

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

SEVENTH INTERIM REPORT OF RECEIVER

TIMOTHY J. COLEMAN
Receiver for Wextrust Entities

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August 11, 2010

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Timothy J. Coleman, Receiver for the Wextrust Entities and Affiliates (“Receiver”), respectfully submits this Seventh 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 last six months, the Receiver has worked to decrease estate expenses and administrative costs while working toward the completion of the tasks directed in the Receiver Order. The Receiver has continued efforts to liquidate receivership assets for the benefit of victims, has cut receivership expenses and personnel to reduce costs, has continued to keep victims informed on case developments, has overseen federal, state, and appellate litigation for the receivership estate, and has managed numerous tax, accounting, insurance, and ancillary regulatory matters for the estate.

This Seventh Interim Report describes the Receiver’s efforts since February 11, 2010. Section I summarizes the status of the liquidation of Wextrust assets. Section II describes the status of the first interim distribution. Section III is 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 and Africa, including the Receiver’s handling of affirmative claims against third parties.

I. LIQUIDATION OF WEXTRUST ASSETS

A. Liquidation of U.S. Assets

The Receiver has continued the process of liquidating 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 As discussed in previous interim reports, Wextrust’s United States assets now consist primarily of commercial properties owned and operated by Wextrust Equity Partners (“WEP”). Over the past six months, the Receiver has continued to market the properties in conjunction with his real estate advisors, The Hilco Organization (“Hilco”) and Badger Real Estate Advisors, LLC (“Badger”). As of the beginning of August, approximately 593 inquiries have been received from potential purchasers, and approximately 351 confidentiality agreements have been signed.

The Receiver has also continued ongoing efforts, as described in prior interim reports, to increase the market value of the properties by overseeing certain improvements, renewing favorable leases, and negotiating new leases. Specifically, the Receiver has renewed thirteen leases and negotiated nine new leases on properties over the past six months, for a total of approximately 105,000 square feet of leasable space. The Receiver estimates that these leases will result in nearly \$3.4 million in revenue over the life of the leases.

The Receiver is in the process of completing the sales of two properties and has relinquished another that presented no reasonable likelihood of return. The Receiver is currently under contract to sell the Hammond Industrial property in Louisiana for a substantial return to the receivership estate. Upon final approval from the lender, the Receiver will file a motion with the Court to confirm the sale. The Receiver is also in the process of selling 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). The Receiver obtained the Court’s approval on May 21, 2010 to relinquish the 45 South Washington property due to its high carrying costs and reduced

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

market value, which was substantially below the amount of debt secured by the property. (*See* Dkt. No. 649.) The legal costs incurred by the Receiver during the relinquishment process have been partially offset by an agreement with the property's secured lender, Lakeside Bank, in which Lakeside agreed to pay up to \$10,000 toward the receivership's associated legal fees and expenses.

The Receiver is also exploring solutions to liquidate residential real estate assets within the receivership estate that were formerly owned personally by Defendants Steven Byers and Joseph Shereshevsky. For example, the Receiver has reached an agreement in principle 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 offer little to no value to the receivership as presently constituted.

In order to secure some monetary recovery for the receivership, however, the Receiver has negotiated a release of the five residences to the secured lender in exchange for a guaranteed minimum cash payment of at least \$125,000. This agreement is still subject to review by interested parties and approval by the Court. Once consummated, the Receiver will explore similar arrangements with other secured lenders holding mortgage interests in the remaining residential real estate assets in the receivership estate.

B. Liquidation of Wextrust Interests in Africa

As previously reported, the Receiver is participating in various liquidation proceedings in South Africa and Namibia and has requested assistance from various government agencies in liquidating assets expeditiously. The Receiver will continue to take steps to liquidate Wextrust assets in Africa as promptly and efficiently as possible. The Receiver will then take the

necessary steps to repatriate such assets and distribute them to victims pursuant to the Distribution Order.

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 in specific amounts to qualified victims. One Wextrust investor, Martin Malek, moved for a stay of all distributions to victims pending the outcome of his appeal of the plan of distribution. Malek's request was granted by the United States Court of Appeals for the Second Circuit ("Second Circuit") on February 4, 2010. Accordingly, pursuant to court order, no distribution payments may be made to victims until after the Second Circuit issues its ruling on the merits of Malek's appeal.

The original date set by the Second Circuit for oral argument on Malek's appeal was May 17, 2010. The date has since been postponed until a date no earlier than August 2, 2010, and as of the date of this report, the Receiver has had no further communication from the Second Circuit as to scheduling for the oral argument. The Receiver anticipates that oral argument will take place at some point during the fall of 2010, and that the Second Circuit will decide the appeal in due course thereafter.

III. ESTATE MANAGEMENT OPERATIONS

A. Management of Remaining Real Estate Properties

1. U.S. Real Estate Operations

As directed by the Court, the Receiver took control of all of the real estate assets of the Wextrust Entities and Affiliates, which now consist primarily of the WEP commercial properties. In the 180 days ending July 1, 2010, the Receiver has collected approximately \$7.9 million in

rent. As discussed in Section I.A above, the Receiver has renewed thirteen leases and negotiated nine new leases on properties during this period.

The Receiver also continues to manage development and construction work on the Dean Street property, a residential condominium in the Boerum Hill neighborhood in Brooklyn, New York. The Dean Street property construction is approximately 85% complete. The building is now fully enclosed, the exterior brick work, custom windows, and custom wood paneling have been installed, and the final surface finishes and appliances have been selected. Finally, a dispute with the elevator manufacturer has been resolved, and the final installation of the elevator system is scheduled to begin shortly.

Since the prior interim report, all liens have successfully been removed from the Dean Street property, allowing project funding to resume. A slight delay on a pending loan extension was caused by a recent takeover of the project's lender, United Commercial Bank, by East West Bank. However, the loan extension has now been approved and substantial completion is anticipated in approximately 90 days.

Upon the receipt of final approval from the New York Attorney General's Office, as discussed in the last interim report, and the Court's Order Granting Sale of 47 Dean Units, sales efforts have progressed through Halstead Property. The project managers selected one of the apartments to serve as a model unit and expect to begin showings to prospective buyers soon. A fully constructed website will go live in coordination with the opening of the model unit. Finalization of the sales contracts for two units, with respective offering prices of \$1,460,000 and \$1,550,000, is forthcoming, and another unit has received an offer at its full offering price of \$1,200,000. 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 Wextrust portfolio of high yield loans. As discussed in prior interim reports, there are two high yield loan portfolios. The Wexford High Yield Debt Fund I, LLC (“High Yield I”) now 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.² 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 includes 10 loans for which Wextrust has a combined direct and joint-venture participation interest of approximately \$6 million.³ 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.

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 six months leading up to the

² The Fifth Interim Report indicated that the High Yield I portfolio consisted of 11 loans, with an aggregate exposure in excess of \$5 million. (See Dkt. No. 544 at 14-15.) The difference reported here is attributable to several factors. First, the Receiver sold the property securing the loan to KMM Venture Properties, in which Wextrust had an exposure of \$560,000. Second, the current aggregate participation interest of the High Yield I portfolio does not include several loans where there is no projected recovery. For example, the senior lender (MB Financial) has commenced foreclosure proceedings, with the Receiver’s consent, on the property securing a second-lien loan made to Group West Builders. Because the collateral for this loan is insufficient to satisfy the obligations to the first-lien lender, there is no projected recovery for this loan. Similarly, as indicated in the Fifth Interim Report, a number of other loans (Group West Builders, MEG Crown Point, Laura Lee Properties, and Eli Hadad) have no projected recovery value. Although the Fifth Interim Report indicates no projected recovery for Bedford Place, that loan was made to the same borrowers as the 21 Lizensk loan. The Receiver is currently engaged in settlement discussions with a part-owner of the property at 21 Lizensk, which may also resolve the Bedford Loan exposure. Accordingly, the Bedford Place loan is included in the current participation interest of the High Yield I portfolio.

³ The Fifth Interim Report indicated that the High Yield III portfolio consisted of 15 loans, with an aggregate direct and joint-venture participation interest in excess of \$9 million. The difference reported here is attributable to the fact that the settlement concerning each of the Kingsdale/Breugelmans loans has closed, and those loans are thus no longer part of the High Yield III portfolio. In addition, as indicated in the Fifth Interim Report, the loan made to Ferry Street Partners is not projected to result in a recovery and has thus been removed from the current aggregate participation interest in the High Yield III portfolio. Although the Fifth Interim Report indicates no projected recovery for loans made to Lapahana LLC, Myra Jordan, 56 Walker & Guy Morris, and Fountainside, these loans are being actively managed by HPC and thus remain part of the participation interest in the High Yield III portfolio.

prior interim report, legal fees were cut nearly in half in the past six months, and other expenses were also reduced.

The Receiver has reduced the number of attorneys on the case. Legal fees were cut approximately from \$2.99 million to \$1.03 million for the six month period from February 2010 through July 2010 as compared to the prior six month period (see Table 4 below). Although the Receiver and several associates working on the case moved to a different law firm during this period, no other attorneys at the new firm have worked on this case. During this period, the Receiver also shifted some administrative work from law firm paralegals to lower-cost Wextrust employees. In July, the Receiver approved a change in payroll processing that will result in an anticipated \$25,000 savings on an annual basis.

The Receiver's tax counsel also continues to manage the estate's income tax liabilities and compliance obligations, including coordinating with the Bankruptcy and Insolvency Unit of the Internal Revenue Service ("IRS"), which is responsible for the IRS' interests in this matter, and discussing with the IRS Office of Chief Counsel the obligations of the Wextrust Entities and Affiliates to file returns. The Receiver and his tax counsel will continue to work with the IRS to resolve outstanding tax issues as they arise.

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 \$170 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 May 31, 2010

	Axela (3)	WEP (4)	WDG	Consolidated
Property				
Building / Land	-	163,284,983	6,758,660	170,043,643
Loan Payable on Property	-	130,084,518	5,287,323	135,371,841
Net Book Value (5)	\$ -	\$ 33,200,465	\$ 1,471,337	\$ 34,671,802
Capitalized Costs:				
Tenant Improvements	-	1,542,693	-	1,542,693
Capital Improvements	-	2,437,856	-	2,437,856
Total Capitalized Costs	\$ -	\$ 3,980,549	\$ -	\$ 3,980,549
Net Book Value (5)	\$ -	\$ 37,181,015	\$ 1,471,337	\$ 38,652,352

(1) - Where possible, net book values were obtained from the Standardized Fund Accounting Report ("SFAR") as of May 31, 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 May 31, 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 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) and <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.

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

As of May 31, 2010, the Wextrust Entities and Affiliates had approximately \$13.1 million in cash in approximately 130 U.S. bank accounts. For the six months ending May 31, 2010, total receipts were \$11.4 million against \$9.8 million in expenses authorized by the Receiver to preserve the status quo of the Wextrust enterprise, as shown in Table 2 below. This represents a six percent reduction in management fees and a 15 percent reduction in ordinary

course expenses from the prior six months. The vast majority of those expenses were paid in connection with operating the WEP real estate portfolio, including approximately \$3.7 million in debt service payments; \$1.8 million in ordinary course expenses; and \$0.9 million in capital expenditures, tenant improvements, and leasing commissions.

Table 2: Receipts and Disbursements

Wextrust Capital, LLC, et al.
Consolidated Cash Receipts and Disbursements - Rounded (1) (2)
from 12/01/09 through 05/31/2010

	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)	-	-	8,810,000	-	-	-	8,810,000
Sale of Receivership Assets	-	-	1,090,000 (4)	-	-	-	1,090,000
Construction Draws	-	-	-	-	480,000	-	480,000
Other Receipts	670,000 (5)	-	365,000	-	-	-	1,035,000
TOTAL RECEIPTS	670,000	-	10,265,000	-	480,000	-	11,415,000
DISBURSEMENTS							
Capital Expenditures, Tenant Improvements & Leasing							
Commissions	-	-	870,000	-	430,000	-	1,300,000
Insurance	5,000	-	220,000	-	3,000	-	228,000
Loan Payments	150,000 (6)	-	3,740,000	-	3,000	-	3,893,000
Management Fees	-	-	424,000	-	-	-	424,000
Ordinary Course Expenses	35,000	-	1,810,000	-	10,000	-	1,855,000
Labor Costs	160,000	30,000	490,000	-	30,000	-	710,000 (9)
Professional Expenses - Non-Receiver (7)	2,000	-	12,000	-	3,000	-	17,000
Taxes	40,000 (8)	-	1,320,000	-	10,000	-	1,370,000
Other	-	-	-	-	-	-	-
TOTAL DISBURSEMENTS	392,000	30,000	8,886,000	-	489,000	-	9,797,000
NET CASH GENERATION / (BURN)	278,000	(30,000)	1,379,000	-	(9,000)	-	\$ 1,618,000

(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. This analysis includes Wextrust entities that were not reported in the Standardized Fund Accounting Reports (SFARs) because additional information continues to become available. The analysis does not include certain third party receipts and disbursements reflected in the SFARs.

(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, 2010.

(3) - Approximately \$501,000 was collected, in addition to monthly rent, from tenants for property taxes and insurance.

(4) - Amount represents the proceeds received from the sale of the property owned by West Bearden Holdings, LLC that was completed on December 4, 2009. The Court approved the sale by order entered on November 9, 2009.

(5) - Amount includes the proceeds which were received in conjunction with settlements agreement with FM Global and Broadway Bank.

(6) - Amount represents funds paid to settle a loan with Regions Bank on behalf of Wextrust Equity Partners, LLC.

(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, etc.

(8) - High Yield Debt Fund I is in the process of foreclosing on a parcel of land located in Bethel Park, PA on which delinquent property taxes were owed and subsequent paid to avoid losing the property in a tax certificate sale.

(9) - Labor costs were higher due to the timing of the payments made.

Table 2 also shows a positive cash flow of approximately \$1.6 million for the Wextrust enterprise for the six months ending May 31, 2010, a result that is approximately \$1.1 million

above the projected cash flow of \$490,000 reported in the Sixth Interim Report for this period. This difference is primarily due to proceeds received from the sale of property owned by West Bearden Holdings, LLC as well as settlement agreements with FM Global and Broadway Bank.

Deloitte has also assisted in preparing a cash forecast for Wextrust for three three-month periods: June 1, 2010 through August 31, 2010, September 1, 2010 through November 30, 2010, and December 1, 2010 through February 28, 2011, shown in Table 3. The net cash flow is projected to be positive in each of these quarters, totaling \$1.1 million.

Table 3: Wextrust Cash Forecast

Base Cash Flow Projections for Wextrust Capital, LLC and Affiliates, et al. for the Nine Months Ending February 28, 2011 (1) (2)

	WexTrust Capital, LLC, et al. for the 3 - Months Ending August 31, 2010	WexTrust Capital, LLC, et al. for the 3 - Months Ending November 30, 2010	WexTrust Capital, LLC, et al. for the 3 - Months Ending February 28, 2011	Total
Total Effective Income	4,498,161	4,472,414	4,455,730	13,426,306 (3)
Total Operating Expenses	1,720,883	1,705,751	2,400,292	5,826,926
Net Operating Income	2,777,278	2,766,663	2,055,439	7,599,380
Non Operating Expenses:				
Debt Service - Interest (Including Swap Payments)	1,530,951	1,532,551	1,532,551	4,596,053
Debt Service - Principal	294,444	379,698	379,698	1,053,840 (4)
Capital Expenditures (5)	124,119	103,800	10,000	237,919 (6)
Tenant Improvements & Lease Commissions	77,963	150,000	-	227,963
Reserves	39,779	39,779	39,779	119,336
Other Non-Operating Expenses	83,271	83,372	83,035	249,678
Total Non-Operating Expenses	2,150,527	2,289,200	2,045,062	6,484,789
Net Cash Flow (7)	626,752	477,463	10,376 (8)	1,114,591

(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.1.

(3) - Amount includes approx. \$250,000 in tenant rent receipts from 29 tenants who are assumed to renew their leases.

(4) - The increase in 'Debt Service – Principal' is due to principal amortization commencing on loans that were previously interest-only. Such amortization provisions reflect loan agreement terms previously in place and generally do not reflect a revision in loan terms.

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

(6) - 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.

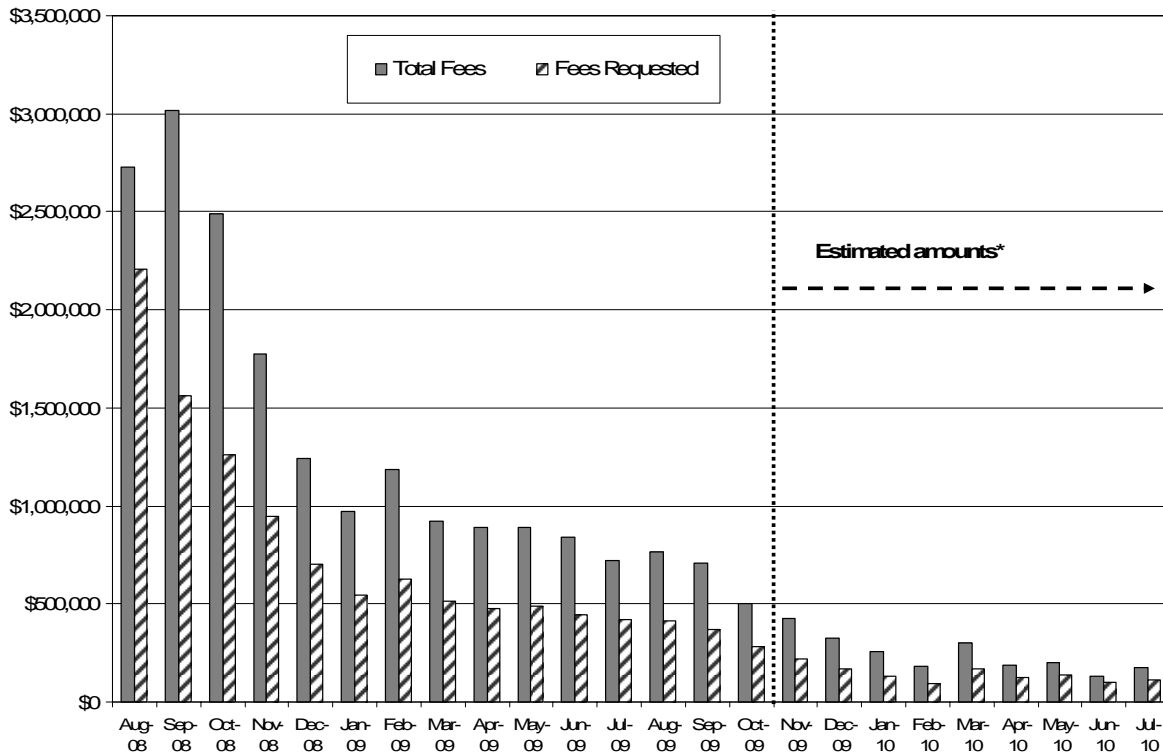
(7) - Does not include Receivership related professional fees.

(8) - The decrease in 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 \$670,000. 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 fees due to the Receiver and receivership counsel, Dewey & LeBoeuf LLP (“D&L”), and since March 2010, Freshfields

Bruckhaus Deringer US LLP (“Freshfields”). As shown in Table 4, fees for the Receiver, D&L, and Freshfields have continued to decline.

Table 4: Administrative Costs



*Bills after November 2009 have not been audited and are adjusted for prior discount and holdback amounts.

During this period, the eighth interim fee application of the Receiver and D&L remained pending. Finally, for all professionals, Wextrust has incurred and paid \$13,831,221.68 in professional fees and expenses as of July 31, 2010. Incurred but not yet paid professional fees and expenses for all professional were an estimated \$5.6 million as of June 30, 2010.

V. INVESTIGATIONS AND LITIGATION

A. Claims Against Third Parties

The Receiver has made progress in his efforts to investigate potential claims against third parties in the United States, and continues to coordinate with the Securities and Exchange Commission (“SEC”) and United States Attorney’s Office to ensure that recoveries are pursued

in the most efficient and cost-effective manner.

The Receiver's current efforts are focused on three former providers of professional services to Wextrust. The Receiver has made demands on all three professional services firms, taken extensive discovery, held depositions with high-level employees, and engaged in several discussions to attempt to resolve potential claims. The Receiver also participated in a voluntary, non-binding mediation with one professional firm and its insurance carriers. The professional firm agreed to pay for the mediation, which commenced in April 2010. To date, the mediation has failed to produce a settlement. The Receiver will continue to pursue these claims, in consultation with the SEC, and will apprise the Court and interested parties of his progress in these important endeavors.

The Receiver has also concluded his efforts in pursuing claims against charitable organizations that received funds diverted from various Wextrust investments, which have yielded approximately \$46,000 in recoveries. In pursuing these claims, the Receiver weighed several considerations, such as the cost involved in pursuing the claims, the available assets and financial solvency of the charities, and the significant ties many Wextrust victims have with the organizations.

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. Most recently, on June 11, 2010, counsel for the Receiver appeared in state court in Norfolk, Virginia to oppose the foreclosure of a mechanic's lien on a receivership real estate asset. As a result of the Receiver's efforts, the case was dismissed without prejudice.

C. Appellate Litigation

Two of the five pending appeals before the Second Circuit have been resolved successfully since the filing of the Receiver's last interim report on February 11, 2010.

The first appeal involved a joint motion by the International Ad-Hoc Committee of Wextrust Creditors and the International Consortium of Wextrust Creditors (collectively, the "Committees") to modify the Receiver Order so that they could file involuntary bankruptcy petitions against certain Wextrust Affiliates. The Second Circuit heard oral argument from the Receiver, the SEC, and the Committees on November 16, 2009, and issued its opinion on June 15, 2010. In that opinion, reported at *SEC v. Byers*, 609 F.3d 87 (2d Cir. 2010), the Second Circuit affirmed Judge Chin's earlier decision, finding that district courts have authority to prevent non-parties such as the Committees from filing involuntary bankruptcy petitions in certain situations. This ruling prevented the piecemeal movement of certain valuable Wextrust assets into bankruptcy, which would have increased administrative costs and decreased available recoveries for Wextrust victims.

The second appeal, filed by Wextrust unsecured creditor Broadway Bank ("Broadway") on December 30, 2009, challenged a series of orders relating to Broadway's creditor claim against the receivership estate. The dispute between the Receiver and Broadway related to the nature, extent, and ownership of a participation interest in a loan made by Wextrust Affiliate High Yield I in May 2007. The district court issued an opinion dated December 3, 2009, ruling in favor of the Receiver. Specifically, the Court found that Broadway no longer held any interest in the disputed asset and simply possessed a general unsecured claim against the receivership estate, payable in the same *pro rata* manner as all other general unsecured creditors under the Distribution Order. Broadway appealed the Court's decision.

The parties subsequently agreed to a settlement, which was approved by the Court on April 12, 2010. The settlement (1) resolved and terminated Broadway's creditor claim against the receivership in the amount of \$5,125,000; (2) provided for an immediate cash payment by Broadway to the receivership in the amount of \$650,000, with a potential future cash payment to the receivership of up to \$150,000; and (3) terminated Broadway's pending appeal. This settlement was beneficial to the receivership estate as it monetized assets that would otherwise have remained illiquid and reduces transaction costs and administrative burdens for the receivership.

There are three additional cases on appeal that are awaiting resolution. The first appeal involves Wextrust commodity fund investor Martin Malek's challenge to the Distribution Order. As discussed in Section II, the Second Circuit has not yet set a date for oral argument, and thus resolution of this appeal is not expected for several months. Until that time, no distribution payments may be made to victims. The Receiver has urged the Second Circuit to expedite and deny Malek's appeal to avoid further losses and delay to Wextrust victims. The Receiver is prepared to distribute funds to Wextrust victims immediately upon receiving a favorable decision from the Second Circuit.

The second, related appeal involves a motion to intervene filed by a group of eight Wextrust investors who sought to have the Court 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 Distribution Order, which involves similar factual issues.

The third pending appeal was filed by Wextrust investor Vivian Orgel on December 15, 2009, and challenges the Court's resolution of the nature and amount of her specific investor

claim under the plan of distribution. Ms. Orgel filed her opening brief on April 22, 2010, and the Receiver will file his responsive brief on August 16, 2010. No time table has been set for oral argument.

D. Developments in the Criminal Cases Against Byers and Shereshevsky

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 United States Government. The plea agreement has not yet been made public, but at the April 13 plea hearing, Byers pled guilty to Counts One and Three of his criminal indictment. In entering a plea, Byers has acknowledged his role in the Wextrust fraud. Count One charged him with conspiracy to commit securities fraud, mail fraud and wire fraud, in violation of 18 U.S.C. § 371. It carries a maximum term of imprisonment of 5 years. Count Three charged him with securities fraud in violation of 18 U.S.C. §§ 78j(b) & 78ff. It carries a maximum term of imprisonment of 20 years.

Judge Chin will determine the exact sentence that Byers will receive at a sentencing hearing currently scheduled for October 27, 2010. The hearing was originally scheduled for September 13, 2010, but has since been postponed. Although Byers has reached a plea agreement with the Government, Judge Chin has discretion to impose any sentence up to the statutory maximum of 25 years in prison.

Victims are encouraged to attend and be heard at Byers' sentencing hearing. The Receiver will order a transcript of the hearing and post it to the receivership website for the benefit of any interested parties who are unable to attend in person. The Receiver encourages interested parties to continue monitoring the receivership website for additional information regarding Byers' sentencing and the pending civil and criminal cases against Defendant Shereshevsky, who remains incarcerated pending trial. Shereshevsky's criminal trial is currently scheduled for October 18, 2010.

VI. CONCLUSION

The majority of the work mandated by the Court under the Receiver Order has been completed and, in the coming months, the Receiver will focus on managing the estate, liquidating the U.S. real estate assets, seizing and repatriating assets from Africa, responding to the various appeals, and making the first interim distribution. 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
August 11, 2010

Respectfully submitted,

Timothy J. Coleman
Receiver for Wextrust Entities

s/ John K. Warren
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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 **August 11, 2010** I directed the service of a true and correct copy of the foregoing **SEVENTH INTERIM REPORT OF RECEIVER** upon the following individuals in the manner indicated below:

Via First Class Mail

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