

Jonathan O. Hafen (6096) (jhafen@parrbrown.com)
Jeffery A. Balls (12437) (jballs@parrbrown.com)
PARR BROWN GEE & LOVELESS, P.C.
101 South 200 East, Suite 700
Salt Lake City, Utah 84111-3105
Telephone: (801) 532-7840

Attorneys for Court-Appointed Receiver Wayne Klein

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 TWENTY-FIRST
QUARTERLY STATUS REPORT

*For the period October 1, 2023 to
December 31, 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 Twenty-First Quarterly Status Report ("Report") for the period from October 1, 2023 to December 31, 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

Activities during the Reporting Period focused on recovering assets, assigning additional judgments to the United States for collection, and preparing for trial in litigation still pending.

II. ASSET RECOVERY, SETTLEMENTS

A. Settlements. During the Reporting Period, the Court approved the settlement with LaGrand Johnson, which had been submitted for approval in September. There was one new settlement, with the Chapter 7 trustee in the bankruptcy of Randale Johnson. Under this settlement: (i) the trustee will turn over to the Receiver the \$8,512.04 balance of one of Randale Johnson's deposit accounts, (ii) the Receiver relinquished claims to six other smaller accounts, (iii) the trustee assigned to the Receiver all of the bankruptcy estate's rights to receivership entities, Randale Johnson's trust, and voidable transfer claims relating to a property transfer by Randale Johnson to his former spouse. In its approval order,⁴ the Court partially lifted an earlier asset freeze order, to allow financial institutions to turn over Randale Johnson's funds to the trustee. The Randale Johnson settlement has also been approved by the bankruptcy court, which has entered a separate order requiring turnover of funds to the Receiver.

B. Settlement Recoveries. During the quarter, the Receiver received \$31,636.78 in payments from other settlements.

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.

⁴Docket no. 1266, filed December 13, 2023.

C. Status of Settlement Agreements. To date, 76 settlement agreements have been paid in full and the underlying lawsuits were dismissed or notices were filed that the judgments were satisfied. The table below shows the status of settlement agreements where the debtors are making (or have promised) payments to the Receiver:

Settlement Agreements Allowing Installment Payments				
Name	Case No.	Case Status	Prior	Current
Aulds, Robert	2:19-cv-00192-DN-PK	Dismissed	83%	95%
Black, Scott	2:19-cv-00678-DN-PK	Dismissed	88%	100%
Heideman & Assoc.	2:19-cv-00854-DN-PK	Dismissed	50%	67%
Jameson, Richard	2:19-cv-00822-DN-PK	Open	0%	0%
Johnson, LaGrand ⁵	2:19-cv-00534-DN-PK	Dismissed	0%	90%
Johnson, Randale ⁶	2:19-cv-00532-DN-PK	Bankruptcy stay	0%	0%
Kinsey, Ed	2:19-cv-00729-DN-PK	Dismissed	42%	50%
Newman, Ina	2:18-cv-00623-DN-PK	Dismissed	75%	85%
Shepard, Mark	2:19-cv-00803-DN-PK	Dismissed	99%	100%
Taylor, Christopher	2:19-cv-00816-DN-PK	Dismissed	35%	36%
Woodson, James	2:19-cv-00794-DN-PK	Judgment	85%	98%

D. Collection Efforts.

1. Richard Jameson. On December 20, 2023, the court granted the Receiver's motion to determine that preconditions to the settlement agreement with Richard Jameson were satisfied, thereby obligating his estate to pay the \$16,000.00 agreed-upon amount. Shortly after the end of the Reporting Period, Jameson's estate promised to pay the settlement amount, so the Receiver hopes this will be paid in full shortly.⁷

⁵The remaining payments are coming from financial institutions, not the defendant. One of three expected payments has been received.

⁶This settlement agreement is with the trustee for Randale Johnson's bankruptcy estate. Payments will come from the bankruptcy estate.

⁷A status report in this open matter was filed by the parties on December 20, 2023. A hearing is set for January 24, 2024 to consider Justin Heidman's motion to withdraw as counsel for Jameson and North Star Tax Services.

2. Christopher Taylor. Taylor has ceased making agreed-upon payments on his settlement. The Receiver expects to seek approval to assign this judgment to the United States.

III. ASSIGNMENT OF JUDGMENTS TO THE UNITED STATES

A. Judgments Assigned. On November 27, 2023, the Court granted the Receiver's motion to assign five additional judgments to the United States.⁸ The assigned judgments represent five of the six judgments affirmed by the Tenth Circuit in August 2023. The Receiver did not assign the judgment against Roger Hamblin, which is discussed below. The Receiver filed notices of assignment in each of the five cases where judgments were assigned and provided the United States with information from his files that would aid in the collection of these judgments.

B. Collections by the United States on Assigned Judgments. The orders approving assignment of judgments to the United States require the Receiver to report to the Court on the success of the United States in collecting on assigned judgments. During 2023, the United States collected \$39,240.00 from the judgment against Kevin Kerr. This represents 96% of the judgment amount. Counsel for the United States and the Receiver regularly discuss the status of collection efforts by the United States, which are ongoing. As an example, the Court previously approved the assignment of the jury verdict of \$87,079.71 against Curtis Snow. Snow subsequently filed for bankruptcy. The United States has filed an adversary complaint against Snow, seeking a nondischargeability determination relating to that judgment.⁹

⁸Docket no. 1264, filed November 27, 2023.

⁹The Receiver and the United States are cooperating in evaluating whether certain transfers by Snow to his wife were voidable transfers that should be recovered.

IV. LITIGATION

A. Anticipated Collection Litigation. The Receiver anticipates initiating litigation to collect on two judgments:

1. Roger Hamblin. One of the judgments affirmed on appeal was against Roger Hamblin and his company, Digital Wave Energy. Hamblin died during the pendency of the appeal. Because the Receiver found that funds were withdrawn from his bank accounts and assets were transferred between various trusts after the Receiver first filed suit, the United States and the Receiver agreed that the Receiver should initially pursue initial collection efforts. The Receiver had demanded payment from Hamblin's estate and is preparing to initiate an action to recover voidable transfers.¹⁰

2. Becky Johnson. The Receiver's settlement agreement with the trustee of Randale Johnson's bankruptcy estate gave the Receiver rights to pursue an action to avoid voidable transfers of real property from Randale Johnson to his former wife, Becky Johnson. The Receiver expects to file a voidable transfer action in this Court.

B. Bankruptcy Court Litigation: Randale Johnson. The Receiver's settlement agreement with the trustee of Randale Johnson's bankruptcy estate was described above. On November 9, 2023, the Receiver filed an adversary complaint in bankruptcy court seeking a determination that the \$200,000.00 judgment granted by this Court and the Receiver's claims for

¹⁰In early January, Hamblin's son requested additional time to consult with counsel in responding to the Receiver's demand.

recovery of an additional \$464,467.80 are not dischargeable. The bankruptcy court has entered a scheduling order for that action, with a final pretrial conference set for November 5, 2024.¹¹

C. Recovery Litigation. Three recovery lawsuits filed by the Receiver are still active.

1. Plaskolite. Cross summary judgment motions are pending in this lawsuit brought by the Receiver.

2. Glenda Johnson. The Receiver took the deposition of Glenda Johnson on December 19, 2023, during which Mrs. Johnson refused to answer most questions, asserting her Fifth Amendment rights. The Receiver expects to file a motion for partial summary judgment, seeking recovery of transfers where Mrs. Johnson did not dispute that she failed to act in good faith and that the transferors did not receive reasonably equivalent value.

3. Nelson Snuffer. The Receiver will take the depositions of Nelson Snuffer and three of its lawyers in late January. Nelson Snuffer will also depose the Receiver in February.

D. Criminal Contempt Case. Neldon Johnson and Glenda Johnson's trial on criminal contempt charges was postponed another six months.¹²

E. Lawsuits Filed by Neldon Johnson. Two lawsuits filed by Neldon Johnson before appointment of the Receiver are still pending:

1. 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.

¹¹The Receiver has provided information requested by the U.S. Trustee relating to possible misconduct in bankruptcy filings by Randale Johnson and Curtis Snow.

¹²2:21-cr-513.

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.¹³

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.¹⁴ The dismissal motion is pending before Magistrate Cecilia Romero.

2. 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, 2018.¹⁵ 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 status report in March 2023 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.¹⁶ There have been no rulings in that case since the Receiver filed his status report.

V. REAL PROPERTY HOLDINGS

The Receivership Estate now holds only the three contiguous properties that are subject to a purchase option. Option payments are current. The Receiver paid property taxes.

¹³Case no. 4:18-cv-0073.

¹⁴*Id.*, docket no. 30.

¹⁵Case no. 4:18-cv-062.

¹⁶*Id.*, docket no. 27, filed March 31, 2023.

VI. 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:

Category	Revenue	Expenditures
Settlement payments	\$31,636.78	
Real estate option	\$50,538.00	
Interest earnings	\$11,256.46	
Property taxes		\$6,090.71
Storage unit		\$354.00
Mediation fee		\$212.50
Operating expenses		\$22.00
Total	\$93,431.24	\$16,679.21

The fee application for work performed during the third quarter of 2023 was approved.¹⁷ Payments totaling \$68,086.00 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 December 31, 2023 were:

Account Balances	
Account	Amount
Checking account	\$75,601.59
Bank savings account	\$59,622.66
Money market fund	\$811,643.49
Total	\$946,867.74

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.

¹⁷Docket no. 1265, filed December 1, 2023.

VII. NEXT STEPS

The remaining tasks for the Receivership are:

A. Ongoing Litigation. Litigation will continue in: (i) the three recovery cases still pending, (ii) bankruptcy court litigation to determine the dischargeability of the \$200,000.00 judgment against Randale Johnson and to recover additional claimed fraudulent transfers, and (iii) voidable transfer actions expected to be filed against Roger Hamblin and Becky Johnson.

B. Assignment of Judgments. The Receiver may seek to assign at least one additional judgment to the United States and will provide information to the United States to assist in its collection of judgments and settlement agreements previously assigned.

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.

VIII. 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 certifies that the information in this Twenty-First Quarterly Status Report is accurate to the best of his knowledge.

/s/ Wayne Klein

Wayne Klein, Receiver

DATED this 26th day of January, 2024.

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 this RECEIVER'S TWENTY-FIRST QUARTERLY STATUS REPORT was electronically filed with the Clerk of the Court through the CM/ECF system on January 26, 2024, 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