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

<u>SIXTH INTERIM REPORT OF RECEIVER</u>

TIMOTHY J. COLEMAN
Receiver for Wextrust Entities

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February 11, 2010

Attorneys for Receiver

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Timothy J. Coleman, Receiver for the Wextrust Entities ("Receiver"), respectfully submits this Sixth 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").

As discussed in previous reports, the Receiver has completed many of the tasks directed by the Court in the Receiver Order, including taking steps to preserve the *status quo*, making determinations about the extent of commingling among the Wextrust Entities and the entities they control or in which they have an ownership interest ("Wextrust Entities and Affiliates"), proposing a Plan of Distribution (Dkt. No. 243),[1] and completing the claims verification process outlined in the Plan of Distribution. Having completed these tasks, the Receiver has prepared to make the first interim distribution to the Wextrust victims once litigation over the Plan of Distribution is resolved. The Receiver has also continued to manage and market the Wextrust real estate portfolio. This Sixth Interim Report describes the Receiver's efforts over the past three months. Because of the lower level of activity, the Receiver will file reports every six months going forward unless ordered by the Court to do so more frequently.

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 describes 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.

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[1] The Receiver's proposed Plan of Distribution was approved by the Court on July 23, 2009 ("Distribution Order") (Dkt. No. 428).

I. LIQUIDATION OF WEXTRUST ASSETS

A. Liquidation of U.S. Assets

Pursuant to the Distribution Order, the Receiver has continued the process of liquidating assets of the receivership estate. As discussed in previous interim reports, Wextrust's United States assets are now comprised primarily of the commercial properties owned and operated by Wextrust Equity Partners ("WEP"). Over the past three months, the Receiver has continued to market the properties in conjunction with his real estate advisor, The Hilco Organization ("Hilco").[2] As of the beginning of February, approximately 533 inquiries have been received, and approximately 310 confidentiality agreements have been signed.

As discussed in previous interim reports, the Receiver has also taken targeted steps to increase the market value and saleability of the properties, including certain improvements, lease renewals, and new leases. Over the past three months, the Receiver has renewed nine leases and negotiated four new leases on properties, for a total of approximately 128,000 square feet of leasable space. The Receiver estimates these leases will result in approximately $2.7 million in revenue over the life of the leases, thereby enhancing the value of the properties and the expected proceeds of the liquidation. In addition, the Receiver has completed the sale of one property and agreed to terms for the sale of another property. On November 10, 2009, the Receiver completed the sale of 116 N. York Road, an office/retail space located in Elmhurst, Illinois, for a purchase price of $3.15 million. The Receiver has also agreed to terms to sell the Hammond Industrial property in Louisiana for approximately $25.7 million. The agreement allows the receiver to continue to market the property for a period of time to obtain higher bids. If no higher bids are

[2] The Hilco website is http://www.hilcorealestate.com/property/ properties.asp?client_id=226. The Receiver's website also contains a link to the Hilco website.

received after the 75-day period, the Receiver will file a motion with the Court to confirm the sale.

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

The Receiver has completed the claims verification process, which was set out in the Receiver's Plan of Distribution and approved by the Court on July 23, 2009. (*See* Dkt. No. 428 at 40-41.) Claim statements were mailed to investors in May 2009, investors were given the opportunity to dispute their claim statements, and the Receiver mailed final determination letters to investors in early September 2009. The Receiver also posted a spreadsheet of all unpaid, unsecured claims of creditors on the receivership website in July 2009, worked with the creditors to resolve disputed claims, and sent final determinations to the creditors in mid-August 2009. All unresolved investor and creditor claims were submitted to the Court at the September 24, 2009 Claims Hearing and were resolved by the Court in a December 3, 2009 opinion ("Claims Opinion") (Dkt. No. 579).[3]

On December 21, 2009, the Court granted the Receiver's motion to commence a first interim distribution of receivership assets in specific amounts to qualified Wextrust victims.

[3] *See SEC v. Byers*, No. 08-cv-7104, 2009 U.S. Dist. LEXIS 112494 (S.D.N.Y. Dec. 3, 2009).

(Dkt. No. 598.) However, Wextrust investor Martin Malek has obtained a stay of the distribution from the United States Court of Appeals for the Second Circuit ("Second Circuit") pending the outcome of his appeal of the Distribution Order.[4] Accordingly, pursuant to court order, no distribution payments may be made to victims until after the Second Circuit issues its ruling on Malek's appeal. Oral argument for that appeal had been tentatively scheduled for no earlier than March 15, 2010. In its February 4 Order, however, the Second Circuit indicated that the oral argument will be expedited on a schedule to be set by the clerk of the court.

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 90 days ending January 1, 2010, the Receiver has collected approximately $5.2 million in rent. As discussed in Section I.A above, the Receiver has renewed nine leases and negotiated four new leases on properties during this period.

The Receiver also continues to manage development and construction work on the 47 Dean Street project, a residential condominium in the Boerum Hill neighborhood in Brooklyn, New York. As of the last interim report, this project was anticipated to be substantially complete in December 2009. Unforeseen events, however, have delayed the project's progress. Most significantly, the general contractor, Erin Construction, abandoned the project in November 2009 and filed a lien against the property, which, in turn, halted the project's funding. Based on a motion filed by the Receiver, the Court found this lien void under

[4] Malek first filed a motion to stay with this Court, which was denied on December 3, 2009. Malek appealed to the Second Circuit and, on February 4, 2010, the Second Circuit granted Malek's request for a stay.

the Receiver Order. Three other liens were also placed on the property and, through the efforts of the Receiver, his advisors, and the 47 Dean Street partners, these issues have been resolved. Upon the removal of the last lien of record, which is expected to occur shortly, project funding will resume. Erin Construction has been replaced as the general contractor, and the project is expected to be substantially complete within the next three to four months.

The project also recently received final approved by the New York Attorney General's Office. With that approval, marketing materials will be printed within the next week and marketing will begin. More than 400 individuals have expressed interest in the project.

2. <u>High Yield Loans</u>

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.[5] 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

[5] 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 interst of the High Yield I portfolio.

participation interest of approximately $6 million.[6] The loans in those portfolios are secured by a variety of commercial and residential real estate assets.

In the last three months, the Receiver has continued his efforts to obtain value from the high yield loan portfolios. In November 2009, for example, Wextrust High Yield Debt Fund I, LLC sold a single-story industrial/warehouse building in Dallas, Texas that it had previously foreclosed upon.[7] Despite the challenges in the commercial real estate market, the purchase price of $400,000 resulted in a net recovery to the receivership estate of approximately $310,000 – an amount commensurate with the projected recovery detailed in the Fifth Interim Report. (*See* Dkt. 544 at 15.)

B. <u>Other Business and Financial Management</u>

As discussed in the Fourth Interim Report, the Receiver has continued to manage the business and financial aspects of the Wextrust enterprise, including taking additional expense reduction actions. During the last three months, for example, the Receiver has reduced the staffing level of his financial advisor, Deloitte Financial Advisory Services LLP ("Deloitte"), which will result in lower administrative fees in the months to come.

The Receiver's tax counsel also continue 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

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[6] 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.

[7] The property served as collateral for a loan in the principal amount of $560,000 made in July 2006 by High Yield I to KMM Ventures, Inc. The borrower subsequently defaulted and High Yield I commenced foreclosure proceedings, which resulted in a judgment in October 2008.

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 the aggregation of financial information from the financial systems and books and records of 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 accepted accounting standards. As shown in Table 1, the total book value of the remaining Wextrust real estate portfolio is approximately $180 million.[8] Those values are based upon the accounting records and other information maintained by Wextrust and do not represent current market value. Moreover, as discussed in previous reports, these properties were purchased at the height of the commercial real estate market and are heavily leveraged. The Receiver contemplates that most of the proceeds of the sales of these properties will be used to repay secured debt.

[8]The Fifth Interim Report indicates a book value of approximately $184 million. The difference in that book value and the book value shown in Table 1 is attributable primarily to the sale of the 116 N. York property.

Table 1: Book Value of Wextrust Real Estate Assets

Wextrust Capital, LLC, et al.
Net Book Value (1) (2)
as of November 30, 2009

	Axela (3)	WEP (4)	WDG	Consolidated
Property				
Building / Land	-	173,820,056	7,041,048	180,861,105
Loan Payable on Property	-	139,061,950	5,763,320	144,825,270
Net Book Value (5)	$ -	$ 34,758,106	$ 1,277,728	$ 36,035,835
Capitalized Costs:				
Tenant Improvements	-	2,137,783	-	2,137,783
Capital Improvements	-	2,188,723	-	2,188,723
Total Capitalized Costs	$ -	$ 4,326,506	$ -	$ 4,326,506
Net Book Value (5)	**$ -**	**$ 39,084,612**	**$ 1,277,728**	**$ 40,362,340**

(1) - Where possible, net book values were obtained from the SFAR as of November 30, 2009 although the amounts noted here will not always agree with amounts reported on the SFAR's. 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 where the relinquishment process was initiated or had been relinquished as of November 30, 2009.
(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 the sale of the property owned by 116 N. York Road, LLC that was completed on November 12, 2009. The Court approved the sale by order entered on November 9, 2009.
(5) - There may be other payable amounts due upon sale of property, including property taxes, etc.

As of November 30, 2009, Wextrust Entities and Affiliates had approximately $14.2 million in cash in approximately 140 U.S. bank accounts.[9] For the three months ending November 30, 2009, the Receiver authorized payment of approximately $4.8 million in expenses necessary 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 $2.1 million in debt service payments; $1 million in ordinary course expenses; and $420,000 in capital expenditures, tenant improvements, and leasing commissions. For the same period, WEP had tenant receipts of approximately $4.7 million, which included tenant reimbursement for insurance and taxes on several of the WEP properties.

[9] The cash balance will not agree with the amount reported on the SFARs due primarily to the exclusion in the SFARs of accounts with escrowed monies that cannot be transferred at this time, accounts managed by a third party property manager, accounts subject to a dispute, or accounts located outside the United States.

Table 2: Receipts and Disbursements

Wextrust Capital, LLC, et al.
Consolidated Cash Receipts and Disbursements - Rounded (1) (2)
from 09/01/09 through 11/30/2009

RECEIPTS	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
Tenant Receipts **(3)**	-		-	4,690,000		-	-	-		4,690,000
Sale of Receivership Assets	320,000	**(4)**	-	240,000	**(5)**	-	-	-		560,000
Construction Draws	-		-	-		-	230,000	-		230,000
Other Receipts	190,000	**(6)**	-	200,000		-	-	10,000		400,000
TOTAL RECEIPTS	**510,000**		**-**	**5,130,000**		**-**	**230,000**	**10,000**		**5,880,000**
DISBURSEMENTS										
Capital Expenditures, Tenant Improvements & Leasing Commissions	-		-	420,000		-	240,000	110,000	**(7)**	770,000
Insurance	-		-	50,000		-	-	-		50,000
Loan Payments	-		-	2,130,000		-	10,000	-		2,140,000
Management Fees	-		-	210,000		-	-	-		210,000
Ordinary Course Expenses	10,000		-	1,040,000		-	(10,000)	-		1,040,000
Labor Costs	-		50,000	170,000		-	30,000	-		250,000
Professional Expenses - Non-Receiver **(8)**	-		40,000	-		-	-	-		40,000
Taxes	-		-	280,000		-	10,000	-		290,000
Other	-		-	-		-	-	-		-
TOTAL DISBURSEMENTS	**10,000**		**90,000**	**4,300,000**		**-**	**280,000**	**110,000**		**4,790,000**
NET CASH GENERATION / (BURN)	**500,000**		**(90,000)**	**830,000**		**-**	**(50,000)**	**(100,000)**		**$ 1,090,000**

(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 November 30, 2009.
(3) - Approximately $166,000 was collected, in addition to monthly rent, from tenants for property taxes and insurance.
(4) - Amount includes the high-yield fund's portion of proceeds from the sale of foreclosed property located in Dallas, TX.
(5) - Amount represents the proceeds received from the sale of the property owned by 116 N. York Road, LLC that was completed on November 12, 2009 and the settlement of cash reserves held by the lender. The Court approved the sale by order entered on November 9, 2009.
(6) - Amount includes the proceeds which were received in conjunction with the 625 W. Division Street settlement agreement.
(7) - Amount represents the settlement on a claim filed by Universal Restoration Services, Inc. ("Universal") that was approved by the Court on October 22, 2009. Universal performed emergency water mitigation, mold remediation, and construction repairs related to water damage at one of the hotel properties. Wextrust had received insurance proceeds in June 2008, July 2008, and April 2009 in connection with the work performed by Universal.
(8) - Receivership professional expenses are not included in this analysis. The payment of Professional Fees - Non-Receiver represent fees relating to the marketing of properties for sale.

Table 2 also shows a positive cash flow of approximately $1.1 million for the Wextrust enterprise for the three months ending November 30, 2009, a result that is approximately $740,000 above the projected cash flow of $363,000 reported in the Fifth Interim Report for this period. (*See* Dkt. No. 544 at 21). This difference is primarily due to proceeds received in conjunction with (1) the sale of the 116 N. York Road property; (2) the foreclosure and sale of a High Yield property in Dallas, Texas; and (3) the 625 W. Division Street settlement. In addition, the difference was impacted by timing of receipts and disbursements for the WEP properties.

Deloitte has also assisted Wextrust in preparing a cash forecast for two three-month periods: December 1, 2009 through February 28, 2010 and March 1, 2010 through May 31, 2010, shown in Table 3. The cash flow for the period ending February 28, 2010 is projected to be negative. The approximately $205,000 negative cash flow is attributable primarily to the February 2010 annual payment of property taxes on the WEP properties, which total approximately $750,000. The cash forecast for this period is approximately $164,000 above that projected in the Fifth Interim Report and is attributable mainly to reduced property taxes resulting from the sale of the West Bearden property in December 2009. The cash forecast anticipates that Wextrust will generate positive cash flow of approximately $695,000 for the three-month period ending May 31, 2010. The Wextrust enterprise is projected to generate a positive cashflow of approximately $490,000 for the two three-month periods.

Table 3: Wextrust Cash Forecast

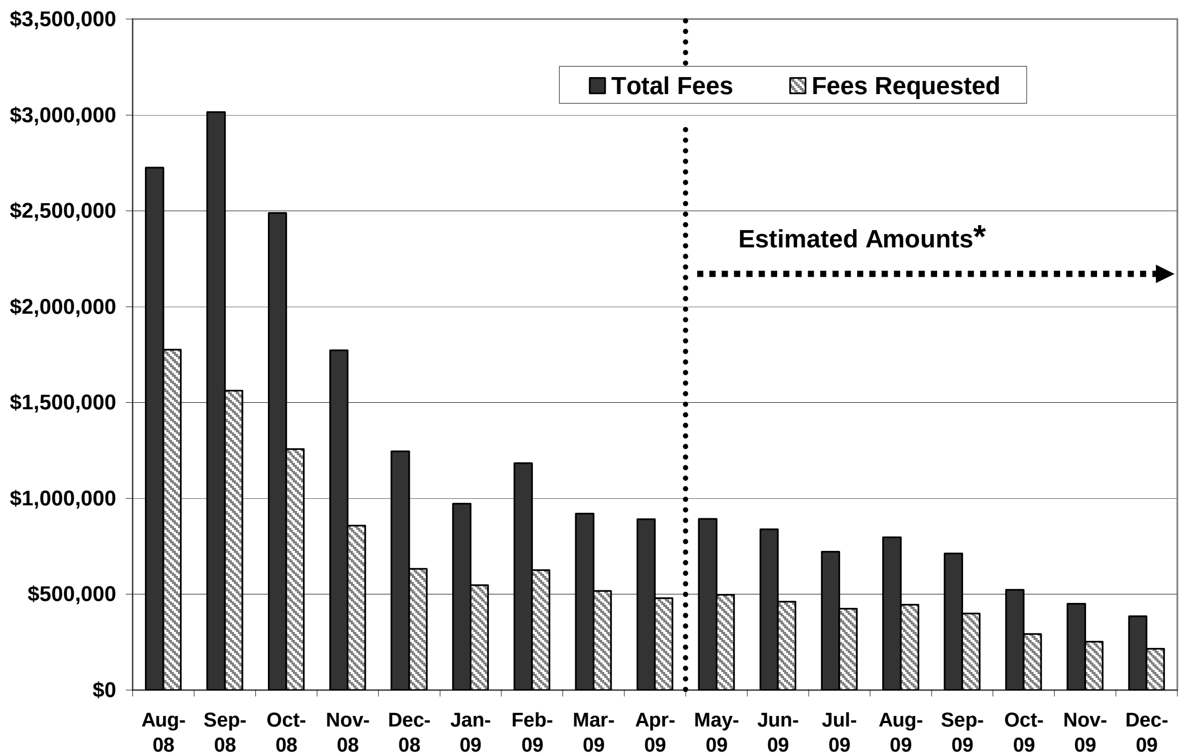
Base Cash Flow Projections for Wextrust Capital, LLC and Affiliates, et al. for the Six Months Ending May 31, 2010 (1) (2)

	WexTrust Capital, LLC, et al. for the 3 - Months Ending February 28, 2010		WexTrust Capital, LLC, et al. for the 3 - Months Ending May 31, 2010		Total
Total Effective Income	4,837,855		4,629,246		9,467,101
Total Operating Expenses	2,634,206		1,791,561		4,425,767
Net Operating Income	2,203,649		2,837,685		5,041,334
Non Operating Expenses:					
Debt Service - Interest (Including Swap Payments)	1,676,986		1,612,404		3,289,390
Debt Service - Principal	286,991		255,444		542,435
Capital Expenditures **(3)**	131,304		2,000	**(4)**	133,304
Tenant Improvements & Lease Commissions	147,900		150,000		297,900
Reserves	44,666		39,779		84,445
Other Non-Operating Expenses	120,342		83,428		203,770
Total Non-Operating Expenses	2,408,189		2,143,055		4,551,244
Net Cash Flow **(5)**	(204,540)	**(6)**	694,630		490,090

(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) - 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, Capital Expenditures are not projected unless there is a known, necessary repair or replacement imminent.
(5) - Does not include Receivership related professional fees.
(6) - The negative net cash flow projected for the 3 months ended February 28, 2010 is mainly attributable to the projected payment of 2009 property taxes in February of 2010 totaling approximately $750,000. This payment is funded in part by the monthly and annual collections 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"). As shown in Table 4, fees for the Receiver and D&L have continued to decline.

Table 4: Administrative Costs



* May to July estimates are based on audited bills. August to December estimates are based on unaudited bills adjusted for prior discount and holdback amounts.

On November 16, 2009, the Court approved the sixth interim fee application of the Receiver and D&L and awarded them $20,350 and $526,135, respectively, for the January 2009 period.[10] On November 13, 2009, the Receiver and D&L filed their seventh interim fee application, seeking $54,638 in interim fees for the Receiver and $1,567,529 in interim fees for

[10] The Court also awarded expense reimbursement of $10,325 for January 2009.

D&L for the February 2009-April 2009 period.[11] Total reductions and holdbacks amounted to $1,372,976 for this period. On December 23, 2009, the Court approved the seventh interim fee application, awarding the Receiver and D&L their requested fees.

V. INVESTIGATIONS AND LITIGATION

A. Claims Against Third Parties

The Receiver is continuing to investigate potential claims against third parties in the United States, including claims against former providers of professional services to Wextrust and claims against charities that received funds diverted from various Wextrust investments. The Receiver sent three demand letters to former Wextrust advisors and has been meeting with these parties to discuss resolving potential claims. The Receiver has also made formal written demands to 28 charities that received funds diverted from various Wextrust investments. To date, the Receiver has settled with three organizations for a gross recovery of approximately $40,000. The Receiver is also in active negotiations with the representatives or attorneys for 12 additional organizations that received the majority (over 70 percent) of the improper contributions. The Receiver is coordinating with the Securities and Exchange Commission ("SEC") and the United States Attorney's Office to ensure that recoveries against third parties are pursued in the most efficient and cost-effective manner.

The Receiver and the court-appointed liquidators in South Africa have also identified several potential claims that may be brought against third parties in Africa. After these claims are evaluated, the Receiver, in consultation with the SEC, will make a determination of whether such claims should be pursued, and will instruct the liquidators and local counsel accordingly. The Receiver is also working directly with senior advocates at the National Prosecuting Authority of South Africa, and with agents of the South African Police Service, Serious

[11] D&L also sought expense reimbursement of $83,912 for this three month period.

Economic Offences Unit, in connection with their ongoing investigation of the Wextrust fraud in South Africa. Should any assets be recovered by the authorities through forfeiture or other means, the Receiver will take steps to repatriate such assets and distribute them to victims.

B. Ancillary Litigation

As discussed in prior interim reports, Broadway Bank has filed an action in New Jersey to determine and enforce its rights, claims, and interests (if any) against HPC and Wex/HPC with respect to a property located in Atlantic City. HPC and Wex/HPC recently filed a motion for summary judgment based on this Court's Claims Opinion, discussed in Section II, which held that Broadway Bank does not possess any participation or property interest in the Atlantic City property.[12] The parties are in the process of briefing the issues on summary judgment.

C. Appellate Litigation

The Receiver is currently involved in five separate appeals before the Second Circuit that were filed by various parties in interest to the case. The first appeal involves 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 bankruptcy petitions could be filed against the receivership estate. The Receiver and the SEC are both opposing the Committees' appeal. The Second Circuit heard oral argument from all parties on November 16, 2009, but has not yet issued a decision.

The second appeal involves a motion to intervene filed by a group of eight Wextrust investors (collectively, the "Commodity Fund Investors"), who sought to have the Court declare that the Wextrust Commodity Funds were improperly included in the receivership estate.

[12] The Court held that Broadway Bank, by virtue of selling such participation interest to Wextrust High Yield Debt Fund III, held a general, unsecured claim against the receivership estate. Broadway Bank's claim, in the principal amount of $5,125,000, has been scheduled by the Receiver and will be paid, on a pro rata basis, along with all of the other unsecured claims and investor interests asserted and allowed against the receivership case.

Although briefing for the appeal was completed on June 30, 2009, and the Second Circuit originally scheduled oral argument for November 16, 2009, the appeal was stayed on November 13, 2009 pending the outcome of Wextrust investor Martin Malek's appeal of the Court's Distribution Order.

The third appeal involves Wextrust investor Martin Malek's challenge to the Distribution Order. Three other interested parties – TCF National Bank, Space Park AIM and ISSB Partnerships, and Regions Bank – also participated initially in this appeal, but have since withdrawn their appeals and have stated that they will not continue to challenge the Distribution Order. (*See* Dkt. Nos. 526, 564, 587.) Briefing for the appeal was completed on January 15, 2010. Although the date for oral argument is not yet set, the Second Circuit has recently indicated that the appeal will be expedited for oral argument.[13]

The fourth appeal was filed by Wextrust investor Vivian Orgel on December 15, 2009 and challenges the Court's resolution of her investor claim in the Court's Claims Opinion.[14] Orgel participated in the September 24, 2009 claims hearing, where she requested that the Court order the Receiver to conduct an individual tracing analysis of her funds and to award her 100% recovery on her claim based on the timing of her investment. These requests were denied by the Court at the hearing and in the Claims Opinion, and Orgel is now representing herself in an appeal of the Court's decision. No briefing schedule has been set as of the date of this report.

The fifth case was filed by Wextrust unsecured creditor Broadway Bank ("Broadway") on December 30, 2009, and challenges a series of orders issued by the Court relating to Broadway's claim against the receivership estate. Broadway originally filed an appeal on

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[13] As discussed in Section II, the hearing date for Malek's appeal was originally set for no earlier than March 15, 2010. On February 4, 2010, however, the Second Circuit granted Malek's motion to stay the distribution of the estate to Wextrust victims and indicated in that Order that the appeal will be expedited for oral argument.
[14] *See SEC v. Byers*, No. 08-cv-7104, 2009 U.S. Dist. LEXIS 112494 (S.D.N.Y. Dec. 3, 2009). As discussed in Section II, the Court's Claims Opinion resolved all outstanding disputes of creditors and investors.

September 21, 2009, but subsequently withdrew the appeal on November 9, 2009 without prejudice to its rights to re-file at a later date. Broadway's current appeal focuses on the Court's determination that it held a general unsecured claim against High Yield I (the receivership estate) rather than a property or participation interest in the Boardwalk & Lincoln property in Atlantic City, New Jersey. No briefing schedule has been set as of the date of this filing, although a pre-argument conference has been scheduled for March 11, 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: New York, New York,
February 11, 2010

Respectfully submitted,

Timothy J. Coleman
Receiver for Wextrust Entities

s/ Mark S. Radke_______________
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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 **February 11, 2010** I directed the service of a true and correct copy of the foregoing **SIXTH INTERIM REPORT OF RECEIVER** upon the following individuals in the manner indicated below:

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