST ENTITIES AND AFFILIATES

As in previous reports, Deloitte has 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 may not be recorded in accordance with generally accepted accounting principles. As shown in Table 1, the total book value of the remaining Wextrust real estate portfolio is approximately \$167.3 million. This value is based on the accounting records and other information maintained by Wextrust 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 boom 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 November 30, 2010

	Axela (3)	WEP (4)	WDG	Consolidated
Property				
Building / Land	-	159,467,002	7,881,606	167,348,608
Loan Payable on Property	-	127,940,232	6,410,269	134,350,501
Net Book Value (5)	\$ -	\$ 31,526,770	\$ 1,471,337	\$ 32,998,107
Capitalized Costs:				
Tenant Improvements	-	1,720,923	-	1,720,923
Capital Improvements	-	2,318,799	-	2,318,799
Total Capitalized Costs	\$ -	\$ 4,039,722	\$ -	\$ 4,039,722
Net Book Value (5)	\$ -	\$ 35,566,492	\$ 1,471,337	\$ 37,037,829

(1) - Where possible, net book values were obtained from the Standardized Fund Accounting Report ("SFAR") as of November 30, 2010 although the amounts noted here will not always agree with amounts reported on the SFAR. SFAR data was based on accounting information 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 November 30, 2010.

(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) - First Highland, LLC and Commerce Center Holdings, which are TIC properties, are included at 100% even though the Wextrust interest is less (78.21% and 35%, respectively). The balance includes property owned by Hammond Industrial Holdings, LLC that was sold on December 17, 2010 (the Court approved the sale by order entered on November 10, 2010). The balance excludes: <1> property owned by West Bearden Holdings, LLC that was sold on December 4, 2009 (the Court approved the sale by order entered on November 9, 2009), <2> property owned by 45 S. Washington Holdings, LLC where the Court entered an order permitting the relinquishment of property and authorizing the Receiver to deed, in lieu of foreclosure, the property to Lakeside Bank on May 21, 2010 and <3> property owned by Belle Meade Center Partners, LLC where the property has been foreclosed.

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

As of November 30, 2010, the Wextrust Entities and Affiliates had approximately \$6.5 million in cash, which is net of the \$5.0 million that was transferred to A.B. Data, Ltd. in November 2010 for the December 13, 2010 distribution to investors, in approximately 90 U.S. bank accounts. For the six months ending November 30, 2010, total receipts were \$9.9 million against \$8.5 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, including approximately \$3.5 million in debt service payments; \$1.8 million in ordinary course expenses; and \$0.4 million in capital expenditures, tenant improvements, and leasing commissions. Compared to the prior six month period, income remained steady while the Receiver reduced expenses by 14 percent.

Table 2: Receipts and Disbursements

Wextrust Capital, LLC, et al.
Consolidated Cash Receipts and Disbursements - Rounded (1) (2)
from 06/01/10 through 11/30/2010

	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)	-	-	8,820,000	-	-	-	8,820,000
Sale of Receivership Assets	-	-	-	-	-	-	-
Construction Draws	-	-	-	-	660,000	-	660,000
Other Receipts	90,000	-	330,000	-	20,000	(22,000)	418,000
TOTAL RECEIPTS	90,000	-	9,150,000	-	680,000	(22,000)	9,898,000
DISBURSEMENTS							
Capital Expenditures, Tenant Improvements & Leasing	-	-	380,000	-	680,000	-	1,060,000
Commissions	-	-	130,000	-	3,000	-	133,000
Insurance	-	-	3,490,000	-	160,000	-	3,650,000
Loan Payments	-	-	400,000	-	-	-	400,000
Management Fees	-	-	1,780,000	-	1,000	-	1,811,000
Ordinary Course Expenses	30,000	-	390,000	-	3,000	-	587,000
Labor Costs	194,000	-	23,000	-	-	-	143,000
Professional Expenses - Non-Receiver (4)	120,000	-	-	-	-	-	690,000
Taxes	-	-	680,000	-	10,000	-	690,000
Other	-	-	-	-	-	-	-
TOTAL DISBURSEMENTS (5)	344,000	-	7,273,000	-	857,000	-	8,474,000
NET CASH GENERATION / (BURN)	(254,000)	-	1,877,000	-	(177,000)	(22,000)	\$ 1,424,000

(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 November 30, 2010.

(3) - Approximately \$324,000 was collected, in addition to monthly rent, from tenants for property taxes and insurance.

(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.

(5) - Disbursements do not include \$5 million that was transferred to a third-party distribution agent. The distribution agent is to process interim distribution payments to investors. The distribution agent processed the first interim distribution payments to investors in December 2010.

Table 2 also shows a positive cash flow of approximately \$1.42 million for the Wextrust enterprise for the six months ending November 30, 2010, a result that is approximately 28

percent higher than the projected cash flow reported in the Seventh Interim Report for this period.

Deloitte has also assisted management in preparing a cash forecast for Wextrust for three three-month periods through August 31, 2011 as shown in Table 3. The net cash flow is projected to be a net positive of \$1.05 million. The period ending February 28, 2011 shows a negative net cash flow because of property taxes and insurance payments, which are paid during the period but funded in part by the monthly and annual collections of tenants' fees.

Table 3: Wextrust Cash Forecast

Base Cash Flow Projections for Wextrust Capital, LLC and Affiliates, et al. for the Nine Months Ending August 31, 2011 (1)(2)

	WexTrust Capital, LLC, et al. for the 3 - Months Ending February 28, 2011	WexTrust Capital, LLC, et al. for the 3 - Months Ending May 31, 2011	WexTrust Capital, LLC, et al. for the 3 - Months Ending August 31, 2011	Total
Total Effective Income	\$ 3,879,924	\$ 3,858,674	\$ 3,507,398	\$ 11,245,996 (3)
Total Operating Expenses	2,339,692	1,412,213	1,435,493	5,187,398
Net Operating Income	1,540,231	2,446,461	2,071,905	6,058,597
Non Operating Expenses:				
Debt Service - Interest (Including Swap Payments)	1,206,395	1,137,861	1,147,479	3,491,734
Debt Service - Principal	275,588	250,170	250,170	775,928
Capital Expenditures (4)	58,406	72,400	83,000	213,806 (5)
Tenant Improvements & Lease Commissions	74,975	175,200	-	250,175
Reserves	27,935	22,013	22,013	71,960
Other Non-Operating Expenses	69,846	66,676	63,492	200,013
Total Non-Operating Expenses	1,713,144	1,724,319	1,566,154	5,003,617
Net Cash Flow (6)	\$ (172,913) (7)	\$ 722,142	\$ 505,751	\$ 1,054,981

(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 First Highland, LLC, which is a TIC property, at 100% even though the Wextrust interest is less (78.21%). Amounts exclude Commerce Center Holdings, which is a TIC property where Wextrust interest is 35%. 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. \$390,000 in tenant rent receipts from approx. 25 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.

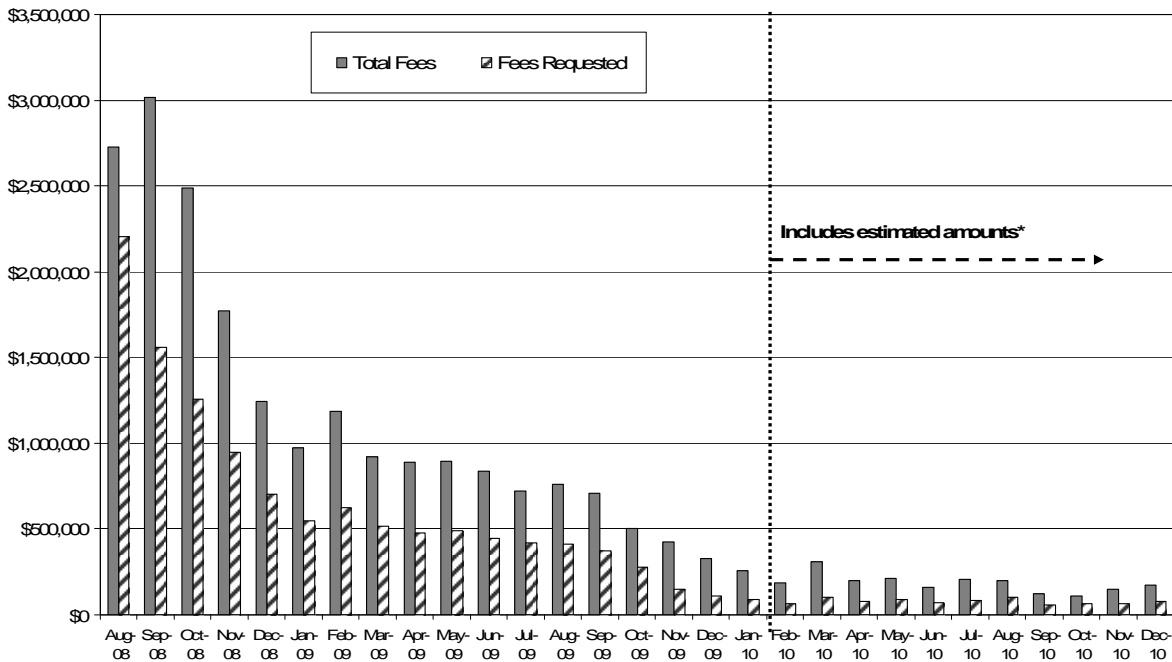
(6) - Does not include Receivership related professional fees.

(7) - The negative net cash flow projected for the 3 months ended February 28, 2011 is mainly attributable to the projected payment of 2010 property taxes and insurance in February of 2011 totaling approximately \$810,000. This payment is funded in part by the monthly and annual collections of CAM fees from tenants.

The above analysis does not include expenses associated with the administration of the receivership, the largest component of which is professional legal fees due to the Receiver and receivership counsel, Dewey & LeBoeuf LLP ("D&L"), Freshfields Bruckhaus Deringer US

LLP (“Freshfields”) (since March 2010), and Arent Fox LLP (since June 2010). As shown in Table 4, fees for the Receiver and these firms have continued to decline.

Table 4: Administrative Costs



*Bills for D&L after June 2010 and for Freshfields and Arent Fox LLP are estimated and have not yet been submitted for Court approval.

In the past six months, the Court approved the eighth and ninth interim fee applications of D&L and the Receiver subject to reductions consented to after consultation with the SEC. *See* September 21, 2010 Fee Order (Dkt. No. 674). The eighth application award was \$806,920.09 and \$61,537.50, respectively. The ninth application award was \$646,705.12 and \$33,087.50, respectively. Finally, for all professionals, Wextrust has incurred and paid \$15,696,482.83 in professional fees as of December 31, 2010. Incurred but not yet paid fees for all professionals were an estimated \$3.7 million as of December 31, 2010, net of estimated discounts and holdbacks required by the Court.

V. INVESTIGATIONS AND LITIGATION

A. Claims Against Third Parties

The Receiver is continuing to make progress in his efforts to investigate and prosecute possible claims against third parties in the United States. He has worked with the SEC and U.S. Attorney's Office to ensure that recoveries are pursued in the most efficient and cost-effective manner.

As discussed in previous interim reports, the Receiver's efforts have been focused on three former providers of professional services to the Wextrust Entities and Affiliates. In investigating potential claims against these providers, the Receiver has taken discovery and engaged in discussions to attempt to resolve potential claims.

With respect to the first firm, the Receiver has reached an agreement in principle that would resolve the receivership estate's claims and provide an avenue for a substantial monetary return. The Receiver expects soon to finalize the settlement and file a motion for court approval.

With respect to the second firm, settlement talks have broken down between the parties. The Receiver is preparing a lawsuit against the firm, in consultation with the SEC.

With respect to the last professional services firm, the Receiver, in consultation with the SEC, has determined there was insufficient evidence to justify the costs of pursuing additional litigation.

On February 2, 2011, the SEC instituted an administrative proceeding against Don S. Hershman pursuant to Section 8A of the Securities Act of 1933 ("Securities Act"). Hershman was a partner at Much Shelist Denenberg Ament & Rubenstein, PC from 2005 to 2008, and served as primary securities counsel to the Wextrust Entities and Affiliates during this time period. The SEC alleged that Hershman, over the course of his representation of Wextrust, became increasingly aware of facts that he knew or should have known were material facts that

were not disclosed to investors. Specifically, the SEC alleged that such facts included that Wextrust's former principals engaged in the over-raising of funds and took actions inconsistent with investment offering materials, that Shereshevsky had pleaded guilty to conspiracy to commit bank fraud and had lied about this fact, and that Wextrust's CFO was having difficulty accessing certain bank accounts controlled by Shereshevsky.

Despite Hershman's alleged knowledge, however, the SEC found that Hershman did not request that Wextrust disclose such material facts in its offering materials to investors. By virtue of this conduct, the SEC alleged that Hershman was a cause of Wextrust's violations of certain sections of the Securities Act. Without admitting or denying the SEC's allegations, Hershman submitted a settlement offer to the SEC in which he consented to the entry of a cease and desist order and the payment of \$29,333.10 in disgorgement and prejudgment interest to the Receiver. The SEC accepted the settlement offer, and Hershman mailed a cashier's check in this amount to the Receiver on February 7, 2011. These funds will be held by the Receiver for the benefit of the victims.

B. Ancillary Litigation

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 have monitored a series of ongoing cases in both state and federal bankruptcy court that implicate receivership property interests. They will continue to do so, in consultation with the SEC, to preserve and protect the receivership estate's rights.

C. Appellate Litigation

Five appeals have been brought by interested parties challenging various rulings by the district court in this case. As discussed in the last interim report, two of the five pending appeals

were resolved successfully on April 12, 2010 and June 15, 2010, respectively. During the past six months, the final three cases have also been resolved in favor of the Receiver. There are no outstanding appeals at this time.

The first appeal involved Wextrust commodity fund investor Martin Malek's challenge to the Court's plan of distribution to victims that was approved on July 23, 2009. The Second Circuit heard oral argument on Malek's appeal on October 20, 2010. The court issued its opinion five days later, on October 25, 2010. In that opinion, the Second Circuit affirmed the plan of distribution and overruled all of Malek's objections.

The second, related appeal involved a motion to intervene filed by a group of eight Wextrust investors who sought to have the Second Circuit declare that Wextrust's commodity fund investments were improperly included in the receivership estate. This appeal was stayed on November 13, 2009 pending the outcome of Malek's appeal of the plan of distribution, which involved similar factual issues. After Malek's appeal was denied, the Second Circuit issued an order on December 2, 2010 directing the eight Wextrust investors to inform the court within 21 days whether they wished to proceed with the appeal. The investors failed to respond to the Second Circuit's order. As a result, on January 13, 2011, the appeal was dismissed with prejudice, meaning that it cannot be re-filed and pursued at a later date.

The third pending appeal was filed by Wextrust investor Vivian Orgel on December 15, 2009, and challenged this Court's resolution of the nature and amount of her specific investor claim under the plan of distribution. Oral argument on Orgel's appeal was heard the same day as Malek's appeal, on October 20, 2010. The Second Circuit issued its opinion five days later in favor of the Receiver.

D. Developments in the Criminal Cases Against Byers and Shereshevsky

As discussed in the Receiver's Seventh Interim Report, Defendant Steven Byers entered a plea of guilty in the criminal case against him on April 13, 2010 pursuant to a plea agreement reached with the U.S. Government. In entering a plea, Byers acknowledged his role in the Wextrust fraud. He faces a maximum term of imprisonment of 25 years.

Judge Chin will determine the exact sentence that Byers will receive at a sentencing hearing currently scheduled for March 10, 2011. The hearing was originally scheduled for September 13, 2010, but has since been postponed. The Receiver regrets any inconvenience this may have caused victims who planned to attend the hearing and will work with the Court to provide as much notice as possible on the receivership website regarding any future postponements.

Defendant Joseph Shereshevsky's criminal trial was scheduled to begin on February 22, 2011. However, on February 3, 2011, Shereshevsky entered a plea of guilty. Specifically, Shereshevsky pleaded guilty to Counts One, Three, and Six of his superseding indictment, dated August 31, 2010. Count One charged Shereshevsky with conspiracy to commit securities fraud, mail fraud and wire fraud, in violation of 18 U.S.C. § 371. Count Three charged him with securities fraud in violation of 15 U.S.C. §§ 78j(b) and 78ff. Count Six charged him with mail fraud in violation of 18 U.S.C. § 1341. The total maximum term of imprisonment on the three counts is 45 years.

Shereshevsky entered his plea pursuant to a plea agreement reached with the U.S. Government, which included a stipulated sentencing range of 210 to 262 months (approximately 17 to 22 years). Judge Chin will determine the exact sentence that Shereshevsky will receive at a sentencing hearing scheduled for May 13, 2011, at 10:30 am EST. The hearing will take place in Courtroom 11A at the Daniel Patrick Moynihan United States Courthouse located at 500 Pearl

Street, New York, New York 10007. Shereshevsky is being held at the Queens Private Correctional Facility in Jamaica, New York pending his sentencing.

The Receiver will order transcripts of Byers and Shereshevsky's sentencing hearings and will post them on the receivership website for the benefit of any interested parties who are unable to attend the hearings in person. The Receiver encourages interested parties to continue monitoring the website for additional information.

VI. CONCLUSION

The Receiver has completed a large portion of the Court's instructions in the Receiver Order, and will continue to focus on economically managing the receivership estate, liquidating the U.S. real estate assets at the greatest return possible, resolving federal tax issues, and accomplishing further distributions to victims. The Receiver will also 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
February 11, 2011

Respectfully submitted,

Timothy J. Coleman
Receiver for Wextrust Entities

s/ Jonathan W. Ware
Jonathan W. Ware, *pro hac vice*
John K. Warren, *pro hac vice*
FRESHFIELDS BRUCKHAUS DERINGER US LLP
701 Pennsylvania Avenue, NW
Washington, DC 20004
Tel. (202) 777-4500

Mark S. Radke, *pro hac vice*
ARENT FOX LLP
1050 Connecticut Avenue, NW
Washington, DC 20036-5339
Tel. (202) 715-8431

Attorneys for Receiver

Of Counsel:
Mia L. Havel

CERTIFICATE OF SERVICE

The undersigned, an attorney, states that I am one of the attorneys for Timothy J. Coleman, Receiver, in this matter and do hereby certify that on **February 11, 2011** I directed the service of a true and correct copy of the foregoing **EIGHTH INTERIM REPORT OF RECEIVER** upon the following individuals in the manner indicated below:

Via First Class Mail

Joseph Shereshevsky, Registry No. 35857-054
c/o GEO Group
Queens Private Correctional Facility
182-22 150th Avenue
Jamaica, NY 11413
Pro Se Defendant

Via ECF Notification & Electronic Mail

Alexander M. Vasilescu, Esq.
Andrew M. Calamari, Esq.
Steven G. Rawlings, Esq.
Alistaire Bambach, Esq.
Neal R. Jacobson, Esq.
Philip Moustakis, Esq.
Danielle Sallah, Esq.
Attorneys for Plaintiff SEC

Via ECF Notification & Electronic Mail

Barry S. Pollack, Esq.
Joshua L. Solomon, Esq.
Attorneys for non-party G&H Partners AG

Via ECF Notification & Electronic Mail

Barry S. Zone, Esq.
Jason Canales, Esq.
Attorneys for Defendant Steven Byers

Via ECF Notification & Electronic Mail

Michael Fred Bachner, Esq.
Attorney for Relief Defendant Elka Shereshevsky

Via ECF Notification & Electronic Mail

Philip A. Byler, Esq.
Andrew T. Miltenberg, Esq.
Ira S. Nesenoff, Esq.
James B. Daniels, Esq.
Attorneys for non-party Broadway Bank

Via ECF Notification & Electronic Mail

Martin Siegel, Esq.
Attorney for non-party Int'l Consortium of Wextrust Creditors

Via ECF Notification & Electronic Mail

Paul A. Levine, Esq.
Attorney for non-party Key Equipment Finance, Inc.

Via ECF Notification & Electronic Mail

Beth L. Kaufman, Esq.
Attorney for non-party Lawrence Costa

Via ECF Notification & Electronic Mail

Harris Kay, Esq.
Marc X. LoPresti, Esq.
Attorneys for various non-party investors

Via ECF Notification & Electronic Mail

Ethan Holtz, Esq.
Edward P. Gilbert, Esq.
Attorneys for non-party RAIT Partnership

Via ECF Notification & Electronic Mail

Francesca Morris, Esq.
Attorney for non-parties Ticor Title Insurance Co. and Heritage Community Bank

Via ECF Notification & Electronic Mail

John M. Bradham, Esq.
Peter B. Katzman, Esq.
Attorneys for non-parties Space Park AIM and ISSB Partnerships

Via ECF Notification & Electronic Mail

Alan E. Marder, Esq.
Attorney for non-parties Nashville Warehouse Partners and Southeast Warehouse Partners

Via ECF Notification & Electronic Mail

Shalom Jacob, Esq.
Shmuel Vasser, Esq.
Attorneys for non-party Int'l Ad-Hoc
Committee of Wextrust Creditors

Via ECF Notification & Electronic Mail

Louis Orbach, Esq.
Charles J. Sullivan, Esq.
Amy Marie Culver, Esq.
Attorneys for non-party TCF National Bank

Via ECF Notification & Electronic Mail

Elizabeth P. Gray, Esq.
Attorney for non-party Gerald Jaffe

Via ECF Notification & Electronic Mail

John P. Doherty, Esq.
Attorney for non-party Wells Fargo Bank N.A.

Via ECF Notification & Electronic Mail

Jeffrey L. Schwartz, Esq.
John P. Amato, Esq.
Stephen W. Ragland, Esq.
Clarence A. Wilbon, Esq.
Attorneys for non-party First Tennessee Bank
National Association

Via ECF Notification & Electronic Mail

Edward F. Malone, Esq.
George R. Mesires, Esq.
Attorneys for non-parties Barrington and
Hinsdale Banks

Via ECF Notification & Electronic Mail

Susan F. Balaschak, Esq.
Keith N. Costa, Esq.
Randal S. Mashburn, Esq.
John H. Rowland, Esq.
Attorneys for non-party Regions Bank

Via ECF Notification & Electronic Mail

Emily S. Alexander, Esq.
Attorney for non-party Martin Malek

Via ECF Notification & Electronic Mail

David B. Grantz, Esq.
Scott T. McCleary, Esq.
Attorneys for non-party Bank of America

Via ECF Notification & Electronic Mail

Adam W. Downs, Esq.
Gerard P. Brady, Esq.
Attorneys for non-party Erin Construction &
Development Co., Inc.

Via ECF Notification & Electronic Mail

Alexander S. Lorenzo, Esq.
Attorney for non-party LNR Partners, Inc.

s/ Jonathan W. Ware