

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SECURITIES AND EXCHANGE)
COMMISSION,)

Plaintiff,)

v.)

BILLY WAYNE McCLINTOCK)
individually, and dba MSC)
HOLDINGS, DIANNE)
ALEXANDER aka LINDA)
DIANNE ALEXANDER,)

Defendants,)

MSC HOLDINGS USA, LLC,)
MSC HOLDINGS, INC., MSC GA)
HOLDINGS, LLC,)

Relief Defendants.)

CIVIL ACTION FILE

NO. 1:12-CV-04028-SCJ

RECEIVER’S TWELFTH INTERIM REPORT

Jason L. Nohr, the Receiver appointed by this Court by Orders dated February 11, 2013 and June 9, 2014, files his Twelfth Interim Report to describe his investigation and detail his progress towards completing the tasks assigned by the Court through December 31, 2016.

The Receiver continues to be actively engaged in activities intended to identify and recover assets belonging to the Defendants and to quantify the losses incurred by the individuals who were victims of the Defendants' Ponzi scheme.

In a June 14, 2013 Report and Recommendation to the Court, the Receiver described the results of his preliminary investigation indicating the existence of potential claims against the Defendants and third parties. The Receiver recommended proceeding with these claims because they appear to be viable and will likely increase the assets of the Receivership Estate. The SEC agreed with the Receiver's Report and Recommendation, and the Court entered an Order allowing the Receiver to proceed with the investigation and pursuit of third party claims on September 11, 2013.

Since that time, the Receiver has pursued recovery actions against third parties to recover their receipt of false profits and referral fees from the illicit Ponzi scheme operation for which the MSC Holdings entities were used prior to the SEC's action and the Receiver's appointment. The Receiver has successfully resolved recovery claims and lawsuits before the Receivership Court and, in so doing, has recovered hundreds of thousands of dollars for the Receivership Estate. The Receiver is currently engaged in prosecuting the remaining clawback actions and in initiating collections actions in state and federal courts around the country

for judgments obtained in those cases. The Receiver is also engaged in liquidating assets and real property obtained from the Receivership Defendants.

Currently pending before the Court is the Receiver's Motion to Approve an Initial, Interim Plan of Distribution [Doc. No. 118], which was filed on December 9, 2016. The proposed interim Plan of Distribution, if approved, will authorize the Receiver to distribute a large portion of the amounts recovered through pursuit of these claims and actions through a court approved administrative claims process to defrauded investors with approved and authorized claims. The proposed Plan of Distribution provides a claim determination and classification based upon the Rising Tide method with respect to each Claimant and identifies the specific amount each investor will receive subject to Court approval and consideration of any objections.

As these actions and collection efforts continue, the Receiver is mindful of the need to balance the interests of identifying and pursuing viable third party actions against the need to preserve the assets of the Receivership Estate. The Receiver continues to be judicious with the expenditure of time and resources on this case and has written off substantial amounts of hourly time to reduce his fees in this matter.

Procedural and Factual Background

On November 19, 2012, the U.S. Securities and Exchange Commission (“SEC”) filed an application for a temporary restraining order and other equitable relief, alleging that Defendants Billy Wayne McClintock, individually and doing business as MSC Holdings (“McClintock”), and Dianne Alexander a/k/a Linda Dianne Alexander (“Alexander”) were operating a type of Ponzi scheme known as a “prime bank fraud” from 2002 to the present using entities called MSC Holdings, Inc., MSC GA Holdings, LLC, and MSC Holdings USA, LLC (collectively “relief defendants”).

The SEC alleged that Defendants McClintock and Alexander raised over \$15 million from over 200 investors in more than 20 states, including Georgia, by telling investors that their money would be placed with a clandestine overseas entity that McClintock and Alexander refer to only as “the Trust.” McClintock and Alexander misrepresented that the Trust would generate a return of at least 38 percent.

On the same day, November 19, 2012, this Court granted the SEC application and entered an Order freezing assets of the Defendants, prohibiting the destruction of documents, and granting additional relief.

On February 11, 2013, the Court entered an Order appointing Jason L. Nohr as Receiver (the “Order of Appointment”). The Order of Appointment grants the Receiver access to assets, financial and bank accounts, and real property of the Defendants, the directive to recover, conserve, and expand the assets of the Receivership Estate, and, among other things, the authority to investigate and prosecute claims of the Receivership Estate against third parties.

The SEC’s application for a temporary restraining order and other equitable relief determined that dozens of people received over four million dollars in so-called “referral fees” as compensation for introducing new investors to the Defendants’ scam, with such “fees” representing the ill-gotten gains that must be returned and distributed to defrauded investors.

On November 28 and 29, 2012, Defendants McClintock and Alexander (respectively) consented to the entry of permanent injunctions against them and agreed that the amount of disgorgement and civil penalties they would pay would be determined at a later date.

Defendant Alexander subsequently moved to partially lift the asset freeze on December 11, 2012 with respect to her monthly social security income and amounts allegedly necessary for the payment of attorneys’ fees. On February 14,

2013, the Court entered an Order modifying the asset freeze to allow Defendant Alexander to collect her monthly social security benefits.

The Receiver's Activities

Pursuant to the Court's Order of Appointment, the Receiver was to file an interim report within sixty (60) days addressing the Receiver's investigation to date, including identifying the assets and liabilities of the Receivership Defendants, identifying assets held by others that may be recovered by the Receiver, and an initial appraisal of the prospects for third party claims against those in possession of assets of the Receivership Estate, including but not limited to those receiving referral commissions and claims against investors who received more from the illicit scheme than they invested.

On April 15, 2013, the Receiver filed his First Interim Report pursuant to the Court's Order of Appointment. Since that time, the Receiver and his staff have been diligently engaged in completing the tasks he has been assigned to accomplish. The Receiver and his staff have continued to identify and work toward recovering assets of the Receivership Estate. Their work has included determining whether the Defendants have assets of value that may be recovered and sold, identifying where the Defendants transferred the money received from "investors" as a result of their fraudulent activities, and investigating potential

claims against third parties. The Receiver has completed the initial investigatory phase of his activities and has begun to pursue third party claims on behalf of the Receivership Estate, as detailed in his June 14, 2013 Report and Recommendation to the Court.

The following is a summary of the Receiver's specific activities to date:

- Identified, located contact information, and presented notice of the receivership to fifty-eight (58) separate banking institutions in Florida, California, and nationally regarding potential accounts of the Defendants. The Receiver sent notice of the receivership and the asset freeze, along with requests for financial documents and records, to these financial institutions across the country and in proximity to the Defendants' residential locations. Those notices identify the Receivership Defendants, the multiple other entities through which they operated, and demanded remittance of funds held in any Receivership accounts.
- Established three bank accounts in the name of the Receivership Estate.
- The Receiver recovered assets belonging to the Receivership Estate pursuant to an alleged "donation" by Defendant Alexander to R&A

Ministry, Inc. in the amount of \$91,284.03. The transfer was made on November 29, 2012, in apparent violation of the Court's Asset Freeze Order of November 19, 2012 and the consent to permanent injunction agreed to by Alexander on November 28, 2012. Upon demand by the Receiver for the return of the "donation," Robert Rohm of R&A Ministry presented a check to the Receiver for those funds on March 6, 2013. Those funds have been deposited in the Receivership Account.

- Filed timely Notices of the Receivership in multiple jurisdictions where third party actions may later be necessary (pursuant to 28 U.S.C. § 754) in the United States District Courts for the Middle District of Florida and the Southern, Eastern, and Central Districts of California.
- Reviewed voluminous banking records of two separate Wells Fargo accounts for Billy Wayne McClintock.
- Contacted counsel for Defendant McClintock concerning failure to furnish financial documents and sworn statements required by the Court's Order of Appointment.

- Investigated, researched, and identified real property in Florida, Georgia, and California belonging to Defendants McClintock and Alexander, including property purportedly transferred to various “trusts.” Located, contacted, and provided Notice of Receivership to the mortgage servicer (Cenlar FSB) for Defendant Alexander’s real property located at Lake Lanier.
- Performed title searches and filed *lis pendens* on real property belonging to Defendants Alexander and McClintock in Florida and Georgia.
- Reviewed the financial statement and financial documents provided by Defendant Alexander.
- Reviewed numerous documents for five separate accounts from Wells Fargo bank (including accounts for MSC Holdings and Linda Dianne Alexander).
- Interviewed and reviewed documents provided by attorney William Slater Vincent concerning legal work for Defendant Alexander and the establishment of the “Grace Abounds Trust” and escrow account.

- Interviewed and reviewed documents provided by attorney Kimberly Scouller concerning legal work for Defendant Alexander and the establishment of the “Alexander Family Trust” and escrow account.
- Interviewed and reviewed all documents provided by Mitchell Davis regarding tax filings prepared for Defendant Alexander.
- Reviewed documents received from Fifth Third Bank for account of Defendant McClintock.
- Reviewed documents received from Bank of America for account of relief defendant MSC Holdings.
- Reviewed documents received from Cadence Bank for account of relief defendant MSC Holdings.
- Reviewed documents received from SunTrust Bank for account of relief defendant MSC Holdings.
- Reviewed documents for three separate accounts from BB&T Bank for accounts held by Defendants McClintock and Alexander and Relief Defendant MSC Holdings.
- Reviewed statements from JP Morgan Chase for credit accounts held by Defendants Alexander and McClintock.

- Sent Notice of Receivership and demanded the production of information and documents to Paradise Holdings, LLC, an entity that received \$400,000 from MSC Holdings in 2007.
- Engaged in ongoing communications with defense counsel regarding the location, value, and potential sale of Defendant Alexander's personal assets, including two automobiles, located in Carlsbad, California. Engaged in communications with and provided Notice of Receivership to the landlord for Defendant Alexander's rental property in Carlsbad, California to ensure non-destruction of personal property during eviction proceedings.
- Presented Notice of Receivership and requested documents and information to Cloud Resources (regarding precious metals purchased by Defendant Alexander), Norman Dadian (former trustee for "Grace Abounds Trust" established by Defendant Alexander), Jade Law Offices (regarding "Grace Abounds Trust"), William Steckley and Anthony Dupont (former trustees for "The Promise Land Trust" established by Defendant McClintock), Charles Williams (current trustee for "The Promise Land Trust"), and the law offices of Williams & Davis (regarding "The Promise Land Trust").

- Sent Notice of Receivership and asset freeze letters to Learn Waterhouse Receivership (subject to a potential claim of recovery by Defendant Alexander), First Choice Management Service (a receivership subject to a potential claim of recovery by Defendant Alexander), and Hide Away Storage (holding potential personal property of Defendant McClintock).
- Established a dedicated portion of the Receiver’s law firm website to keep future claimants informed as to status of the ongoing litigation and the receivership estate.
- Continuously updated information and documents to the dedicated portion of the Receiver’s website, including court orders and the Receiver’s interim reports.
- Compiled a detailed list of transactions evidencing the fraudulent transfer of funds from the Trust to Defendant Alexander.
- Communicated with investors and organized contact information and amounts paid to and received from the Defendants.
- Reviewed and organized data concerning “referral fees” paid by the Defendants to individuals as an incentive to increase the number of “investors” in the Defendants’ Ponzi scheme.

- Deposed Defendant Alexander.
- Located and recovered a portion of the precious metals (including gold, silver and palladium coins, and silver bars) that Defendant Alexander purchased with Receivership assets from National Numismatic Associates (“NNA”).
- Obtained three independent appraisals of the precious metals recovered from Defendant Alexander.
- Researched market conditions for the sale of precious metals. Secured a buyer for and completed the sale of the precious metals recovered from Defendant Alexander resulting in recovery of \$322,114.75 for the Receivership Estate. Those funds have been deposited into the Receivership Account.
- Submitted the Receiver’s first fee application to the SEC for approval on July 15, 2013 for the initial phase of the Receiver’s activities in this case.
- Reviewed documents from Wells Fargo Bank for account held in the name of Paradise Holdings under the control of Defendant McClintock.

- Conducted research to locate All Big Ten, Inc., recipient of checks totaling \$285,000 written from Paradise Holdings' Wells Fargo account.
- Conducted telephone interview with the owner/controller of All Big Ten, Inc. regarding money received from Paradise Holdings.
- Investigated Kentucky property records pursuant to investigatory leads to determine if Defendant McClintock acquired any such real property in Kentucky.
- Received and thoroughly reviewed statements for American Express accounts held by Defendants.
- Prepared and mailed certified letters to 96 individual and corporate entities to verify money paid in to and received out of MSC Holdings.
- Spoke with numerous investors regarding certified letters they received from the Receiver and status of case.
- Received and reviewed documents from numerous investors disputing information contained in certified letters.
- Compiled, organized, and compared data and documents received from investors against that which the Receiver has already compiled

to determine the amounts actually paid and received for a future claims process and proceeding with third party claims.

- Compiled documents and information pertaining to the transfer of funds from MSC Holdings to Defendant McClintock.
- Filed a claim with the court appointed Receiver for Zeek Rewards (Rex Venture Group) in an effort to recover money fraudulently transferred by Defendant Alexander.
- Located additional bank accounts under the control of Defendant McClintock and after discovering that those accounts were held at banks that failed, requested copies of those banking records from the FDIC.
- Continued comparison of information provided by Defendant Alexander to bank records obtained by Receiver to verify exact amounts paid to and received from Investors.
- Thoroughly reviewed documents from the FDIC for failed banks where Defendant McClintock and Defendant MSC Holdings held accounts.
- Compiled documents and information for demand letter to investors who received “false profits” and “referral fees.”

- Prepared and mailed letters to 96 individuals who received “false profits” totaling \$3,463,478 and “referral fees” totaling \$3,247,011.
- Received numerous letters and inquiries from investors and attorneys regarding Receiver’s demand for return of “false profits” and “referral fees.”
- Talked to numerous investors and attorneys for investors concerning demand letters regarding repayment of “false profits” and “referral fees” to the Receivership Estate.
- Prepared responses to letters and inquiries from investors and attorneys for investors regarding repayment of money to the Receivership Estate, including conducting legal research to explain the legal bases for the Receivership’s recovery efforts and legal action against investors who received “false profits” and “referral fees.”
- Received checks totaling \$1,152,581 from investors for the return of “false profits” and “referral fees” to the Receivership Estate. Those funds have been deposited into the Receivership Account.
- Compiled extensive information, documents, spreadsheets, and the Receiver’s Declaration to support the SEC’s motion for disgorgement against Defendants Alexander and McClintock.

- Located and contacted utility companies providing service to the residences of Defendants Alexander and McClintock requesting payment information to obtain additional banking information for both Defendants.
- Sought reappointment by this Court in order to file Notices of Receivership in twenty-three (23) separate federal districts to pursue third party claims for recovery.
- Submitted the Receiver's second fee application to the Court for approval on July 7, 2014 for his work in collecting over \$1,000,000 in third party claims owed to the Receivership Estate.
- Filed Notices of Receivership in twenty-three (23) separate federal districts to pursue third party claims for recovery.
- Prepared a Complaint against over eighty-one (81) investors who received "false profits" and/or "referral fees" to recover funds owed to the Receivership Estate.
- Conducted extensive research to locate and verify physical addresses for eighty-one (81) individuals who received "false profits" and/or "referral fees" from the Ponzi scheme run by Defendants Alexander and McClintock.

- Conducted extensive research to determine the federal districts of the defendants to be named in the Receiver's third party action for recovery of "referral fees" and "false profits".
- Filed a Complaint on August 26, 2014 with this court against eighty (80) individual defendants who received "false profits" and/or "referral fees" from the Ponzi scheme.
- Served notice on the Defendants named in the Receiver's Complaint requesting Waiver of Service pursuant to Rule 4 of the Federal Rules of Civil Procedure.
- Received and filed fifteen (15) Waiver of Service of Summons forms with this Court.
- Prepared and submitted two declarations in support of the SEC's Motion for Summary Judgment against Defendants Alexander and McClintock for disgorgement penalties.
- Located process servers throughout the United States to perfect service on sixty-five (65) Defendants.
- Prepared service documents for those Defendants who refused to acknowledge service.

- Perfected service on over seventy (70) Defendants named in the Receiver's Complaint and filed the corresponding Proof of Service forms with this Court.
- Continued efforts to serve the few remaining Defendants where service has not been perfected.
- Submitted the Receiver's third fee application to the Court for approval on September 10, 2015 for his work in preparing, filing, and serving his Complaint against seventy (70) Defendants pursuing return of referral fees and false profits for the Receivership Estate.
- Settled claims against twenty-six (26) Defendants resulting in payments to the Receivership Estate totaling \$694,872. Those funds have been deposited into the Receivership Account.
- Participated in a mediation involving fifteen (15) defendants successfully settling with nine (9) of the participants.
- Filed forty (40) responses and replies to separate motions and responses, including Motions to Dismiss, filed by Defendants in the Receiver's third-party action filed with this Court.
- Prepared and filed an Amended Complaint in this Court in the Receiver's third-party action.

- Prepared and filed the Joint Discovery Plan and Initial Disclosures as required by this Court in the Receiver's third-party action.
- Submitted the Receiver's fourth fee application to the Court for approval on March 22, 2016 for his work in defending and settling portions of the Receiver's Complaint filed against seventy (70) Defendants that received false profits and referral fees and made approved distributions to the court authorized forensic accountant and litigation counsel.
- Prepared and filed a Motion in Support of Entry of Default Judgment and Brief in Support (with supporting Declaration by Receiver) against thirty-five (35) Defendants who had not answered the Complaint served upon them.
- Obtained Default Judgment against twenty-eight (28) Defendants totaling \$1,769,393.
- Obtained Certified Abstracts of Judgments against Defendants in default from the Clerk's office.
- Initiated proceedings in multiple states, including Georgia, to collect judgments the Receiver obtained against multiple Defendants, including perfecting liens upon real property owned by Defendants.

- Collected \$369,165 from five (5) Default Defendants. Those funds have been deposited into the Receivership Account.
- Hired a private investigator to assist in locating assets of Default Defendants.
- Sent letters to six (6) banks to locate assets of Default Defendants.
- Litigated clawback actions against remaining Defendants (not in default and who did not settle) culminating in Motions for Summary Judgment (including multiple declarations) before the Receivership Court.
- Entered an appearance in Eleventh Circuit appellate proceedings initiated by a Default Defendant who filed a Notice of Appeal to oppose appeal and defend default judgment.
- Filed a Motion for Contempt against Defendant Alexander for her failure to follow this Court's Order regarding surrender of real property.
- Prepared and filed Response in Opposition to HSBC/SLS's Motion to Intervene and Modify Asset Freeze to foreclose on Rebel Road real property and negotiated with HSBC/SLS's counsel regarding all issues relating to the property.

- Began leasing property located on Rebel Road in Cumming, Georgia resulting in collection of \$25,000 in rental payments. Those funds have been deposited into the Receivership Account.
- Began the appraisal process for selling real property located on Middlecreek Way in Cumming, Georgia.
- Interviewed and hired a forensic accountant and fraud examiner to examine bank records obtained for Defendants and Relief Defendants to provide expert opinion supporting Ponzi scheme presumption.
- Consulted with and assisted in preparation of expert report by forensic accountant and service of report upon all remaining Defendants in clawback litigation.
- Prepared Receiver's expert witness and forensic accountant for discovery deposition and defended discovery deposition in Statesboro, Georgia.
- Prepared and filed Supplemental Initial Disclosures as required by this Court in the Receiver's third-party action.
- Prepared and filed a Proof of Claim form with this Court for approval.
- Mailed 152 Proof of Claim packages to potential claimants seeking reimbursement from the Receivership Estate.

- Received, reviewed, and archived 121 Proof of Claim packages for further approval in the claims process.
- Verified documents and claim forms for 89 timely filed Proof of Claim packages.
- Prepared and filed with this Court the Receiver's Motion to Approve Plan of Distribution and First Interim Distribution.
- Prepared and filed with this Court the Receiver's Motion for Order Establishing Deadline for Filing Objections to Receiver's Plan of Distribution.
- Received documents from various claimants in response to Receiver's Motion to Approve Plan of Distribution.
- Submitted the Receiver's fifth fee application to the Court for approval on January 20, 2017 for his work in defending and settling claims against Defendants totaling \$307,065, for his work in receiving and verifying all timely filed claims packages, and for preparation of the Plan of Distribution.
- Hired a CPA and compiled the documents and information necessary to file all required Receivership tax returns.

The Receiver's Report

The Receiver is engaged in all of the foregoing activities to date in order to identify and recover assets and timely complete the tasks set forth in the Order of Appointment. As of December 31, 2016, the cash on hand in the Receivership's bank accounts total \$1,925,393.30. In pursuit of identifying and recovering assets and pursuing litigation against those individuals who benefited from the Defendants' Ponzi Scheme the Receivership has disbursed \$26,889.35 in expenses. The Receivership Estate has paid \$8,858.33 to SLS for the outstanding amounts for property insurance and other expenses relating to the Rebel Road property, pursuant to this Court's September 15, 2015 Order regarding HSBC's Motion to Intervene.

The Receiver is currently engaged in concluding and resolving the remaining civil actions against third parties that this Court has previously approved and in collecting judgments the Receiver has successfully obtained in those actions from the identifiable assets of those Defendants that are located across the country. Ultimately, the amounts recovered through pursuit of these claims and actions (in addition to the amounts the Receiver has already recovered) will be distributed to investors pursuant to a court approved administrative claims process (after the payment of costs, fees, and expenses).

Respectfully submitted this 2nd day of February, 2017.

CAUTHORN NOHR & OWEN

/s/ Jason L. Nohr

Georgia Bar No. 545435

Receiver for MSC Holdings

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CERTIFICATE OF SERVICE

This certifies that I have this day served a copy of the foregoing *Receiver's Twelfth Interim Report* via the CM/ECF electronic filing system which will send notice of such filing to counsel of record.

This 2nd day of February, 2017.

/s/ Jason L. Nohr
Georgia Bar No. 545435
Receiver for MSC Holdings

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