



## I. BACKGROUND

By an Agreed Order entered on December 2, 2009 [Doc. # 7] (“Order Appointing Receiver”), Thomas L. Taylor III was appointed in order to collect, marshal, and take custody, control and possession of the assets of Kaleta Capital Management, Inc. (“Receivership Assets”) in contemplation of the eventual return of assets to investors harmed by the misconduct alleged in the Complaint. Order Appointing Receiver ¶5(a). On June 16, 2010 the Receiver, DFFS and BizRadio filed a Stipulation to Modify the Order Appointing Receiver [Doc. # 33] to expressly include DFFS and BizRadio within the Receivership Estate. The Court so expanded the Receivership Estate by Order dated June 17, 2010. Doc. # 34.<sup>1</sup>

The Receiver incorporates by reference his prior Status Reports [Doc. #s 60, 213, 226, 237] and addresses herein (1) presently active matters (including litigation commenced by the Receiver); and (2) those matters which may require determination or intervention by this Court. Because of facts and circumstances surrounding those matters, it is the Receiver’s view that the case should not yet be placed on inactive status.

## II. CASE STATUS

### A. Status of Securities and Exchange Commission Enforcement Action

On November 13, 2009, the Commission filed this action against Albert Fase Kaleta (“Kaleta”) and his company Kaleta Capital Management, Inc. (“KCM”), alleging they raised approximately \$10 million from approximately 50 investors in a fraudulent securities offering. At the case’s outset, the Court placed KCM and its assets under the control of Houston attorney Thomas L. Taylor III, whom the Court appointed Receiver in this case on agreement of the parties. Dkt. # 7. In June 2010, the Court modified the receivership order to cover two additional entities: Daniel Frishberg Financial Services, Inc., d/b/a DFFS Capital Management, Inc.

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<sup>1</sup> Citations to the Order Appointing Receiver refer to Doc. # 7.

(“DFFS”) and Business Radio Network L.P, d/b/a BizRadio (“BizRadio”), both of which the Commission had already named as Relief Defendants solely to obtain equitable relief against them. Dkt. # 34. The Court entered an Agreed Judgment as to Defendants Kaleta and KCM on December 2, 2009. Dkt. # 6. In the Agreed Judgment, the Court permanently enjoined Kaleta and KCM from violating certain anti-fraud provisions of the federal securities laws, specifically Section 17(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. § 77q(a)] and Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder, [17 C.F.R. § 240.10b-5], and, as to Kaleta, Section 206 of the Investment Advisers Act of 1940 (“Advisers Act”) [15 U.S.C. § 80b-6]. Id. In June 2011, the Court entered a final judgment against Kaleta, among other things, ordering him to pay disgorgement of \$1.5 million, prejudgment interest of \$246,979.21, and a civil penalty of \$1.5 million. Dkt. # 73. Upon entry of the June 2011 Order, all of the Commission’s claims in its complaint against Kaleta were resolved. But the Commission still has unresolved claims for disgorgement and a civil penalty as to Defendant KCM and unresolved claims for disgorgement as to Relief Defendants BusinessRadio Network, L.P., D/B/A BizRadio and Daniel Frishberg Financial Services, Inc., D/B/A DFFS Capital Management, Inc.

It is the Receiver’s understanding that the Commission’s counsel intends to recommend that the Commission file a notice of dismissal under Rule 41(a)(1) of the Federal Rules of Civil Procedure as to the Commission’s unadjudicated claims against Defendant KCM and each Relief Defendant. These entities are defunct and under the control of the Receiver, to whom all of their assets already have been relinquished. Assuming the Commission accepts the recommendation, the filing of the dismissal notice would resolve all of the claims in the Commission’s complaint.

#### **B. Settlement of Claims with Wallace Bajjali Related Parties**

*1) Background Regarding the Receiver's Settlement with the Wallace Bajjali Parties Previously Approved by this Court*

Upon his appointment by this Court, the Receiver commenced an investigation of the facts and circumstances underlying the Securities and Exchange Commission's (the "Commission") enforcement action against KCM and relief defendants DFFS and BizRadio. The Receiver learned that the Wallace Bajjali Parties were tied to the Receivership Entities in several respects, including, *inter alia* (1) that proceeds from the KCM promissory notes at the heart of the enforcement action had been transferred to, or for the benefit of, certain Wallace Bajjali Parties; (2) that DFFS, a registered investment advisor, had introduced its clients to investments in several Wallace Bajjali real estate partnerships (including WB Fund II and LFW Fund); (3) that Wallace Bajjali real estate partnerships owned equity interests in BizRadio; and (4) that WB Dev. Partners acted as agent for DFFS clients making debt investments in BizRadio. The Receiver asserted to the Wallace Bajjali Parties that the Receivership Estate held legal claims against them, and commenced negotiation of a settlement of those claims in an effort to avoid the costs and uncertainty of litigation.

The Settling Parties agreed to a mutual release of all claims against each other in exchange for the following, upon approval of the settlement by the Court: (1) W. Houston Fund, LFW Fund and Spring Cypress Investments (the "Note Entities") would execute "Replacement Notes" which would quantify and restate debts owed to KCM; (2) WB Dev. Partners would execute a "Cash Flow Note" in the amount of \$450,000 to the Receivership Estate, subject to reduction for early payment, with payments to be made from cash flows generated through a real estate development project in Amarillo, Texas; (3) Wallace and Bajjali would execute personal "Guaranty Agreements" for the Cash Flow Note and the Replacement Notes (which debts were not guaranteed outside of the settlement); and (4) the Receiver would seek entry by the Court of

a “Final Claim Bar Order,” permanently enjoining “BusinessRadio Note Holders” from commencing or continuing legal proceedings against the Wallace Bajjali Parties arising out of, in connection with, or relating to promissory notes issued by BizRadio for which WB Dev. Partners acted as agent for investors and other debt transactions between BizRadio and the “BusinessRadio Note Holders” as detailed in the Settlement.

The Receiver’s Motion seeking approval of the Settlement was filed on September 12, 2011. Doc. # 113. Following extended argument and evidentiary hearings with respect to objections filed by certain investors affected by the Settlement, *see* Docs. # 124, 142, this Court approved the Settlement on February 7, 2012. Doc. # 170 (the “Order Approving Settlement”). The objecting investors moved for reconsideration of the Court’s Order Approving Settlement on March 6, 2012, *see* Doc. # 179, which motion was denied on August 1, 2012. Doc. # 209.

The objecting investors subsequently appealed this Court’s Order Approving Settlement to the U.S. Court of Appeals for the Fifth Circuit. *See* Doc. # 214. Briefing to the Court of Appeals was completed on April 4, 2013, and on June 19, 2013 the Court of Appeals affirmed this Court’s Order. *SEC v. Kaleta*, No. 12-20633, 2013 U.S. App. LEXIS 12471 (5th Cir. June 19, 2013). Per the Settlement’s terms, the Wallace Bajjali Parties’ obligations under the Settlement did not become final and binding until on or about September 17, 2013, which was the objecting investors’ deadline to seek a writ of certiorari from the Supreme Court. Specifically, the Wallace Bajjali Parties were not obligated under the terms of the Settlement to execute the “Replacement Notes,” “Cash Flow Note” and “Guaranty Agreements” which are the core of the Settlement until all appeals were exhausted and the Final Claim Bar Order was not subject to any pending collateral attack.

The terms of the Settlement provided that once a “Final Claim Bar Order” (*see* Doc. # 210) became final, all appeals of the Order were exhausted or expired and such Order was not subject to pending collateral attack, the Wallace Bajjali Parties would, within 15 days, execute (1) the “Replacement Notes,” Exhibits C – H to the Settlement agreement (Doc. # 113-1 at 28-48); (2) the “Cash Flow Note,” Exhibit U to the Settlement agreement (*Id.* at 122-27); and (3) the personal “Guaranty Agreements” of Wallace and Bajjali with respect to (i) the Replacement Notes, Exhibits I – T to the Settlement agreement (*Id.* at 50-121), and (ii) the Cash Flow Note, Exhibits V, W to the Settlement agreement (*Id.* at 128-39).

The Replacement Notes represent the current indebtedness of the Note Entities to KCM. The principal amounts of the Replacement Notes equal \$879,176.35 bearing a weighted average annual interest rate of approximately 12.15% running from the date of the original obligation until the Replacement Notes are paid. Per their terms, the Replacement Notes attached to the Settlement agreement became due and payable on February 29, 2012, with certain conditions extending this date to no later than December 31, 2012.

The Cash Flow Note obligated WB Dev. Partners to make quarterly payments to the Receiver on obligations up to \$450,000 and based upon the receipt of “Dedicated Cash Flow”<sup>2</sup> generated by a real estate development project in Amarillo, Texas. Per the terms of the Cash Flow Note, as originally agreed, if WB Dev. Partners made payments totaling \$300,000 to the Receiver within eighteen (18) months of its effective date, the remaining payment obligations

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<sup>2</sup> Doc. #113-1 at 123 (“*Dedicated Cash Flow*” means, as of the last day of the calendar quarter for which Dedicated Cash Flow is computed, an amount equal to fifteen percent (15%) of the positive difference between: (i) cumulative cash Development Fees actually received by Maker pursuant to the Amarillo Development Agreements during the calendar quarter of determination and in all prior quarters or portions thereof, *less* (ii) the sum of (A) historical cumulative costs (whether capitalized or expensed) attributable to Maker’s or its affiliates’ negotiation and performance of the Amarillo Development Agreements including, *plus* (B) expenses attributable to Maker’s negotiation and performance of the Amarillo Development Agreements as reasonably estimated by Maker to be incurred during the twelve-month period following the calendar quarter for which Dedicated Cash Flow is computed.”).

would be discharged. With respect to its payment obligations under the Cash Flow Note when executed, WB Dev. Partners agreed to provide to the Receiver -- beginning on February 1, 2012 and continuing quarterly thereafter -- certain supporting financial information in regard to the “Dedicated Cash Flow” of the Amarillo project.

The Guaranty Agreements attached to the Settlement agreement were secured by the Receiver as additional consideration in execution of the Settlement and did not exist outside of the Settlement. Under those Guaranty Agreements for the Replacement Notes, Wallace and Bajjali personally guarantee all principal and interest due and payable thereunder upon default, up to and including the total principal due over the life of each note and interest due upon and following default by the respective Maker. In regard to the Cash Flow Note, Wallace and Bajjali personally guarantee the payment of “Dedicated Cash Flow” as defined in the Cash Flow Note, these guarantees being limited by certain net revenues generated from the Amarillo development project. These Guaranty Agreements do not guarantee the Receivership Estate will receive any specific amount upon a default by WB Dev. Partners.

a) Proposed Modifications to the Settlement

The Receiver has concurrently with this Status Report moved this Court to modify certain terms of the Settlement [Doc. # 252]. The structure and substance of the Settlement should not be disturbed and the Receiver does not propose any changes to the substantive terms of the Settlement other than as to the times for performance. The dates and times for performance are presently unachievable because these dates have passed during the pendency of the appeal from this Court’s Order Approving Settlement, and due to changes in the projected timelines of the business operations of the Wallace Bajjali Parties.<sup>3</sup> Accordingly, the Settling Parties wish to

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<sup>3</sup> As represented in the Declaration of David G. Wallace (“Wallace Declaration”), submitted concurrently through counsel for the Wallace Bajjali Parties.

modify the terms of the Settlement in regard to various dates and deadlines previously agreed to and approved by the Court. The proposed modifications would also eliminate provisions providing a concession for early payment of the Cash Flow Note.

As this Court recognized in its Order Approving Settlement, the prospective nature of the Replacement Notes and the Cash Flow Note was a product of necessity. The Receiver urged, and this Court concluded (1) that substantial payment by the Wallace Bajjali Parties of their obligations to the Receivership Estate could not reasonably be achieved immediately; (2) that the prospective (but concrete and specific) business opportunities of the Wallace Bajjali Parties provided a realistic source of payment of their obligations; and (3) that the personal guarantees of Wallace and Bajjali (which did not exist in connection with the underlying transactions) advanced the Receivership Estate's interests.

Although the prospective business developments of the Wallace Bajjali Parties have not proceeded along the original projected timeline, these developments have, nonetheless, proceeded. Based upon a sworn statement presented by the Wallace Bajjali Parties, which has been submitted to this Court by counsel for the Wallace Bajjali Parties in connection with the Motion to Modify Settlement, the Receiver has concluded that prospects for payment are reasonably good, buttressed by the personal guarantees of Wallace and Bajjali, which will guarantee the Cash Flow and Replacement Notes as modified. Moreover, any alternative means of recovery would be burdensome, uncertain and prohibitively expensive -- just as they were when the Settlement was first submitted to the Court. Accordingly, by the Motion to Modify Settlement, the Receiver seeks modification of the dates for discharge of the obligations of the Wallace Bajjali Parties under the Settlement.

Absent the objecting investors' request for reconsideration of the Order Approving Settlement and subsequent appeal, the obligations under the Replacement Notes would have become due and payable on February 29, 2012, with certain conditions extending this date to no later than December 31, 2012. The Settling Parties seek to modify the Replacement Notes, making them due and payable on the earlier of (i) December 31, 2014, or (ii) the fifth business day after the date that each such note's Maker has completed the sale of all or substantially all of its real estate assets and received all of the purchase price for these sales. The Wallace Bajjali Parties represent that Spring Cypress Investments is able to satisfy its Replacement Note obligations upon execution of that entity's Note. Wallace Decl. ¶20. Moreover, interest on the Replacement Notes will continue to accrue at a weighted average annual rate of approximately 12.15% until paid in full.

Under the current terms of the Cash Flow Note, if payments totaling \$300,000 of the \$450,000 obligation had been made within eighteen (18) months after the effective date of the note, the remaining \$150,000 due from WB Dev. Partners per the terms of the note to the Receivership Estate would be discharged. The Settling Parties seek to modify the Cash Flow Note, removing this concession for early payment of obligations. Additionally, the Cash Flow Note obligates the Wallace Bajjali Parties to provide the Receiver with certain financial information regarding the Amarillo development project. The Settling Parties move the Court to modify the dates this financial information must be provided to the Receiver to January 1, 2014 and following quarterly thereafter.

Because the express terms of the Guaranty Agreements trigger personal obligations of Wallace and Bajjali upon default and notice of default by the Receiver in regard to an underlying Replacement Note or the Cash Flow Note, and are directed by the terms of such a note in default,

the text of the Guaranty Agreements do not require modification. The obligations of Wallace and Bajjali under the Guaranty Agreements will track modifications made to the terms of the underlying documents.

Based upon the representations of the Wallace Bajjali parties -- submitted in connection with the pending Motion to Modify Settlement -- the Receiver believes that the prospective business developments of the Wallace Bajjali Parties remain the most viable option for recovery of Receivership Assets, and the prospects for the satisfaction of the obligations of the Settlement -- modified as requested herein -- are reasonably good. Eliminating the early payment concession in the Cash Flow Note provides additional benefits to the Receivership Estate, and interest on the Replacement Notes will continue to accrue at a weighted average annual rate of approximately 12.15% until paid in full. The personal guarantees of Wallace and Bajjali bolster the Receivership Estate's prospects for collection of the Wallace Bajjali Parties' obligations as modified herein.

### **C. DFFS E&O Insurance Policy Settlement**

The Receiver asserted the Receivership Estate's right to proceeds of a DFFS Errors & Omissions insurance policy issued by American International Specialty Line Insurance Company Policy # 01-766-06-09 (the "Policy"). In this regard, the Receiver acted to stay multiple private actions seeking recoveries from Daniel Frishberg as a named insured under the Policy. After securing stays by this Court of the private litigation, the Receiver coordinated with counsel for the carrier, as well as claimants' respective counsel, to facilitate a global resolution to claims against the Policy which would include a monetary distribution to the Estate. Prior to an agreed upon mediation between the Receiver, the carrier and claimants, counsel for Mr. Frishberg produced a letter identifying twelve additional claimants who purportedly had asserted timely claims on the Policy. These additional claims clearly implicated potentially covered claims

against DFFS itself -- in addition to Mr. Frishberg. Counsel for the carrier requested additional time to evaluate these new claims and to determine its coverage position, and the Receiver continued to press the carrier for an overall resolution which would reserve at least a portion of the Policy proceeds for the benefit of the Receivership Estate.

On February 21, 2013, the Receiver filed a Motion to Approve Settlement regarding the Policy proceeds. Doc. # 234. The material settlement terms include (1) the payment to the Receivership Estate of \$800,000 -- approximately 85% of the remaining Policy amount; (2) mutual releases executed by the parties to the agreement; and (3) the entry by the Court of a Bar Order, which would bar any party from commencing any action against the insurance carrier or the Policy. The Receiver further moved for the approval of an interim distribution of \$700,000 of the settlement proceeds to the fourteen parties who made timely claims against the Policy (the "Policy Claimants") (to be distributed on a *pro rata* basis based on net out-of-pocket losses, subject to proof), with the remaining \$100,000 in settlement proceeds to remain with the Receivership Estate.

On March 13, 2013, Daniel and Elisea Frishberg filed their Objection [Doc. # 238] to the settlement stating their entitlements as executives of the insureds. The Receiver filed a Response on March 29, 2013 and this Court entered a Memorandum and Order granting the Motion to Approve Settlement on May 31, 2013.

As prescribed in the Order, the Receiver initiated procedures to confirm all claims of the Policy Claimants. The Receiver distributed to all Policy Claimants a Claim Calculation Form and requested any and all documentation sufficient to establish the claim. After review of the claims and documents submitted by the Policy Claimants and analyzing the books and records of the entities of the Estate, the Receiver corresponded with each Policy Claimant setting forth the

amount of their claim and providing a thirty day period for time to object. The Receiver worked with Policy Claimants' counsel to confirm any discrepancies and all KCM and BizRadio investments were confirmed.

All of the fourteen Policy Claimants included within their claims losses arising from investments in the Wallace Bajjali partnerships made through DFFS/Frishberg. At this juncture, the Receiver has determined not to include any such losses on Wallace Bajjali partnerships as recognized claims for purposes of the E&O settlement distribution. Based upon information received from Wallace Bajjali -- including information submitted in connection with the pending Motion to Modify Settlement -- it is unclear whether losses will actually be sustained on the Wallace Bajjali partnerships or, if so, in what amount. Thus, interim distributions related to the E&O policy proceeds are being made in proportion to net out-of-pocket losses on KCM Notes, BizRadio notes and investments in BizRadio equity. To the extent that losses are ultimately sustained on the Wallace Bajjali partnerships, the Receiver anticipates that claims with respect to such losses would be evaluated and addressed in connection with the Estate's final distribution.

This interim distribution of E&O settlement proceeds represents approximately 7.1% of principal for each of those Policy Claimants who have incurred a net out-of-pocket loss, as detailed in the Motion. The Receiver expects this distribution to be effected within the next week, after which notice will be filed with the Court and sent to all Policy Claimants.

#### **A. Ongoing Litigation by the Receiver**

*(1) Receiver v. the Frishbergs, Kaleta, Barrington Financial Advisors, Inc. and William C. Heath*

On August 23, 2011, the Receiver commenced an action in the U.S. District Court against Daniel and Elisea Frishberg, Albert Kaleta, Barrington Financial Advisors, Inc. ("Barrington"), and William C. Heath, Barrington's president and CEO. The suit alleges that the Frishbergs and

Kaleta breached their fiduciary duties of loyalty and care which they owed to KCM, BizRadio, and DFFS as officers and directors, and seeks damages commensurate with the liabilities that the Receivership Entities were exposed to as a result of those breaches of fiduciary duty -- namely claims against the Receivership Estate by defrauded investors. The suit also seeks the return of all KCM and BizRadio Note proceeds received, directly or indirectly, by the Frishbergs and Kaleta as fraudulent transfers from the Receivership Entities.

The Receiver further sought damages from Barrington and Heath for their participation with Frishberg in the tortious interference with, and transfer of, DFFS client accounts to Barrington, which commenced prior to the Receiver's efforts to place DFFS into the Receivership Estate. As alleged in the Complaint, this transfer represented substantially all of the assets of DFFS and was effectuated to deprive DFFS creditors (namely KCM and Estate claimants) of satisfaction of their debts. Frishberg has received payments from Barrington for these DFFS assets and Barrington has profited from their transfer; by his Complaint the Receiver seeks the return of those payments to the Receivership Estate.

Motions to Dismiss by Barrington, Heath and the Frishbergs were denied [Doc. #180]. All defendants other than Kaleta filed Answers to the Receiver's First Amended Complaint. Docs. # 186, 187. The ancillary action against the Frishbergs, Kaleta, Barrington and Heath was severed from the Commission's Enforcement action by Order of this Court on May 10, 2012. Doc. # 199. The Receiver's action is numbered Civil Action No. 4:12-cv-01491.

(a) Kaleta Settlement

On the deadline date to file his Answer, January 26, 2012, Kaleta filed a voluntary petition in the United States Bankruptcy Court for the Southern District of Texas for relief under Chapter 7 of Title 11 of the United States Bankruptcy Code, *In Re Albert F. and Connie T.*

*Kaleta*, Case No. 4:12-bk-30558 (the “Bankruptcy Action”). The Receiver’s suit as to *Kaleta* was thereafter subject to the automatic stay arising from *Kaleta*’s voluntary petition in bankruptcy.

On April 23, 2012 the Receiver instituted an adversary proceeding against *Kaleta* in the United States Bankruptcy Court for the Southern District of Texas, *Thomas L. Taylor III, Receiver v. Albert Fase Kaleta*, Case No. 4:12-ad-03209 (the “Adversary Action”), through the filing of a Complaint to Determine Dischargeability Pursuant to 11 U.S.C. § 523. On May 1, 2012 the Receiver filed in the Adversary Action a Motion for Withdrawal of Reference Pursuant to 11 U.S.C. § 157(d) and FED. R. BANKR. P. 5011(a).

Prior to the hearing on the Motion for Withdrawal of Reference, the Receiver and *Kaleta* agreed to terms on a framework for settlement of the Adversary Action. Judge Bohm, with the agreement of the parties, issued a Report and Recommendation that the Motion for Withdrawal of Reference to the Bankruptcy Court be granted. This Court granted the motion, and the Adversary Action was restyled *Thomas L. Taylor III, Receiver v. Albert Fase Kaleta*, Civil Action No. 4:12-cv-2401, in the United States District Court for the Southern District of Texas (*See* No. 4:12-cv-2401 Docs. # 1, 4). The Bankruptcy Court ordered the automatic stay be “lifted pursuant to 11 U.S.C. §362(d)(1) so that matters may proceed before the Honorable Nancy F. Atlas.” Bankruptcy Action Doc. # 30. On February 6, 2013 this Court issued an Order consolidating the Adversary Action into the lead case, the Enforcement Action. Doc. # 231.

The Receiver’s settlement with *Kaleta* embodied the following material terms: (1) *Kaleta* consented to the entry of a judgment against him in the amount of \$1,000,000; (2) *Kaleta* waives (a) the dischargeability of the judgment in the present and any future bankruptcy proceedings and (b) any claims against the Receivership Estate; and (3) the Receiver and *Kaleta* executed a

mutual release of all other claims the parties may have. The Receiver filed a Motion to Approve the Settlement with Kaleta on February 21, 2013 [Doc. #235] and on May 31, 2013, this Court entered a Memorandum and Order approving the Settlement. Doc. # 243.

(b) Barrington Defendants

On May 22, 2013 the Receiver has filed a Motion for Approval of Settlement with Barrington and Heath , the terms of which are as follows:

1. The Barrington Defendants agreed to pay to the Receivership Estate the sum of \$50,000 in ten equal monthly installments;
2. The Barrington Defendants released the Receivership Estate from any and all claims as of the date of the Settlement; and
3. The Receiver released the Barrington Defendants from any and all claims of the Receivership Estate as of the date of the Settlement.

The Receiver recommended the Settlement as fair, equitable, and reasonable, and is in the best interests of the Receivership Estate and all claimants to the eventual distribution of Estate assets. The Receiver reached this conclusion because the Estate will collect the maximum assets from the Barrington Defendants which upon the representations of Heath, as recited in the Settlement Agreement, the Barrington Defendants have the resources to pay. The Settlement will also avoid costly and uncertain litigation which, even if successful, would likely not result in a judgment for an amount materially collectible above the Settlement amount. Although the Order Appointing Receiver authorizes the Receiver to resolve the matter without Court approval, the settling parties submitted the Settlement to the Court in the interest of full transparency and on July 23, 2013 this Court approved the Settlement. Doc. # 248.

To date, the Estate has received three timely payments from the Barrington Defendants.

(c) Remaining Action against the Frishbergs

Settlement negotiations with the Frishbergs have been ongoing for a number of months. These negotiations have not been successful and the Receiver has concluded that further settlement discussions would not be fruitful. The Receiver has terminated settlement discussions with the Frishbergs, withdrawing all previous proposals.

On October 15, 2013 the Receiver filed with this court a Motion for Partial Summary Judgment as to defendant Daniel Frishberg. Doc. # 26. Per this Court's Order dated October 21, 2013, Frishberg's response to that Motion is due on November 15, 2013.

October 21, 2013

Respectfully submitted,

THE TAYLOR LAW OFFICES, P.C.

By:           /s/ Thomas L. Taylor III          

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**CERTIFICATE OF SERVICE**

On October 21, 2013, I electronically submitted the foregoing Status Report to the clerk of court for the U.S. District Court, Southern District of Texas, using the CM/ECF case filing system. I hereby certify that I have provided copies to all counsel of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

          /s/ Thomas L. Taylor III

