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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

RAPOWER-3, LLC; INTERNATIONAL
AUTOMATED SYSTEMS, INC.; LTB1,
LLC; R. GREGORY SHEPARD; NELDON
JOHNSON; and ROGER FREEBORN,

Defendants.

RECEIVER'S TWENTIETH
QUARTERLY STATUS REPORT

*For the period July 1, 2023 to
September 30, 2023*

Civil No. 2:15-cv-00828-DN-DAO

District Judge David Nuffer

R. Wayne Klein, the Court-Appointed Receiver (the "Receiver") in this matter, hereby submits this Twentieth Quarterly Status Report ("Report") for the period from July 1, 2023 to September 30, 2023 ("Reporting Period").

I. INTRODUCTION AND BACKGROUND

The Receivership Estate was created on October 31, 2018 with entry of the Court's *Receivership Order* ("Order"),¹ which, among other things, appointed the Receiver and

¹[Docket no. 490](#). A *Corrected Receivership Order* ("CRO"), which corrected formatting errors, was entered the following day. [Docket no. 491](#), filed November 1, 2018.

continued a previously entered asset freeze.² The Receivership Estate was expanded in 2019 to include 13 additional affiliated entities ("Affiliated Entities").³

Because many of the Receivership's objectives have been accomplished, future efforts will focus on completing pending litigation, collecting judgments, and awaiting disposition of remaining real property.

II. ASSET RECOVERY, SETTLEMENTS

A. Settlements. There was one new settlement during the Reporting Period, with LaGrand Johnson. During the quarter, the Receiver received \$265,000.00 from the Johnson settlement (with more expected) and \$16,945.78 in payments from other settlements.

B. Garnishments. No additional garnishment funds were received during the quarter.

III. ASSIGNMENT OF JUDGMENTS TO THE UNITED STATES

The Receiver plans to seek approval to assign five or six additional judgments to the United States. These are judgments affirmed by the Tenth Circuit during the Reporting Period.

IV. REAL PROPERTY HOLDINGS

The Receivership Estate now holds only the three contiguous properties that are subject to a purchase option expiring in 2025. Option fees are current. Millard County's assessment of the values of these properties increased 97% over the 2022 assessed values.

V. LITIGATION

A. Special Report on Status of Litigation. The Receiver filed an eleventh special report on the status of litigation, summarizing the status of settlement payments, summary judgment

²Memorandum Decision and Order Freezing Assets and to Appoint a Receiver, [Docket no. 444](#), filed August 22, 2018.

³[Docket no. 636](#), filed May 3, 2019.

motions, default judgments, and ongoing litigation.⁴ Because all appeals have now been decided and the Receiver has only five litigation cases remaining, the Receiver will cease preparing special litigation status reports unless the Court indicates a desire to continue receiving those reports.

B. Appeals. The Tenth Circuit ruled on all seven appeals by commission recipients that were pending. On July 14, 2023, the appeals court affirmed the district court judgment against Trudy Shepherd (who previously paid her judgment amount). On August 7, 2023, the appeals court affirmed the district court judgments against Janet Roe, Jean Armand, Roger Hamblin, John Howell, Carey Hadderton, and Reinhold Finkes. The Receiver intends to seek approval to assign most of the unpaid judgments to the United States.

The Receiver's December 31, 2022 status report failed to mention that on November 4, 2022, the Tenth Circuit affirmed the tax court ruling that disallowed tax benefits claimed by Preston Olsen. The appeals court found that Olsen lacked a profit motive. A concurring opinion expressed the view that the solar lenses were never "placed in service." That ruling is expected to increase IRS efforts to recover unpaid taxes from many lens purchasers.

C. Active Recovery Litigation. During the Reporting Period, Randale Johnson filed a bankruptcy petition, resulting in the scheduled September 15, 2023 trial against him being stayed. LaGrand Johnson entered into a settlement agreement. This leaves three recovery lawsuits filed by the Receiver still pending, one case where litigation will move to bankruptcy court, and one collection effort still open involving Richard Jameson, discussed next.

⁴Docket no. 1256, filed September 1, 2023.

For the three recovery cases still pending, cross summary judgment motions are pending in the Receiver's case against Plaskolite and trials are set in 2024 against Glenda Johnson and Nelson Snuffer Dahle & Poulsen.

D. Collection Litigation: Jameson.

1. Background. Pursuant to a settlement with Richard Jameson, the Receiver's lawsuit against Jameson was put on hold pending the results of his litigation in the U.S. Court of Claims. On May 30, 2022, Jameson died and on September 21, 2022, the Court of Claims dismissed Jameson's case without prejudice. Jameson's estate did not refile his claims court case within one year after the dismissal, so the dismissal is final.

2. Appointment of Personal Representative. The Utah Fifth District Court has granted the Receiver's motion and appointed Cheri Jameson (Jameson's wife) as personal representative for the estate of Richard Jameson. The Receiver intends to move to substitute Jameson's estate as defendant in the Receiver's suit against Jameson.

3. Motion to Determine "Condition Fulfillment." The Receiver's motion to determine that the condition precedent of Jameson's settlement agreement had been satisfied, thereby obligating Jameson to pay the \$16,000.00 settlement amount, has been fully briefed and is awaiting a ruling.⁵

E. Bankruptcy Court Litigation (Randale Johnson). The Receiver participated in the debtor's examination of Randale Johnson and will file a proof of claim in the bankruptcy. The Receiver has been working closely with the trustee assigned to Johnson's case, providing substantial information to the trustee. The Receiver is discussing with the trustee options

⁵*Id.*, docket no. 35, filed April 14, 2023.

regarding avoidance of prior transfers by Johnson. The Receiver expects to file an adversary action seeking a ruling that Johnson's debt to the Receiver is nondischargeable or move to dismiss his bankruptcy.

F. Criminal Contempt Case. Neldon Johnson and Glenda Johnson's trial on criminal contempt charges has been postponed to January 22, 2024, based on Neldon Johnson's poor health.⁶

G. Lawsuits Filed by Neldon Johnson. Three lawsuits filed by Neldon Johnson before appointment of the Receiver were stayed by the CRO:

1. Thomas Mancini. At the request of the Receiver, Johnson's lawsuit against DOJ trial expert Thomas Mancini was dismissed with prejudice on April 4, 2023.⁷

2. State Court Injunctive Action. Johnson had filed a lawsuit in Utah's Fourth District Court on October 16, 2018, naming the Internal Revenue Service, the U.S. Department of Justice, and Judge Nuffer as defendants. The United States removed the action to federal court on October 31, 2018 and filed a motion to dismiss the lawsuit.⁸ Before the dismissal motion was heard, the removed case was stayed. Circuit Judge Tymkovich, who now presides over that case, lifted the stay order for the limited purpose of ruling on the United States' motion to dismiss.⁹ The dismissal motion is pending before Magistrate Cecilia Romero.

⁶2:21-cr-513.

⁷Case no. 4:18-cv-0087-DN-PK, docket no. 32, filed April 4, 2023.

⁸Case no. 4:18-cv-0073.

⁹*Id.*, docket no. 30.

3. Federal Court Injunctive Action. Johnson filed a lawsuit in federal court against the Department of Justice, the Internal Revenue Service, and Judge Nuffer on September 20, 2018.¹⁰ The United States filed a motion to dismiss that lawsuit, but the case was stayed before the dismissal motion was decided. This case also has been assigned to Circuit Judge Tymkovich. As previously noted, the Receiver, joined by the United States, filed a report recommending that Johnson not be allowed to pursue any claims for monetary damages, expressing a belief that these claims lack merit, and suggesting Johnson's claims have been mooted by subsequent court rulings and the multiple appeals filed by Johnson.¹¹ There have been no rulings in that case since the Receiver filed his report.

VI. COLLECTION EFFORTS

The Receiver filed notices of assignment in cases where judgments were recently assigned to the United States. He sent background information to the United States about those judgment debtors and has consulted with the United States about collection of those judgments. The United States has sent requests for information to the debtors and indicates it intends to file motions to compel discovery. One debtor, Curtis Snow, filed for bankruptcy after assignment of the judgment against him.

VII. FINANCIAL OPERATIONS OF THE RECEIVERSHIP ESTATE

A. Receipts and Disbursements. The table below summarizes the revenue and expenditures of the Receivership Estate during the quarter:

¹⁰Case no. 4:18-cv-062.

¹¹*Id.*, docket no. 27, filed March 31, 2023.

Category	Revenue	Expenditures
Settlement payments	\$281,945.78	
Royalties, rebate	\$620.42	
Interest earnings	\$8,236.02	
Storage unit		\$354.00
Mediation fee ¹²		\$1,000.00
Bank fees		\$30.00
Total	\$290,802.22	\$1,384.00

The fee application for work performed during the second quarter of 2023 was approved.¹³ Payments totaling \$32,516.75 were paid to the Receiver, his counsel, and forensic accountants.

B. Bank Account Balances. The balances of funds in the Receivership accounts at Wells Fargo Bank and Wells Fargo Advisors as of September 30, 2023 were:

Account Balances	
Account	Amount
Checking account	\$23,177.02
Bank savings account	\$4,617.94
Money market fund	\$900,406.75
Total	\$928,201.71

C. Prior Distributions to the U.S. Treasury. The Receiver has distributed \$9,000,000.00 to the U.S. Treasury to date. The most recent distribution was December 20, 2021. The amount the Receiver is retaining in the Receivership Estate is to cover potential litigation expenses.

VIII. NEXT STEPS

The remaining tasks for the Receivership are:

¹²An unsuccessful mediation involving the Receiver's lawsuit against Nelson Snuffer was held on August 21.

¹³Docket no. 1255, filed August 31, 2023.

A. Ongoing Litigation. Litigation will continue in the three cases actively being litigated, plus activity related to determining the enforceability of the Jameson settlement agreement and bankruptcy court proceedings.

B. Assignment of Judgments. The Receiver will file a motion to assign additional judgments to the United States and will provide information to the United States to assist in its collection of the assigned judgments and the settlement agreements.

C. Managing Remaining Properties. The Receiver will continue managing the three properties that are subject to the purchase option, including paying property taxes and ensuring collection of the option payments.

IX. CONCLUSION

While many of the objectives of the Receivership have been accomplished, the remaining tasks will require significant effort, or, in the case of the property sales, require waiting.

The Receiver notes, for the information of the Court, that Receivership Defendant Greg Shepard died on August 30, 2023.

The Receiver certifies that the information in this Twentieth Quarterly Status Report is accurate to the best of his knowledge.

/s/ Wayne Klein
Wayne Klein
Receiver

DATED this 10th day of October 2023.

PARR BROWN GEE & LOVELESS

/s/ Jeffery A. Balls
Jonathan O. Hafen
Jeffery A. Balls
Attorneys for Receiver

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that service of the above RECEIVER'S TWENTIETH QUARTERLY STATUS REPORT was electronically filed with the Clerk of the Court through the CM/ECF system on October 10, 2023, which sent notice of the electronic filing to all counsel of record. A copy was also mailed to the following:

Neldon Johnson
Post Office Box 95332
South Jordan, Utah 84095

Pro se Defendant

/s/ Wendy V. Tuckett