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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 EIGHTH 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 Eighth Interim Report and
4 Recommendations. This report covers the Receiver's activities during the fourth
5 quarter of 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 fourth quarter was on managing and servicing
7 the portfolio of Policies, which contains a total of 79 Policies with death benefits
8 totaling approximately \$160.3 million. Throughout this period, the Receiver also
9 continued his accounting and analysis of receivership estate assets. It should be
10 noted that the Receiver's accounting of investor deposits into PWCG Trust and
11 disbursements from PWCG Trust will be key to establishing the allowed amount of
12 each investor's claim and a plan for distribution of receivership assets. With that
13 accounting completed, the Receiver filed a motion to establish procedures for the
14 administration of claims against the receivership estate. Dkt. 290. The proposed
15 procedures are designed to make the claims administration process as simple and
16 efficient as possible, while providing claimants with the right to have their claims
17 decided by the Court in the event of a dispute that cannot otherwise be resolved. The
18 Receiver anticipates that the number of disputed claims, if any, will be very low.
19 The motion was granted on February 11, 2020 (Dkt. 312), and the Receiver is
20 currently preparing to send out investor claim notices.

21 **III. PENDING LITIGATION**

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

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

14 The Receiver recently sought and obtained authority from the Court to remove
15 MPC as Trustee of PWCG Trust as part of a stipulation that also provides that the
16 litigation stay portion of the receivership order (Dkt. 145) will continue in effect as to
17 MPC until the scheduled mediation date (April 14, 2020). The Receiver is in the
18 process of amending the Trust Agreement accordingly and transitioning all
19 remaining Trustee-related functions that MPC was handling to himself, his staff, and
20 the consultant engaged to assist in servicing the Policies, ITM twentyfirst.

21 **IV. TAX ISSUES**

22 With the assistance of legal counsel and tax accountants, the Receiver
23 evaluated the proper tax treatment and tax return filings for PWCG Trust for 2018
24 and going forward. The appointment of the Receiver over PWCG Trust and creation
25 of the receivership estate covering its assets could result in significant changes to the
26 entity's tax returns under the Internal Revenue Code and related regulations. In many
27 receiverships of this nature, the receivership estate is treated as a Qualified
28 Settlement Fund("QSF") for tax purposes. Here, in light of the nature of the assets,

1 (life insurance policies) and associated IRS regulations affecting the tax treatment of
2 funds recovered upon the maturity of the life insurance policies, it has been
3 necessary to explore the tax issues more deeply in an effort to avoid substantial tax
4 liabilities. Based upon the Receiver's initial review of the tax issues, it has become
5 clear that depending upon how the IRS views the receivership estate's tax obligations
6 the return to investors could be substantially reduced. As such, the Receiver and his
7 professionals have been working to address these issues.

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

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

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

24 As discussed in prior filings, after the Securities and Exchange Commission
25 filed this case, but prior to the Receiver's appointment, Defendant Pacific West
26 Capital Group, Inc. ("Pacific West") sold its purported fractionalized interests in the
27 Policies held by PWCG Trust to an entity called Cook Street Master Trust
28 ("CSMT"), which is managed by BroadRiver Asset Management. CSMT also

1 allegedly acquired Pacific West's rights with respect to future "forfeited"
2 fractionalized interests of investors who failed to pay amounts demanded in cash
3 calls. CSMT made certain payments to PWCG Trust. Presumably, the payments
4 were for premiums associated with its fractionalized interests in Policies, and for
5 premiums associated with fractionalized interests that it believed would be
6 "forfeited" by investors in the future. The total amount paid by CSMT to PWCG
7 Trust is believed to be approximately \$2.35 million.

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

12 VI. INVESTOR COMMUNICATIONS

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

26 VII. SUMMARY OF RECEIPTS AND DISBURSEMENTS

27 The following table reflects a summary of the receipts and disbursements for
28 the receivership estate from October 1, 2019, through December 31, 2019:

1	Balance as of 10/01/19	\$14,384,676
2	Policy Maturities	\$904,808
3	Misc. Income	\$20,909
4	Litigation Cost (Mediator deposit)	\$450
5	Tax payments	\$679
6	Policy Premium Pmts & Business Asset Expenses	(\$1,709,724)
7		
8	Ending Balance as of 12/31/19	\$13,599,540

9 In addition, the Standardized Fund Accounting Report for the receivership
10 estate for the time period October 1, 2019, through December 31, 2019, is attached
11 hereto as Exhibit A.

12 **VIII. RECOMMENDATIONS**

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

16 **A. Document Recovery Efforts**

17 The Receiver has obtained records from MPC, Pacific West, Calhoun,
18 BroadRiver, and financial institutions where PWCG Trust maintained accounts. As
19 noted above, the Receiver has issued several subpoenas and will issue additional
20 subpoenas as necessary to obtain relevant documents, assets, and information.

21 **B. Provide Reports to the Court on a Quarterly Basis**

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

24 **C. Claims Review and Distribution Plan**

25 The Court has recently approved procedures for receiving and verifying
26 investor claims. After investor claims have been determined and there is sufficient
27 cash in the receivership estate to make interim distributions (while continuing to
28 maintain a sufficient reserve to pay premiums necessary to maintain all Policies in

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

3
4 Dated: March 12, 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
501 West Broadway, Suite 290
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 10/01/19 TO 12/31/19

FUND ACCOUNTING (See instructions):			
	Detail	Subtotal	Grand Total
Line 1 Beginning Balance (As of 10/01/19):	14,384,676		14,384,676
<i>Increases in Fund Balance:</i>			
Line 2 Business Income			-
Line 3 Policy Maturities	904,808		904,808
Line 4 Interest/Dividend Income	20,909		20,909
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):	15,310,393		15,310,393
<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	(1,709,724)		(1,709,724)
Line 10c Personal Asset Expenses	-		-
Line 10d Investment Expenses	-		-
Line 10e Third-Party Litigation Expenses	-		-
1. Attorney Fees	-		-
2. Litigation Expenses	(450)		-
Total Third-Party Litigation Expenses	(450)		(450)
Line 10f Tax Administrator Fees and Bonds	-		-
Line 10g Federal and State Tax Payments	(679)		(679)
Total Disbursements for Receivership Operations	(679)		(1,710,853)
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):			(1,710,853)
Line 13 Ending Balance (As of 12/31/2019):			13,599,540

Line 14	Ending Balance of Fund - Net Assets:		
Line 14a	Cash & Cash Equivalents		13,599,540
Line 14b	Investments		-
Line 14c	Other Assets or Uncleared Funds		-
	Total Ending Balance of Fund - Net Assets		13,599,540

OTHER SUPPLEMENTAL INFORMATION:			
	Detail	Subtotal	Grand Total
Report of Items NOT to be Paid by the Fund:			
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
Thomas C. Hebrank
Court-Appointed Receiver

Date: 2/18/20

PWCG Trust

Quarterly Operating Report - Financial Summaries

	RR#1	RR#2	RR#3	RR#4	RR#5	RR#6	RR#7	RR#8	
Beginning Cash	8,760,000	7,980,330	11,045,530	8,362,202	5,457,403	5,751,008	9,729,685	14,384,676	
<u>Receipts</u>									
Policy Maturities	-	5,073,731	-	-	1,332,296	5,508,404	6,260,814	904,808	19,080,053
Interest Income	204	625	735	550	370	6,438	25,207	20,908	55,038
Miscellaneous - Other					129				129
Policy Sales	-	-	-	-	850,000	258,408	11,408		1,119,815
Total Receipts	204	5,074,356	735	550	2,182,795	5,773,249	6,297,429	925,717	20,255,036
<u>Disbursements</u>									
Disbursements to Receiver/Professionals	-	-	(126,945)	(129,623)	(80,615)	(55,623)	(115,473)	-	(508,278)
Business Asset Expenses	(779,874)	(2,009,156)	(2,557,118)	(2,775,727)	(1,808,575)	(1,679,249)	(1,526,965)	(1,709,724)	(14,846,388)
Litigation Expenses								(450)	(450)
Net Business Asset Expenses	(779,874)	(2,009,156)	(2,684,062)	(2,905,350)	(1,889,190)	(1,734,873)	(1,642,438)	(1,710,174)	(15,355,116)
Federal and State Tax Payments	-	-	-	-	-	(59,700)		(679)	(60,379)
Total Disbursements	(779,874)	(2,009,156)	(2,684,062)	(2,905,350)	(1,889,190)	(1,794,573)	(1,642,438)	(1,710,853)	(13,704,643)
Ending Cash	7,980,330	11,045,530	8,362,202	5,457,403	5,751,008	9,729,685	14,384,676	13,599,540	
<u>Bank Statements</u>									
Checking		160,970	191,907	91,557	52,497	128,712	47,681	96,829	
PWCG Trust #1		6,868,818	2,966,029	2,599,589	2,466,436	2,036,614	1,536,979	1,181,919	
PWCG Trust #2		4,015,743	5,204,266	2,766,256	3,232,076	2,049,881	1,931,300	1,431,411	
CD							5,329,347	5,329,347	
CBB						5,514,478	5,539,369	5,560,034	
	-	11,045,530	8,362,202	5,457,403	5,751,008	9,729,685	14,384,676	13,599,540	