

**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR SEMINOLE COUNTY, FLORIDA
CIVIL DIVISION**

STATE OF FLORIDA,
OFFICE OF FINANCIAL REGULATION,

Plaintiff,

vs.

Case No.: 04-CA-2130-16-W

UNIVERSAL LUXURY COACHES, LLC,

Defendant.

RECEIVER'S VERIFIED REPORT AND INVENTORY AS OF DECEMBER 31, 2017

Burton W. Wiand, the Court-appointed Receiver for Universal Luxury Coaches, LLC ("ULC")¹, hereby files this Interim Report and Incorporated Report of Inventory as of December 31, 2017 ("**Interim Report**") to inform the Court, the investors, and others interested in the Receivership Entities of activities to date, as well as the proposed course of action.²

Overview of Significant Activities During this Reporting Period

During the time covered by this Interim Report, the Receiver and professionals he has retained have engaged in the following significant activities:

- Continued to conduct the first interim distribution, as of February 5, 2018, the Receiver has distributed approximately **\$2,370,642.23** to claimants with accepted claims; checks for sixteen (16) claims have not been sent due to the need for additional documentation and/or information for these claims;

¹ Gary D. Lipson was originally appointed Receiver by order dated October 5, 2004. However, Mr. Lipson passed away and Mr. Wiand was appointed as a substitute Receiver on September 15, 2015.

² This Interim Report is intended to report on information and activity from July 1, 2017 through December 31, 2017. As directed by the Court, the Receiver will submit his next Interim Report to the Court by August 14, 2018.

- Continued to conduct research to locate claimants who either had mail returned to the Receiver or did not negotiate the distribution check;
- Worked with possible heirs of deceased claimants and attorneys to determine appropriate recipients of distributions for such claims;
- Communicated with various states and researched and established procedure to deposit unclaimed distributions with the appropriate authority in each state where an unlocated claimant resided;
- Began preliminary work on Receiver's motion for approval of final distribution and close of Receivership; and
- Maintained an informational website for claimants and other interested parties and fielded numerous calls and correspondence from claimants seeking information regarding the Receivership and the interim distribution.

BACKGROUND

I. Procedure and Chronology.

On October 5, 2004, the State of Florida, Office of Financial Regulation (“**OFR**”) filed a complaint in the Circuit Court for the Eighteenth Judicial Circuit in Seminole County against ULC charging it with violations of the Florida securities laws and seeking to enjoin its violations of these laws in connection with a fraudulent scheme to offer and sell unregistered securities. The OFR alleged that ULC, through its various members of the sales force, obtained approximately \$7 million from 150 investors as a result of material misrepresentations or omissions and sale of unregistered securities. The Court entered a temporary injunction against ULC and its members, shareholders, directors, officers, agents, servants, employees and attorneys and those in active concert or participation with any of the foregoing from, *inter alia*, employing any device, scheme or artifice to defraud and selling unregistered securities.

By the same order dated October 5, 2004, the Court also appointed Gary D. Lipson as Receiver over ULC (the “**Order Appointing Receiver**”). Pursuant to the Order Appointing Receiver, the Receiver has the duty and authority to, among other things, take immediate

possession of all assets and properties of the Receivership Entities and hold and manage them until further order of the Court; and marshal and safeguard all such properties and assets. (Order Appointing Receiver at 5.). Since his appointment on October 5, 2004 until his passing, Receiver Lipson undertook a number of steps to fulfill his mandates under the Order Appointing Receiver. Mr. Wiand was appointed as a substitute Receiver on September 15, 2015 and has continued to undertake steps to fulfill these mandates.

II. Inventory Of Property And Actions Taken By The Receiver.

A. Inventory

Pursuant to an Administrative Order and Rule 1.620(b) of the Rules of Civil Procedure, the Receiver was required to file with this Court an initial inventory of the properties of ULC coming under the Receiver's control or possession within twenty days of his appointment. On or about October 25, 2004, Receiver Lipson filed with this Court the Receiver's Initial Report and Inventory (the "**Initial Report**").

On June 23, 2005, this Court entered an Order Clarifying and Modifying the Reporting Requirements of the Receiver. Pursuant to such Order, the Receiver is required to file an inventory and account on a semiannual basis, as of the last day of June and December of each year, commencing as of June 30, 2005, with each such report being due not later than forty-five days after the end of each such period. In compliance with the Order, Receiver Lipson filed the specified semiannual Receiver's Report and Inventory for the years 2005 through 2014 and Receiver Wiand filed the Receiver's Report and Inventory as of December 31, 2015, the

Receiver's Report and Inventory as of June 30, 2016, the Receiver's Report and Inventory as of December 31, 2016, and the Receiver's Report and Inventory as of June 30, 2017.³

During the period from July 1, 2017 through December 31, 2017, the Receiver received funds into, and disbursed funds from, bank accounts under his control as set forth on Exhibit A attached hereto. As of December 31, 2017, the Receiver held \$962,081.36 in cash in bank accounts. As of February 14, 2018, the Receiver has \$962,476.41 in cash in bank accounts. Further, as discussed in Section II.C. below, the Receiver has not mailed all distribution checks which were authorized by the Court because he needs additional information and/or documentation before mailing these remaining checks. There is approximately \$275,218.31 remaining to distribute to these claimants to complete the first interim distribution. This amount is included in the total balance set forth above.

The Receiver continues to hold all of the items listed in the Initial Report and the June 30, 2005 Report, other than the six luxury motor coaches sold by Receiver Lipson as is described in paragraph 4 of the Receiver's June 30, 2005 Report and Inventory.

B. Litigation

On July 31, 2006, Receiver Lipson filed an action against certain individuals and entities, including Conrad Clement, Scott Spor, James Wooley, Donald Rett, Featherlite, Inc., Nevada Coach Partners, LLP, and Clement Enterprises, based upon their respective roles in the creation, management, and/or operation of ULC and their participation in ULC's offer and sale of securities and/or timeshare interests ("**Featherlite Lawsuit**"). On July 24, 2014, Receiver

³ A Receiver's Report and Inventory as of June 30, 2015 was not filed due to the death of Receiver Lipson. The Receiver's Report and Inventory as of December 31, 2015, however, illustrated the additional interest added to the Receiver's account during January 1, 2015 through June 30, 2015. No expenditures were paid in 2015.

Lipson filed a Third Amended Complaint against the Defendants, which raised a number of statutory and common law claims, including but not limited to, violations of Chapter 517 of the Florida Statutes, fraud, unjust enrichment and fraudulent transfers. The Third Amended Complaint also maintained the legal malpractice claim against Defendant Rett. The Receiver sought to recover damages, interest, attorneys' fees and costs from Defendants.

On March 17, 2016, Receiver Wiand mediated the Featherlite Lawsuit with all Defendants, except Defendants Rett and Spor. As a result of that mediation, the Receiver reached a settlement with the participating Defendants. On March 30, 2016, the Receiver filed a motion to approve the settlement. In pertinent part, the settlement agreement provided that the settling Defendants would pay \$3,500,000 to the Receiver within twenty days of the Court's approval of the settlement. The Court approved the settlement on May 2, 2016, and the Receiver received full payment of the settlement amount.

On August 16, 2016, Receiver Wiand mediated the Featherlite Lawsuit with Defendant Rett. The Receiver reached a settlement with Defendant Rett as a result of that mediation. On November 11, 2016, the Receiver filed a motion to approve the settlement. In pertinent part, the settlement agreement provided that Defendant Rett would pay \$237,500 to the Receiver within twenty days of the Court's approval of the settlement. The Court approved the settlement on November 14, 2016, and the Receiver received full payment of the settlement amount.

C. Claims Process.

On February 8, 2006, Receiver Lipson filed a motion to initiate the claims process. The motion sought the Court's approval of (1) a Claim Form and procedure to administer claims and (2) notice by mail and publication ("**Claims Motion**"). On February 16, 2006, the Court granted

the Receiver's Claims Motion. By a subsequent order, the Court established September 15, 2006 as the last date that claims may be submitted to the Receiver (the "**Claim Bar Date**").

On February 20, 2006, Receiver Lipson mailed letters to known investors informing them of the claims process and providing a copy of the Claim Form. The Receiver received 138 submitted Claim Forms from investors in the amount of approximately \$6,867,892.27.⁴ As far as Receiver Wiand is aware, no Claim Forms from non-investor creditors were submitted. Receiver Lipson's paraprofessional appears to have conducted an initial review of the claims and Receiver Lipson sent letters accepting all claims but one.⁵ After Receiver Wiand's appointment, he began a review of the submitted claims and related documents and discovered that Receiver Lipson had not completed his analysis of the claims. While he sent letters to claimants with a generic acceptance of the claims, he did not specify the allowed amount to which each claim was entitled to receive. The Claim Form requested the claimant to identify the amount claimed on the first page of the form, but then asked if the claimant had received any payments with respect to the claim on the second page. For the most part, the claimants identified the full amount of their investment as their "Claim Amount," but failed to account for payments they had received over the course of their investment.⁶ Ostensibly, as no distribution to claimants was imminent prior to

⁴ The amount set forth above does not include unspecified claims for interest or fees which may be sought by some claimants. Further, these numbers reflect the amount to which the claimants are claiming they are entitled, and not how much the Receiver has determined is the value of proper and allowable claims.

⁵ The one claim which does not have an acceptance letter on file is in the amount of \$5,148.85. The Receiver has not found a rejection letter for this claim nor does he see any reason why this claim was not accepted as the other claims were. It is possible that the acceptance letter inadvertently was not placed into the file or not sent to the Claimant.

⁶ The method of calculating an investor's loss in a claims process regularly adopted by receivership courts is the net investment method. The net investment method takes into account the actual dollars the claimant "invested" less any amounts the claimant already received. The

Receiver Lipson's demise, he and his professionals had not undertaken this final step of determining the allowed amounts of claims submitted. Accordingly, Receiver Wiand carefully reviewed the claims submitted, including any documents submitted with each claim. The Receiver also reviewed documents prepared by forensic accountants which analyzed the flow of funds in the ULC bank accounts prior to the appointment of a Receiver to determine payments made to claimants.

On October 28, 2016, the Receiver filed a Motion to (1) Approve Determinations of Claims, (2) Approve Plan of Distribution and a First Interim Distribution, and (3) Establish Objection Procedure. ("**Claims Determination Motion**"). In the Claims Determination Motion, the Receiver set forth his recommended determination of each claim. The Receiver attached detailed exhibits to the Claims Determination Motion addressing each claim. In an effort to minimize the disclosure of the Claimants' financial affairs, the Receiver assigned each claim a number and did not include the Claimant's name(s) in the Motion or exhibits. The Receiver also proposed a procedure for a Claimant to object to the Receiver's determination of his or her pertinent claim or the Receiver's plan of distribution.

The Receiver also requested the Court's approval to make a first interim distribution of **45%** of the Allowed Amounts of Claimants with accepted claims on a *pro rata* basis, resulting in a total distribution to defrauded investors of approximately \$2,636,293.09.⁷ The Receiver

net investment method represents the most equitable and practical approach for determining investor claim amounts and a common approach for handling investor claims in a receivership involving a fraudulent investment scheme

⁷ The Receiver proposed that the first interim distribution (and any subsequent distributions) be made on a *pro rata* basis subject to applicable exceptions and other parameters discussed in the Claims Determination Motion. The amount each claim was to receive as part of a first interim distribution is specified in **Exhibits B** and **C** to the Claims Determination Motion. Further, on four Claim Forms the respective claimants indicated that they had brought an action or made a

requested leave to make the first interim distribution as soon as practicable after the period for objections expired and he had reviewed any objections.

On November 4, 2016, the Receiver mailed 169 letters to all Claimants and their attorneys, if any, notifying them that the Claims Determination Motion had been filed and was available on the Receiver's website and, by request, from the Receiver's office. Each letter specified the claim number assigned to that pertinent claim. Each Claimant was then able to cross-reference their claim number with the exhibits attached to the Claims Determination Motion to determine the Receiver's determination of his or her claim.

A hearing on the Claims Determination Motion was held on November 21, 2016. The Court entered an order granting the Claims Determination Motion on the same day ("**November 21 Order**"). The objection procedure proposed by the Receiver in the Claims Determination Motion and adopted by the Court allowed each claimant 20 days from receipt of notice of the November 21 Order to serve the Receiver with a written objection to the determination of the claimant's claim and/or to the plan of distribution. Failure to properly and timely object to the Receiver's claim determination or plan of distribution permanently waived and barred the claimant's right to object to or contest the Receiver's claim determination and plan of distribution, and fixed the final claim amount as the Allowed Amount determined by the Receiver and approved by the Court as set forth in the Exhibits attached to the Claims Determination Motion. On December 1, 2016, the Receiver mailed each claimant and the

demand against third parties to recover for their losses in ULC (*see* Claim Nos. 27, 34, 87, and 106). The Receiver has proposed that the Court allow these claims in the Allowed Amounts set forth on **Exhibits B** and **C** contingent upon the claimants each providing an affidavit either setting forth the amount he or she recovered from any third party in connection with their investment or a statement that no funds were recovered. In the event a claimant did recover funds, the Receiver will add such payment to the claimant's Total Payment amount and reduce the claimant's Allowed Amount and proposed distribution amount accordingly.

claimant's attorneys, if any, a letter informing the claimant of the November 21 Order and the procedure to serve a written objection. Claimants had until December 21, 2016, to serve any objections.

The Receiver did not receive any objections. Thus, on January 13, 2017, the Receiver mailed 105 checks totaling \$1,751,931.89 to claimants holding claims which were entitled to receive a first interim distribution. The first interim distribution represents a recovery of 45% of the Allowed Amounts of accepted claims which received a first interim distribution. As of February 5, 2018, the Receiver has distributed approximately \$2,370,642.23 to claimants with accepted claims.

The Receiver has encountered significant hurdles in completing the first interim distribution. Nearly half of all the accepted claims involve a claimant who has died since submitting the claim or become incapacitated. The Receiver has been working diligently with surviving family members and attorneys to ensure that the funds are distributed to the appropriate recipient(s).⁸ This process has been delayed due to the need for several claimants to retain counsel and/or open probate proceedings to substantiate or determine proper recipients for the pertinent distribution proceeds. There are seven claims remaining for which the Receiver is still working on obtaining additional information and/or documentation before sending the first interim distribution checks.

Further, mail that the Receiver sent to 28 claimants was returned. The Receiver conducted research in conjunction with the OFR to try to locate these claimants. Through these

⁸ On March 13, 2017, the Receiver instituted an interpleader proceeding to determine the appropriate recipients for distributions for a claim with an Allowed Amount of \$233,970.36. On June 27, 2017, the Court entered an order establishing the appropriate recipients for the first and future distributions and approving \$4,000 in attorneys' fees to the Receiver.

efforts, the Receiver has located either the claimant or a living relative for 19 of these claims. At this point, the Receiver believes it is necessary to deposit the distributions for the remaining nine claims into the appropriate state's Division of Unclaimed Property. It is possible that distributions for two of the seven claims referenced above also will need to be deposited into unclaimed funds because the possible heirs have not provided sufficient documentation to support the Receiver distributing funds to them.

III. The Next 6 Months.

The Receiver will continue to work with claimants, possible heirs, and attorneys to complete the first interim distribution. If the Receiver is unable to locate the claimant or a person entitled to receive the funds, he will turn over the funds to the Division of Unclaimed Property in the appropriate state. The Receiver anticipates filing a motion for a final distribution and to close the Receivership estate.

DATED this 14th day of February, 2018.

Respectfully submitted,

s/Michael S. Lamont

Michael S. Lamont, Lead Counsel

Florida Bar No. 0527122

Jordan D. Maglich, FBN 0086106

WIAND GUERRA KING P.A.

5505 West Gray Street

Tampa, Florida 33609

Telephone: (813) 347-5100

Facsimile: (813) 347-5198

Attorneys for Burton W. Wiand, Receiver

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on February 14, 2018, I electronically filed a true and correct copy of the foregoing with the Clerk of the Court by using the Florida Courts E-Filing Portal, which served the following party:

A. Gregory Melchior, Esq., Assistant General Counsel
State of Florida, Office of Financial Regulation
1313 Tampa Street, Suite 615
Tampa, FL 33602-3394

James Edward Cheek, III, Esq.
Winderweedle, Haines, Ward & Woodman, P.A.
329 Park Avenue North, 2nd Floor
Winter Park, FL 32789

s/Michael S. Lamont
Michael S. Lamont, FBN 0527122

RECEIVER'S VERIFICATION

I declare and affirm under the penalties of perjury that the foregoing facts are true and correct to the best of my knowledge and belief.

s/Burton W. Wiand
Burton W. Wiand, as Receiver

Exhibit A

Cash Receipts and Expenditures

July 1, 2017 through December 31, 2017

USAmeriBank Transactions – Money Market Account

Date	Transaction	Receipts	Expenditures	Balance
7/1/2017	Beginning Balance			\$1,513,135.21
7/4/2017	Transfer to Checking (new distribution checks)		\$116,500.00	\$1,396,635.21
7/11/2017	Transfer to Checking (Professionals' fees and costs)		\$109,887.39	\$1,286,747.82
7/31/2017	Interest	\$545.88		\$1,287,293.70
8/25/2017	Transfer to Checking (new distribution checks)		\$34,500.00	\$1,252,793.70
8/31/2017	Interest	\$532.59		\$1,253,326.29
9/14/2017	Transfer to Checking (new distribution checks)		\$269,000.00	\$984,326.29
9/29/2017	Interest	\$456.20		\$984,782.49
10/12/2017	Transfer to Checking (new distribution checks)		\$42,500.00	\$942,282.49
10/31/2017	Interest	\$406.64		\$942,689.13
11/30/2017	Interest	\$387.48		\$943,076.61
12/31/2017	Interest	\$400.57		\$943,477.18
12/31/2017	ENDING BALANCE			\$943,477.18

USAmeriBank Transactions – Checking Account

Date	Transaction	Receipts	Expenditures	Balance
7/1/2017	Beginning Balance			\$23,210.56
7/4/2017	Transfer from Money Market (new distribution checks)	\$116,500.00		
7/5/2017	Extra Space Storage		\$174.71	
7/11/2017	Transfer from Money Market (Professionals' fees and costs)	\$109,887.39		
7/31/2017	Bank Charge		\$36.00	
8/8/2017	Extra Space Storage		\$174.71	
8/25/2017	Transfer from Money Market (new distribution checks)	\$34,500.00		
9/11/2017	Extra Space Storage		\$174.71	
9/14/2017	Transfer from Money Market (new distribution checks)	\$269,000.00		
10/12/2017	Extra Space Storage		\$174.71	
10/12/2017	Transfer from Money Market (new distribution checks)	\$42,500.00		
11/1/2017	Extra Space Storage		\$174.71	
12/1/2017	Extra Space Storage		\$174.71	
12/1/2017	Payment of Attorneys' Fees for Interpleader (reduced from distribution per Court order)		\$4,000.00	
12/31/2017	ENDING BALANCE			\$18,604.18