

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

In re:)	Case No. 10-50494
)	
FAIR FINANCE COMPANY)	Chapter 7
)	
Debtor.)	Chief Judge Marilyn Shea-Stonum
)	

STATUS REPORT FOR JUNE 14, 2011 STATUS CONFERENCE

Brian A. Bash, Trustee herein, hereby submits his summary of the status of the Trustee's administration of the estate to date. In this report, the Trustee will provide a more detailed narrative of the nature and scope of the work that he and his professionals have accomplished since his appointment, in effort provide a more complete understanding of the current status of the case and the Trustee's focus going forward.¹

The Early Stages of the Trustee's Appointment

Since the Trustee's Appointment in February 2010, the Trustee and his professionals have wound down the Debtor's business and investigated the Debtor's assets and financial affairs, including the transactions and circumstances through which the Debtor's assets were depleted as part of a massive fraud involving over seventy entities. At the time of the Trustee's appointment, the estate had only about \$200,000 in liquid assets. The complexity of this case is underscored by the length of the federal investigations of Debtor's owners. The Department of Justice's investigation began no later than September 2009 and returned indictments in March 2011.²

¹ This report is intended to describe the general scope and nature of the Trustee's investigation and the status of this case. It is not exhaustive, and the Trustee's investigation and analysis are on-going, including, without limitation, his investigation and analysis of some of the documents and matters identified herein.

² The *Indictment* of Durham, Cochran and Snow reflects that the Department of Justice sent an undercover agent to Debtor posing as an investor on September 11, 2009.



105049411061300000000001

In the first few months after the Trustee's appointment, the Trustee had to focus on matters imminent to winding down the business (including Debtor's business as servicer to hundreds of dealers, as well as dealing with Debtor's leases and securing the records and physical premises at Debtor's numerous office locations), while at the same time acting as quickly as possible to secure and preserve assets, even before the Trustee had access to most of Debtor's records.

Due to the criminal investigation of Fair's owners and officers, there were few witnesses who were willing and able to assist the Trustee in understanding Fair's business and financial records. Under these circumstances, the Trustee had to cautiously and critically evaluate the information provided by those witnesses and employees who were willing to assist, which compounded an already difficult investigation.

The Debtor's records were disorganized, and the most important records were not immediately available to the Trustee for months after the opening of the case because of the Department of Justice's investigation.³ Significant time was needed to wind down Debtor's affairs so that it would not be incurring ongoing rent, power, and employee benefit costs that were not providing the estate with any value. The Trustee had to move quickly into litigation due to early information that substantial assets, including collateral securing the Debtor's liens, had been recently dissipated, and the risk that additional assets would be dissipated.

The Investigation

The Trustee and his professionals have had to review, analyze, prioritize and organize nearly a million pages of documents including business records, financial records, accounting work papers, legal instruments, government securities filings for the Debtor and entities related

³ The Department of Justice did permit the Trustee's forensic accountant to inspect and copy many of the documents that it seized at the premises where the documents were being stored in the DOJ's custody.

to the bankruptcy case, and filings in the multiple, complex lawsuits between CLST and its shareholders.

In addition to the document review, the Trustee has examined, subpoenaed or otherwise communicated with a number of entities related to Debtor, including various counsel for Timothy Durham, accountants BGBC Partners P.C., Somerset CPAs, and Peachin Schwartz & Weingardt, PC, financial institutions including Key Bank, JP Morgan Chase and Securities Research Inc., and related entities including National Lampoon, Elizabeth McClure, Gary Sallee, Dana Osler and Henri Najem.

The Trustee has also filed, responded to, or monitored numerous litigated matters, including:

- A *Complaint to Avoid Fraudulent Transfers* which the Trustee filed against National Lampoon on June 13, 2011 in California, seeking to recover in excess of \$9 million.
- The *McKibben* lawsuit against Debtor's officers and directors for fraud, seeking in excess of \$200 million in damages.
- The *Laikin* lawsuit seeking in excess of \$20 million in damages.
- The *Brevet* lawsuit seeking to recover an appeal bond posted by the Debtor of approximately \$2 million.
- The *Complaint for Substantive Consolidation* of Obsidian and Diamond, which seeks damages of approximately \$39 million.
- The *Motion to Substantively Consolidate* FHI and DCI.
- The *Motion for Determination of Waiver of Privilege* regarding documents stored on Fair's servers.
- Lawsuits to collect debts owed to the estate by Stephen Plopper, Jeffrey Osler, and Dana Osler.
- Lawsuits to avoid transfers of the Debtor's money to political campaigns.
- Shareholder suits filed against CLST related to CLST's business dealings with Debtor.

- At least six claims against the Debtor or its officers in addition to *McKibben*.
- Actual or prospective foreclosure proceedings against entities that ultimately owe money to the Debtor.

These matters have involved significant time drafting and responding to pleadings, motions, discovery requests, and discovery plans. In addition, given the unusual transactions and facts of this case and the complex interplay of bankruptcy and criminal law, a significant amount of legal research has been required.

Accounting Investigation

The Trustee's forensic accountant has conducted an extensive investigation of the Debtor and related companies and has determined that Debtor's officers inflated Fair's assets and income through inappropriate accounting methods and that they operated Debtor as, or in the nature of, a Ponzi scheme. Since the time at which the Debtor became insolvent or became a Ponzi scheme is relevant to ongoing and potential litigation, the Trustee's forensic accountant restated the Debtor's books from 2002 to 2009. This task involved investigating the finances of over seventy related party borrowers to determine, for example and among other things, the likelihood that the borrowers would repay the Debtor at various points in time.

Administration and Wind Down of Debtor

In addition to the investigation and litigation related to Debtor, the Trustee has also spent significant time winding down and administering the Debtor. This includes:

- Monitoring the performance of accounts receivable in which the Debtor has an interest, held by both CLST and Fortress.
- Negotiating for the turnover or sale of assets, including luxury vehicles, artwork, political contributions, and the shares or assets of United Trailers, and US Rubber Reclaiming.
- Negotiating the foreclosure process for collateral in which the Trustee holds a purportedly junior lien.

- Investigating the Debtor's insurance policies for potential recovery and maintaining insurance on the Debtor's assets.
- Obtaining title reports on dozens of properties in which the Trustee has an interest and ensuring that the interest is perfected.
- Vetting and retaining professionals, including counsel for the estate, a forensic accountant for the estate, auctioneers of artwork and vehicles, and computer specialists.
- Ending the Debtor's 401(k) and health care plans in accordance with applicable federal law.
- Securing, closing, and negotiating settlements with landlords regarding the Debtor's branch offices.
- Negotiating a new lease with the Cuyahoga Falls landlord.
- Transitioning Debtor's dealers to different financing sources.
- Preparing and filing bankruptcy schedules, including determining the outstanding debts to investors.
- Complying with federal tax laws, including filing Form 5500 for the Debtor's 401(k) plan, issuing W-2 forms, and issuing over five thousand 1099s.
- Preserving evidence by imaging computer systems and indexing records in the possession of the Trustee.
- Responding to subpoenas and cooperating with investigations of the Debtor by law enforcement agencies.
- The Trustee has recovered approximately \$2 million to date. In addition, the Trustee has entered into escrow agreements to preserve proceeds from the sale of Daniel Laikin's home pending resolution of the Trustee's claims. There are proceeds of approximately \$1.6 million in excess of liens prior to the Trustee's, which would be applied against any judgment the Trustee may obtain against Laikin.

In the following weeks, the Trustee intends to focus on accomplishing the following key actions:

The bulk of the Trustee's efforts going forward will be focused on litigation aimed at recovering assets. Some of those suits already have been filed, and in certain cases the Trustee

has sought, or may seek, leave to amend his claims as his investigation continues and he learns additional information. The Trustee also has sent dozens of letters demanding the return of funds, in effort to maximize recovery without litigation, and the Trustee will continue to take that approach where appropriate. The Trustee also will continue to carefully evaluate both pending and future claims and to take the approach that he determines to be in the best interest of the estate, which includes a cost-benefit analysis. The Trustee anticipates that his key actions going forward will include the following:

- 1) Developing and filing causes of action to recover funds for the estate, including avoidance claims under chapter 5 of the Bankruptcy Code, breach of contract claims against loan recipients, and other claims.
- 2) Pursuing resolution of litigation in an efficient manner.
- 3) Taking depositions in Cleveland, Indianapolis, and Los Angeles, and issuing additional requests for documents and examinations pursuant to Rule 2004.
- 4) Sending additional demand letters and pursuing additional obligations owing to the estate.

Date: June 13, 2011

Respectfully submitted,

/s/ Brian A. Bash

Brian A. Bash, Trustee (0000134)
Kelly S. Burgan (0073649)
Baker & Hostetler LLP
PNC Center
1900 East 9th Street, Suite 3200
Cleveland, OH 44114-3482
Telephone: 216.621.0200
Facsimile: 216.696.0740
Email: BashTrustee@Bakerlaw.com
Email: kburgan@bakerlaw.com

Counsel for the Trustee

CERTIFICATE OF SERVICE

A copy of the foregoing has been served via ECF or regular, U.S. Mail, on June 13, 2011,
on the attached service list.

/s/ Brian A. Bash

Brian A. Bash

SERVICE LIST

Electronic Mail Notice List

The following is the list of **parties** who are currently on the list to receive e-mail notice/service for this case.

- Brian A Bash bashtrustee@bakerlaw.com, bbash@ecf.epiqsystems.com
- Brian A Bash BBash@bakerlaw.com
- Kelly Burgan kburgan@bakerlaw.com
- Anthony J. Cespedes ajc1253@yahoo.com
- Adam D. Cornett acornett@taftlaw.com, cmillner@taftlaw.com;docket@taftlaw.com
- Breaden M Douthett bdouthett@bakerlaw.com, krossiter@bakerlaw.com
- J Douglas Drushal ddrushal@ccj.com
- Joseph Esmont jesmont@bakerlaw.com, joe.esmont@gmail.com
- Leon Friedberg lfriedberg@cpmlaw.com, rswoager@cpmlaw.com;squinn@cpmlaw.com
- H Ritchey Hollenbaugh hrh@cpmlaw.com, rms@cpmlaw.com;slq@cpmlaw.com
- Cynthia A Jeffrey ecfdoh@reimerlaw.com, RACJ.ecfdoh@yahoo.com
- Stuart A. Laven slaven@beneschlaw.com, docket@beneschlaw.com;mkrawczyk@beneschlaw.com;lbehra@beneschlaw.com
- Trish D. Lazich trish.lazich@ohioattorneygeneral.gov, angelique.seals@ohioattorneygeneral.gov
- Scott B. Lepene slepene@beneschlaw.com, docket@beneschlaw.com;mkrawczyk@beneschlaw.com;lbehra@beneschlaw.com
- David A Looney attorney@bright.net
- Grant A Mason gamason@millermast.com
- Matthew H Matheney mmatheney@frantzward.com, dlbeatrice@frantzward.com
- Shorain L. McGhee shorain.mcghee@sbcglobal.net
- David P. Meyer dmeyer@dmlaws.com, docket@dmlaws.com
- David Polan Meyer dmeyer@dmlaws.com
- Michael J Moran moranecf@yahoo.com
- David A Mucklow davidamucklow@yahoo.com
- Mark A Phillips mphilips@beneschlaw.com, docket@beneschlaw.com;lbehra@beneschlaw.com;cgreen@beneschlaw.com
- Timothy Paul Piatt tppiatt@mgplaborlaw.com
- Clinton E. Preslan ndohbky@jbandr.com
- David F. Proano dproano@bakerlaw.com
- Stephen J Pruneski spruneski@rlbllp.com
- Ray H Stoess raystoess@600westmain.com
- Vance P Truman medinaatty@yahoo.com, medinaatty@gmail.com
- United States Trustee
- Nancy A Valentine navalentine@hahnlaw.com, hlpcr@hahnlaw.com
- Thomas C Wagner wagnert@tcwlawyers.com, wagnert@vwlawyers.com
- Wayne County Litigants ddrushal@ccj.com

Manual Notice List

The following is the list of **parties** who are **not** on the list to receive e-mail notice/service for this case (who therefore require manual noticing/service).

Emily S. Donahue
Jackson Walker L.L.P.
901 Main Street, Suite 6000
Dallas, TX 75202

Eric W. Sleeper
Barton Barton & Plotkin LLP
420 Lexington Avenue
New York, NY 10170

Christine A. Arnold
6005 Twin Lakes Drive
Parma, OH 44219

Gary Sallee
11650 Olio Road, Suite 1000-333
Fishers, IN 46037

Charles R. Dyas, Jr.
Barnes & Thornburg LLP
Fifth Third Center
21 East State Street, Suite 1850
Columbus, OH 43215

Robert Hanlon
Eileen Hanlon
P.O. Box 42
State Route 43
Mogadore, OH 44260

Leon Friedberg
Dennis J. Concilla
Carl A. Aveni
H. Ritchey Hollenbaugh
Carlile Patchen & Murphy LLP
366 Broad Street
Columbus, OH 43215

John McCauley, Esq.
J. Richard Kiefer, Esq.
Bingham McHale LLP
2700 Market Tower
10 West Market Street
Indianapolis, IN 46204

Robert Boote
Ballard Spahr LLP
919 North Market Street, 12th Floor
Wilmington, DE 19801-3034

Tobey Daluz
Ballard Spahr LLP
919 North Market Street, 12th Floor
Wilmington, DE 19801-3034

Leslie C Heilman
Ballard Spahr LLP
919 North Market Street, 12th Floor
Wilmington, DE 19801-3034

Jay Jaffe
Baker & Daniels LLP
600 E. 96th Street, Suite 600
Indianapolis, IN 46240

Michael V. Demczyk
12370 Cleveland Avenue, NW
P.O. Box 867
Uniontown, OH 44685