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10 Attorneys for Receiver
11 THOMAS HEBRANK

12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**

14 SECURITIES AND EXCHANGE
15 COMMISSION,

16 Plaintiff,

17 v.

18 PACIFIC WEST CAPITAL GROUP,
INC.; ANDREW B CALHOUN IV;
19 PWCG TRUST; BRENDA CHRISTINE
BARRY; BAK WEST, INC.; ANDREW B
20 CALHOUN JR.; ERIC CHRISTOPHER
CANNON; CENTURY POINT, LLC;
21 MICHAEL WAYNE DOTTA; and
CALEB AUSTIN MOODY (dba SKY
22 STONE),

23 Defendants.

Case No. 2:15-cv-02563-FMO (FFMx)

**RECEIVER'S FIRST INTERIM
REPORT AND
RECOMMENDATIONS**

Ctrm.: 6D
Judge: Hon. Fernando M. Olguin

1 Thomas C. Hebrank ("Receiver"), the Court-appointed permanent receiver for
 2 PWCG Trust pursuant to the Judgment as to Defendant PWCG Trust ("Appointment
 3 Order") (Dkt. No. 145), hereby submits this First Interim Report and
 4 Recommendations for the period February 16, 2018, through March 31, 2018.¹ The
 5 Receiver is still in the early stages of his investigation and work to preserve and
 6 protect the value of receivership estate assets. Therefore, this report may need to be
 7 modified or supplemented as additional information is gathered and analyzed.

8 I. EXECUTIVE SUMMARY

9 Pursuant to the powers, authority, and directives contained in the Appointment
 10 Order, the Receiver has taken control and management of the assets of PWCG Trust,
 11 including its bank accounts, life insurance policies ("Policies"), and books and
 12 records. The Receiver has met with the principal and staff at Trustee Mills,
 13 Potoczak & Company ("MPC") to gather important records and gain an
 14 understanding of the current condition of the Policy reserves, premium payments,
 15 and prior transactions involving Defendant Pacific West Capital Group, Inc. ("Pacific
 16 West"), Defendant Andrew B. Calhoun IV ("Calhoun"), and BroadRiver Asset
 17 Management ("BroadRiver"). The Receiver has also issued subpoenas and is
 18 gathering relevant records from Pacific West, Calhoun, and BroadRiver.

19 At the time of the Receiver's appointment, many of the Policies were in danger
 20 of lapsing if a source of funding to pay premiums was not quickly identified. PWCG
 21 Trust had been accepting funding from BroadRiver under an agreement whereby
 22 BroadRiver was purportedly acquiring the forfeited interests of investors who did not
 23 respond to cash calls. Rather than continuing the practice of making cash calls and
 24 the potential forfeiture (or at least dilution) of investor interests in Policies, the
 25 Receiver requested and was granted authority to "borrow" from the existing reserves
 26

27 ¹ Although the end of the report period is March 31, 2018, many of the activities
 28 discussed herein carried over into April 2018 and those activities are covered
 herein as well.

1 to cover premium payments for which there were no available reserves ("Unfunded
2 Premium Payments"). Dkt. Nos. 146, 147.

3 The Receiver and his counsel also met with counsel for the Securities and
4 Exchange Commission ("SEC") and the life settlements expert engaged by the SEC,
5 Professor Daniel Bauer. Professor Bauer and his staff had conducted an analysis of
6 the Policies and prepared detailed reports, one of which was filed with the Court in
7 connection with the SEC's motion for summary judgment. Dkt. No. 106-103.
8 Professor Bauer was able to provide valuable insight into the life settlements
9 industry, the Policies, the operational challenges confronting the Receiver due to the
10 lack of reserves, and potential consultants who could assist the Receiver in projecting
11 the amounts that would be necessary to cover Policy payments and in determining
12 the value of the Policies.

13 The Receiver then contacted the consultants recommended by Professor
14 Bauer, determined which of them could provide the necessary services for the best
15 price, and filed his motion to engage consultant ITM Twentyfirst, Inc. ("21st") and
16 for related relief ("Motion"). Dkt. No. 153. The Motion is scheduled to be heard on
17 May 31, 2018. If the Motion is granted, 21st will provide not only the necessary
18 portfolio management services, but also the life expectancy reports ("LE Reports")
19 and Policy valuations that will form the basis of a long-term proposal by the
20 Receiver to maximize the value of the Policies for the benefit of investors. The
21 Receiver expects to be able to submit this proposal to the Court approximately
22 120 days from when 21st is engaged.

23 **II. RECEIVER'S WORK TO IMPLEMENT APPOINTMENT ORDER**

24 **A. Mills Potoczak & Company**

25 The Receiver contacted MPC immediately after his appointment to discuss the
26 current status of the Policy portfolio and operations going forward. MPC informed
27 the Receiver that Policies which did not have adequate associated premium reserves
28 in place would begin lapsing shortly. MPC informed the Receiver that 100% of

1 reserve funds on hand were allocated to specific Policies, and most Policies had no or
2 insufficient premium reserves. PWCG Trust had been billing investors (*i.e.*, making
3 cash calls) for some time for these premium deficiencies, but many investors did not
4 pay in response to these cash calls. BroadRiver had been funding these deficiencies
5 in recent months, under an agreement with Pacific West and Calhoun whereby the
6 forfeited fractional interests of investors who did not pay these cash calls would be
7 transferred to BroadRiver. In light of the Receiver's initial analysis of the case and in
8 an effort to preserve the interests of investors, the Receiver stopped the "cash calls"
9 and ended the practice of accepting funds from BroadRiver.

10 MPC indicated that finding an alternative funding source immediately would
11 be very difficult in that little analysis had been done when the Policies were acquired,
12 and any outside lender or purchaser would require life expectancy and valuation
13 information on the Policies and the insureds, which would take months to obtain.

14 Accordingly, the Receiver asked MPC to prepare cash flow projections for
15 30 days, 60 days, and 90 days, respectively, and based on this analysis, requested
16 authorization from the Court to borrow against existing reserves in order to prevent
17 Policies from lapsing. Dkt. No. 146. The requested authorization was granted on
18 March 2, 2018. Dkt. No. 147.

19 The Receiver also opened new receivership bank accounts, and MPC
20 transferred the balance of funds it held into the Receiver's bank account. MPC now
21 enters wire transfer information online for premium payments to be made, and the
22 Receiver approves these payments.

23 In addition, MPC stated that their fees had not been paid since August 2017,
24 and they had recently instituted an annual \$200 administrative fee per investor per
25 policy. Approximately \$17,000 had been collected at the time of the Receiver's
26 appointment, but these funds were held and not used to pay MPC fees.

27 The Receiver met with MPC in their offices in Cleveland, Ohio on March 26,
28 2018, to gain firsthand knowledge of their operations. MPC maintains several excel

1 spreadsheets to track major functions such as insureds, insurance company
2 information, and premium payments. A different staff member separately tracks
3 each function. The management of the portfolio is very labor intensive, with
4 functions such as (a) obtaining HIPAA releases, (b) obtaining insureds' medical
5 records, (c) contacting insurance companies for premium payment updates, premium
6 optimizations, cash surrender values, etc., (d) contacting insureds every 90 days for
7 an update on their health and status, (e) obtaining death certificates, and
8 (f) monitoring state and obituary databases.

9 Most of the Policies in the portfolio are in "grace period," meaning premium
10 payments are mostly going to pay delinquencies, not future annual or semi-annual
11 premium payments. In addition, many of the Policies' cash surrender values have
12 been drained to pay prior premium payments. This has caused the PWCG Trust
13 portfolio to require constant updating and monitoring to ensure that Policies do not
14 lapse. MPC described this process as "nightmare accounting" and they were
15 constantly being forced to react to premium payment crises, rather than maintaining a
16 standard portfolio. MPC asserted that this crisis situation was not sustainable for
17 much longer.

18 The Receiver was also informed by MPC that Pacific West maintained the
19 investor database. The Receiver then served Calhoun with a subpoena seeking the
20 investor database and other records relating to PWCG Trust. Calhoun later provided
21 the investor database to the Receiver and MPC. Calhoun has also agreed to provide
22 certain hard copy documents to the Receiver, but thus far has not agreed to produce
23 email communications or other electronic files relating to PWCG Trust. As noted
24 below, if Receiver is unable to obtain Calhoun's full compliance with the subpoena,
25 he will file a motion to compel.

26 **B. Professor Bauer and Analysis Group**

27 The Receiver met with Professor Bauer, Analysis Group (who performed the
28 majority of the work for Professor Bauer's expert report and supplemental expert

report), and counsel for the SEC on March 19, 2018. During this meeting, the Receiver discussed Professor Bauer's expert reports and his and Analysis Group's opinions and recommendations going forward. They reiterated their earlier findings that (a) substantial amounts would be needed to keep Policies in force after reserves were exhausted (the projected amount in the supplemental expert report is \$115.6 million, not factoring in death benefits received from maturities), (b) maturities were occurring at a much slower rate than projected, (c) secondary and tertiary reserves had been exhausted, and (d) inadequate analysis had been performed before acquiring the Policies, which has hindered the ability to make projections or value the portfolio. They emphasized the need for a current valuation of the portfolio, which would require obtaining current medical records and LE Reports, as well as updating Policy illustrations and premium optimizations. They also provided the Receiver with a database of their work and analysis.

C. BroadRiver

The Receiver had several calls with BroadRiver to discuss their involvement with PWCG Trust and their funding of premium payments. Their involvement began in July 2017 by acquiring Policy interests directly from Pacific West and Calhoun, as well as providing funding to PWCG Trust in exchange for forfeited investor interests. BroadRiver claims to now have interests in \$32 million of Policy death benefits. It appears that most of their funding and purchase payments went directly to Pacific West and Calhoun and, according to MPC, only \$1.2 million in payments went directly to PWCG Trust. As previously mentioned, the Receiver discontinued the use of BroadRiver to fund Policy premiums.

III. PENDING LITIGATION

At the time of the Receiver's appointment, PWCG Trust was a defendant in four lawsuits pending in Los Angeles Superior Court. These lawsuits had all been filed by one or more investors, either individually or as a putative class. The Receiver filed notice of the Appointment Order and the litigation stay contained

1 therein in each case and also contacted counsel for the other parties. As a result, the
 2 litigation stay has been observed by the court and the parties in each case.

3 **IV. TERRITORIAL JURISDICTION OVER RECEIVERSHIP ASSETS**

4 By filing the Complaint and the TRO with other federal district courts in the
 5 United States, the territorial jurisdiction of this Court over receivership assets is
 6 extended to such districts. 28 U.S.C. § 754, *see also Haile v. Henderson Nat'l Bank*,
 7 657 Fed. 2d 816, 822 (6th Cir. 1981). Based on information obtained to date
 8 regarding property owned by Receivership Entities or in which they may have a
 9 security interest and in conformity with Section 754 and the federal law, the Receiver
 10 has filed the Complaint and the TRO in the United States District Courts for the
 11 Northern, Eastern, and Southern Districts of California, as well as District of South
 12 Carolina, the Northern District of Ohio, and the Western District of Washington.

13 **V. INVESTOR COMMUNICATIONS**

14 The Receiver has established a dedicated web page on his website which will
 15 be used to provide case information, regular updates, and answers to frequently
 16 asked questions to investors and creditors. The Internet address for the webpage is as
 17 follows: <http://www.ethreadvisors.com/cases/pwcg/>. The Receiver mailed a letter
 18 to all investors in the week following his appointment to inform them of the
 19 receivership and direct them to the website to obtain further notices and updates.
 20 The Receiver has posted the Appointment Order and other filings relating to the
 21 receivership on the webpage and will continue to update it with relevant filings and
 22 orders of the Court. Investors and creditors can sign up at the webpage to receive
 23 email updates about the case. To date, a total of 482 investors have signed up to
 24 receive such updates. To ensure receipt of future notices, investors and creditors
 25 should promptly contact the Receiver's office at pwcg@ethreadvisors.com if their
 26 contact information changes and provide their new contact information.

27

28

VI. SUMMARY OF RECEIPTS AND DISBURSEMENTS

The following table reflects the starting balance in PWCG Trust's accounts as of the Receiver's appointment and a summary of the receipts and disbursements for the receivership estate from February 16, 2018, through March 31, 2018:

Balance as of Receiver's Appointment	\$8,760,000.00
Policy Premium Payments	(\$779,874.13)
Interest earned	\$204.27
Ending Balance as of 3/31/18	\$7,980,330.14

In addition, the Standardized Fund Accounting Report for the receivership estate for the time period February 16, 2018, through March 31, 2018, is attached hereto as Exhibit A. Finally, the Receiver has recently been informed that several Policies have matured. He has received death benefits totaling \$2 million thus far and expects to receive another \$3 million in the next two months. These funds will be held until such time as the Court has authorized the Receiver to made distributions to investors and creditors with allowed claims.

VII. RECOMMENDATIONS

The Receiver's efforts to investigate and analyze assets, gather records, and analyze potential claims against third parties are ongoing. In the near term, the Receiver and his professionals make the following recommendations with regard to their efforts to implement the Appointment Order.

D. Document Recovery Efforts

The Receiver will obtain records from MPC, Pacific West, Calhoun, BroadRiver, and all financial institutions where PWCG Trust maintained accounts. As noted above, the Receiver has issued several subpoenas and will issue additional subpoenas as necessary to obtain relevant documents, assets, and information. As noted above, if the persons and entities subpoenaed, including Calhoun, do not

1 comply and produce the requested documents, the Receiver will seek to compel their
 2 compliance through one or more motions to the Court. It may also be necessary to
 3 take the depositions of certain individuals to obtain critical information.

4 **E. Receivership Asset Recovery Efforts and Investigation**

5 The Receiver will seek to locate any presently unaccounted for receivership
 6 assets that may exist and to pursue any improper claims to third parties. The
 7 Receiver will take appropriate steps to secure such assets and preserve their value.

8 **F. Accounting**

9 Once the Receiver has obtained bank records and records held by third parties,
 10 the Receiver will complete his accounting to establish the sources and uses of funds
 11 by PWCG Trust, determine the proper amount of investor and creditor claims, and
 12 identify potential improper transfers to third parties.

13 **G. Provide Reports to the Court on a Quarterly Basis**

14 The Receiver will continue to provide reports to the Court on a quarterly basis,
 15 as well as seeking Court approval of fee applications on a quarterly basis.

16 **H. Claims Review and Distribution Plan**

17 As the Receiver progresses, the Receiver will evaluate the appropriate method
 18 for receiving and verifying investor and creditor claims, as well as the equitable and
 19 efficient manner of distribution assets to those with valid claims. At the appropriate
 20 time, the Receiver will seek Court approval of procedures for determining claims and
 21 a plan of distribution. As noted in the Receiver's pending Motion (Dkt. No. 153), the
 22 Receiver plans to file a long-term proposal for addressing the lack of sufficient
 23 reserves to pay Policy premiums in October 2018, once the life expectancy and other
 24 Policy valuation information necessary for the proposal has been obtained.

25 Dated: May 21, 2018

ALLEN MATKINS LECK GAMBLE
 MALLORY & NATSIS LLP

By: /s/ Edward G. Fates

EDWARD G. FATES
 Attorneys for Receiver
 THOMAS HEBRANK

EXHIBIT A

Thomas C. Hebrank, Receiver
E3 Advisors
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(619) 567-7223

STANDARDIZED FUND ACCOUNTING REPORT

CIVIL - RECEIVERSHIP FUND

SECURITIES AND EXCHANGE COMMISSION,
Plaintiff,

v.

PACIFIC WEST CAPITAL GROUP, INC.; ANDREW B CALHOUN IV; PWCG TRUST; et al,
Defendants

Case No. 2:15-cv-02563 FMO (FFMx)

REPORTING PERIOD 02/16/18 TO 03/31/18

STANDARDIZED FUND ACCOUNTING REPORT for PWCG Trust - Cash Basis

Case No. 2:15-cv-02563 FMO (FFMx)

Reporting Period 02/16/18 to 03/31/18

FUND ACCOUNTING (See instructions):			
	Detail	Subtotal	Grand Total
Line 1 Beginning Balance (As of 02/16/18):	8,760,000		8,760,000
<i>Increases in Fund Balance:</i>			
Line 2 Business Income			-
Line 3 Cash and Securities			-
Line 4 Interest/Dividend Income	204		204
Line 5 Business Asset Liquidation			-
Line 6 Personal Asset Liquidation			-
Line 7 Third-Party Litigation Income			-
Line 8 Misc -Insurance & Prop Tax Refunds			-
Total Funds Available (Lines 1 - 8):	8,760,204		8,760,204
<i>Decreases in Fund Balance:</i>			
Line 9 Disbursements to Investors	-		-
Line 10 Disbursements to Receivership Operations			-
Line 10a Disbursement to Receiver or Other Professionals			-
Line 10b Business Asset Expenses	(779,874)		(779,874)
Line 10c Personal Asset Expenses	-		-
Line 10d Investment Expenses	-		-
Line 10e Third-Party Litigation Expenses	-		-
1. Attorney Fees	-		-
2. Litigation Expenses	-		-
Total Third-Party Litigation Expenses	-		-
Line 10f Tax Administrator Fees and Bonds	-		-
Line 10g Federal and State Tax Payments	-		-
Total Disbursements for Receivership Operations			(779,874)
Line 11 Disbursements for Distribution Expenses Paid by the Fund:			
Line 11a Distribution Plan Development Expenses:			
1. Fees:			
Fund Administrator.....	-		-
Independent Distribution Consultant (IDC)..	-		-
Distribution Agent.....	-		-
Consultants.....	-		-
Legal Advisors.....	-		-
Tax Advisors.....	-		-
2. Administrative Expenses	-		-
3. Miscellaneous	-		-
Total Plan Developmental Expenses			-
Line 11b Distribution Plan Implementation Expenses:			
1. Fees:			
Fund Administrator.....	-		-
IDC.....	-		-
Distribution Agent.....	-		-
Consultants.....	-		-
Legal Advisors.....	-		-
Tax Advisors.....	-		-
2. Administrative Expenses	-		-
3. Investor Identification:			
Notice/Publishing Approved Plan.....	-		-
Claimant Identification.....	-		-
Claims Processing.....	-		-
Web Site Maintenance/Call Center.....	-		-
4. Fund Administrator Bond	-		-
5. Miscellaneous	-		-
6. Federal Account for Investor Restitution (FAIR) Reports Expenses	-		-
Total Plan Implementation Expenses			-
Total Disbursements for Distribution Expenses Paid by the Fund			-
Line 12 Disbursements to Court/Other:			
Line 12a Investment Expenses/Court Registry Investment System (CRIS) Fees	-		-
Line 12b Federal Tax Payments	-		-
Total Disbursement to Court/Other:			-
Total Funds Disbursed (Lines 9 - 11):			(779,874)
Line 13 Ending Balance (As of 03/31/2018):			7,980,330

STANDARDIZED FUND ACCOUNTING REPORT for PWCG Trust - Cash Basis

Case No. 2:15-cv-02563 FMO (FFMx)

Reporting Period 02/16/18 to 03/31/18

Line 14	Ending Balance of Fund - Net Assets:			
Line 14a	Cash & Cash Equivalents			7,980,330
Line 14b	Investments			-
Line 14c	Other Assets or Uncleared Funds			-
	Total Ending Balance of Fund - Net Assets			7,980,330

OTHER SUPPLEMENTAL INFORMATION:				
		<u>Detail</u>	<u>Subtotal</u>	<u>Grand Total</u>
<i>Report of Items NOT to be Paid by the Fund:</i>				
Line 15	Disbursement for Plan Administration Expenses Not Paid by the Fund:			
Line 15a	Plan Development Expenses Not Paid by the Fund:			
	1. Fees:			
	Fund Administrator.....	-		-
	IDC.....	-		-
	Distribution Agent.....	-		-
	Consultants.....	-		-
	Legal Advisors.....	-		-
	Tax Advisors.....	-		-
	2. Administrative Expenses	-		-
	3. Miscellaneous	-		-
	Total Plan Developmental Expenses Not Paid by the Fund			-
Line 15b	Plan Implementation Expenses Not Paid by the Fund			
	1. Fees:			
	Fund Administrator.....	-		-
	IDC.....	-		-
	Distribution Agent.....	-		-
	Consultants.....	-		-
	Legal Advisors.....	-		-
	Tax Advisors.....	-		-
	2. Administrative Expenses	-		-
	3. Investor Identification			
	Notice/Publishing Approved Plan.....	-		-
	Claimant Identification.....	-		-
	Claims Processing.....	-		-
	Web Site Maintenance/Call Center.....	-		-
	4. Fund Administrator Bond	-		-
	5. Miscellaneous	-		-
	6. FAIR Reporting Expenses	-		-
	Total Plan Implementation Expenses Not Paid by the Fund			-
Line 15c	Tax Administrator Fees & Bonds Not Paid by the Fund			-
	Total Disbursements for Plan Administration Expenses Not Paid by the Fund			-
Line 16	Disbursements to Court/Other Not Paid by the Fund:			
Line 16a	Investment Expenses/CRIS Fees	-		-
Line 16b	Federal Tax Payments	-		-
	Total Disbursement to Court/Other Not Paid by the Fund:			-
Line 17	DC & State Tax Payments	-		-
Line 18	No. of Claims:			
Line 18a	# of Claims Received This Reporting Period.....			0
Line 18b	# of Claims Received Since Inception of Fund.....			0
Line 19	No. of Claimants/Investors:			
Line 19a	# of Claimants/Investors Paid this Reporting Period.....			0
Line 19b	# of Claimants/Investors Paid Since Inception of Fund.....			0

Receiver:

By:

Thomas C. Hebrank

Court-Appointed Receiver

Date:

5/8/18