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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-DDP-FFM

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

Ctrm.: 9C
Judge: Hon. Dean D. Pregerson

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 Seventh Interim Report and
4 Recommendations. This report covers the time period from July 1, 2019, through
5 September 30, 2019.

6 I. EXECUTIVE SUMMARY

7 Pursuant to the powers, authority, and directives contained in the Appointment
8 Order, the Receiver has continued his work to preserve and protect the assets of
9 PWCG Trust, including its life insurance policies ("Policies") and cash reserves. As
10 discussed further below, pursuant to the Court's December 7, 2018 order approving
11 the Receiver's proposal to pool the cash reserves and death benefits, pay Policy
12 premiums from the pooled funds, and sell or surrender the 34 Negative Value
13 Policies ("December 7, 2018 Order"), the Receiver has pooled the cash reserves,
14 serviced the Policies, and sold 14 Negative Value Policies for a total of \$1,119,815.

15 The Receiver has also been in contact with several prospective lenders
16 regarding a credit facility to provide additional funding that may be needed to cover
17 projected premiums for the portfolio. In light of recent Policy maturities and the
18 substantial death benefits received in connection with those maturities (including the
19 resulting increase to the pooled cash reserve for the portfolio), the Receiver has
20 deferred further discussions regarding a credit facility for the time being and will
21 resume discussions with potential lenders when the need for additional funding
22 becomes apparent. Additionally, the Receiver, with the assistance of ITM
23 Twentyfirst ("21st"), has continued to manage the portfolio of Policies, make all
24 required premium payments to keep the Policies in force, and has tracked and
25 collected death benefits from Policy maturities.

26 The Receiver has also analyzed tax issues facing the receivership estate,
27 including the appropriate treatment of PWCG Trust and its assets, income, and
28 expenses. Finally, the Receiver has also entered into preliminary settlement

1 discussions with Mills Potoczak & Company ("MPC"), as well as the putative
2 investor class that has a pending action against MPC, about a possible global
3 settlement of the investors' claims and the receivership estate's claims against MPC.
4 The parties are scheduled to attend mediation in April 2020.

5 **II. SUMMARY OF RECEIVER'S WORK**

6 The Receiver's focus during the third quarter was on managing and servicing
7 the portfolio of Policies, which contains a total of 81 Policies with death benefits
8 totaling approximately \$161.6 million. Throughout this period, the Receiver
9 evaluated the status and values associated with each Policy and considered whether
10 further liquidation of Policies or cessation of payments were appropriate. He also
11 worked on his accounting and analysis of receivership estate assets. This work has
12 been necessary to support the Receiver's analysis of third party claims and will be
13 key to establishing the allowed amount of each investor's claim and a plan for
14 distribution of receivership assets.

15 With the Receiver's accounting of investor deposits into PWCG Trust and
16 disbursements from PWCG Trust almost completed, the Receiver plans to file a
17 motion to establish procedures for the administration of claims against the
18 receivership estate shortly. The proposed procedures will be designed to make the
19 claims administration process as simple and efficient as possible, while providing
20 claimants with the right to have their claims decided by the Court in the event of a
21 dispute that cannot otherwise be resolved. The Receiver anticipates that the number
22 of disputed claims, if any, will be very low.

23 **III. PENDING LITIGATION**

24 At the time of the Receiver's appointment, PWCG Trust had been named as a
25 defendant in four lawsuits pending in Superior Court in Los Angeles.¹ These
26

27 ¹ One of these cases, known as the *Rhyme* case, has since been dismissed. Two
28 other cases, known as the *Shechter* and *Applebaum* cases, have been related
before the same court.

1 lawsuits had each been filed by one or more investors, either individually or as a
2 putative class. The Receiver filed notice of the Appointment Order and the litigation
3 stay contained therein in each case and contacted counsel for the other parties. As a
4 result, the litigation stay has been observed by the state court and the parties in each
5 case. The Superior Court has held several case management conferences in an effort
6 to determine whether the cases can proceed against the other defendants in light of
7 the stay of all claims as to PWCG Trust. At present, each of the lawsuits have been
8 stayed subject to review by the state courts in the coming months.

9 The Receiver has also been in communication with the investor plaintiffs,
10 through their counsel, about the claims involved in the pending cases, the Receiver's
11 potential claims against MPC, and the most cost-efficient way to pursue such claims.
12 The Receiver and MPC have signed a tolling agreement as to all statutes of
13 limitations and other time-based defenses to such potential claims. As noted above,
14 the Receiver, the putative investor class, MPC, and MPC's insurance carrier are
15 scheduled to attend mediation in January 2020.

16 **IV. TAX ISSUES**

17 With the assistance of legal counsel and tax accountants, the Receiver
18 evaluated the proper tax treatment and tax return filings for PWCG Trust for 2018
19 and going forward. The appointment of the Receiver over PWCG Trust and creation
20 of the receivership estate covering its assets could result in significant changes to the
21 entity's tax returns under the Internal Revenue Code and related regulations. In many
22 receiverships of this nature, the receivership estate is treated as a Qualified
23 Settlement Fund("QSF") for tax purposes. Here, in light of the nature of the assets,
24 (life insurance policies) and associated IRS regulations affecting the tax treatment of
25 funds recovered upon the maturity of the life insurance policies, it has been
26 necessary to explore the tax issues more deeply in an effort to avoid substantial tax
27 liabilities. Based upon the Receiver's initial review of the tax issues, it has become
28 clear that depending upon how the IRS views the receivership estate's tax obligations

1 the return to investors could be substantially reduced. As such, the Receiver and his
2 professionals have been working to address these issues.

3 The Receiver has analyzed various tax reporting entity options including a
4 QSF, a Disputed Ownership Fund, and continuing to report as a trust. The analysis
5 included projecting future annual earnings based on scheduled premium payments
6 and expected actuarial maturities. Further complicating the analysis was how each
7 entity type reported gains and losses (ordinary vs capital), and whether the entity
8 type is permitted to take advantage of losses which may be carried forward. Finally,
9 based on the entity type chosen, policies were valued under different methodologies,
10 i.e., cost or net present value.

11 Based upon the Receiver's research and analysis, there is a large disparity in
12 tax liabilities based on the entity type selected. That is, there is a potential difference
13 of \$23 million in federal taxes owed based upon when Policies are projected to
14 mature and how the receivership entity reports its taxes. Subject to further analysis,
15 the Receiver plans for the PWCG Trust to continue as a trust for tax purposes in
16 order to minimize future tax liabilities. The 2018 PWCG Trust tax returns have now
17 been filed based on this analysis.

18 **V. COOK STREET MASTER TRUST CLAIMS**

19 As discussed in prior filings, after the Securities and Exchange Commission
20 filed this case, but prior to the Receiver's appointment, Defendant Pacific West
21 Capital Group, Inc. ("Pacific West") sold its purported fractionalized interests in the
22 Policies held by PWCG Trust to an entity called Cook Street Master Trust
23 ("CSMT"), which is managed by BroadRiver Asset Management. CSMT also
24 allegedly acquired Pacific West's rights with respect to future "forfeited"
25 fractionalized interests of investors who failed to pay amounts demanded in cash
26 calls. CSMT made certain payments to PWCG Trust. Presumably, the payments
27 were for premiums associated with its fractionalized interests in Policies, and for
28 premiums associated with fractionalized interests that it believed would be

1 "forfeited" by investors in the future. The total amount paid by CSMT to PWCG
2 Trust is believed to be approximately \$2.35 million.

3 The Receiver and CSMT, through their respective counsel, have been in
4 communication about the treatment of CSMT's claims against the receivership estate
5 and a potential resolution of such claims. To date, an agreement has not been
6 reached, but the parties continue to discuss these issues.

7 VI. INVESTOR COMMUNICATIONS

8 The Receiver has established a dedicated web page on his website which is
9 being used to provide case information, regular updates, and answers to frequently
10 asked questions to investors and creditors. The Internet address for the webpage is as
11 follows: <http://www.ethreadvisors.com/cases/pwcg/>. The Receiver mailed a letter
12 to all investors in the week following his appointment to inform them of the
13 receivership and direct them to the website to obtain further notices and updates.
14 The Receiver has posted the Appointment Order and other filings relating to the
15 receivership on the webpage and will continue to update it with relevant filings and
16 orders of the Court. Investors and creditors can sign up at the webpage to receive
17 monthly email updates about the case. To date, a total of 855 investors have signed
18 up to receive such updates. To ensure receipt of future notices, investors and
19 creditors should promptly contact the Receiver's office at pwcg@ethreadvisors.com
20 if their contact information changes and provide their new contact information.

21 VII. SUMMARY OF RECEIPTS AND DISBURSEMENTS

22 The following table reflects a summary of the receipts and disbursements for
23 the receivership estate from July 1, 2019, through September 30, 2019:

24 Balance as of 7/01/19	\$9,729,685
25 Policy Maturities	\$6,260,814
26 Misc. Income	\$25,207
27 Policy Sales	\$11,408
28	

Policy Premium Pmts & Business Asset Expenses	(\$1,526,965)
Disbursements to Receiver & Professionals	(\$115,473)
Ending Balance as of 9/30/19	\$14,384,676

In addition, the Standardized Fund Accounting Report for the receivership estate for the time period July 1, 2019, through September 30, 2019, is attached hereto as Exhibit A.

VIII. RECOMMENDATIONS

The Receiver's efforts to investigate and analyze assets, gather records, and analyze potential claims against third parties are ongoing. The Receiver and his professionals make the following recommendations.

A. Document Recovery Efforts

The Receiver has obtained records from MPC, Pacific West, Calhoun, BroadRiver, and 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.

B. Accounting

The Receiver has completed his accounting analysis of PWCG Trust's records as necessary to determine the proper amount of investor claims.

C. Provide Reports to the Court on a Quarterly Basis

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

D. Claims Review and Distribution Plan

The Receiver has formulated and plans to seek approval of procedures for receiving and verifying investor claims shortly. After investor claims have been determined and there is sufficient cash in the receivership estate to make interim distributions (while continuing to maintain a sufficient reserve to pay premiums

1 necessary to maintain all Policies in force), the Receiver will propose a plan to fairly
2 and equitably distribute receivership funds to investors with allowed claims.

3
4 Dated: January 7, 2020

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

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6 By: /s/ Edward G. Fates

7 EDWARD G. FATES
8 Attorneys for Receiver
9 THOMAS HEBRANK
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EXHIBIT A

Thomas C. Hebrank, Receiver
E3 Advisors
401 West A Street, Suite 1830
San Diego, CA 92101
(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 06/01/19 TO 09/30/19

FUND ACCOUNTING (See instructions):			
	Detail	Subtotal	Grand Total
Line 1 Beginning Balance (As of 06/01/19):	9,729,685		9,729,685
<i>Increases in Fund Balance:</i>			
Line 2 Business Income			-
Line 3 Policy Maturities	6,260,814		6,260,814
Line 4 Interest/Dividend Income	25,207		25,207
Line 5 Business Asset Liquidation	11,408		11,408
Line 6 Personal Asset Liquidation			-
Line 7 Third-Party Litigation Income			-
Line 8 Misc - Insurance & Prop Tax Refunds			-
Total Funds Available (Lines 1 - 8):	16,027,114		16,027,114
<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	(115,473)		(115,473)
Line 10b Business Asset Expenses	(1,526,965)		(1,526,965)
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			(1,642,438)
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):			(1,642,438)
Line 13 Ending Balance (As of 09/30/2019):			14,384,676

Line 14 Ending Balance of Fund - Net Assets:			
Line 14a	Cash & Cash Equivalents		14,384,676
Line 14b	Investments		-
Line 14c	Other Assets or Uncleared Funds		-
Total Ending Balance of Fund - Net Assets			14,384,676
OTHER SUPPLEMENTAL INFORMATION:			
		Detail	Subtotal
Report of Items NOT to be Paid by the Fund:			Grand Total
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:

1/6/20

PWCG Trust

Quarterly Operating Report - Financial Summaries

	RR#1	RR#2	RR#3	RR#4	RR#5	RR#6	RR#7
Beginning Cash	8,760,000	7,980,330	11,045,530	8,362,202	5,457,403	5,751,008	9,729,685
<u>Receipts</u>							
Policy Maturities	-	5,073,731	-	-	1,332,296	5,508,404	6,260,814
Interest Income	204	625	735	550	370	6,438	25,207
Miscellaneous - Other					129		
Policy Sales	-	-	-	-	850,000	258,408	11,408
Total Receipts	204	5,074,356	735	550	2,182,795	5,773,249	6,297,429
<u>Disbursements</u>							
Disbursements to Receiver/Professionals	-	-	(126,945)	(129,623)	(80,615)	(55,623)	(115,473)
Business Asset Expenses	(779,874)	(2,009,156)	(2,557,118)	(2,775,727)	(1,808,575)	(1,679,249)	(1,526,965)
Less: In & Out Transactions							
Net Business Asset Expenses	(779,874)	(2,009,156)	(2,684,062)	(2,905,350)	(1,889,190)	(1,734,873)	(1,642,438)
Federal and State Tax Payments	-	-	-	-	-	(59,700)	
Total Disbursements	(779,874)	(2,009,156)	(2,684,062)	(2,905,350)	(1,889,190)	(1,794,573)	(1,642,438)
Ending Cash	7,980,330	11,045,530	8,362,202	5,457,403	5,751,008	9,729,685	14,384,676
<u>Bank Statements</u>							
Checking		160,970	191,907	91,557	52,497	128,712	47,681
PWCG Trust #1		6,868,818	2,966,029	2,599,589	2,466,436	2,036,614	1,536,979
PWCG Trust #2		4,015,743	5,204,266	2,766,256	3,232,076	2,049,881	1,931,300
CD							5,329,347
CBB						5,514,478	5,539,369
	-	11,045,530	8,362,202	5,457,403	5,751,008	9,729,685	14,384,676