

**ROBB EVANS**  
**RECEIVER OF WESTERN GIFT DISTRIBUTORS, INC.**  
**SIERRA GAMING PROPERTIES, LLC**

**FINAL REPORT TO COURT**

**PREPARED AS OF JULY 10, 2000**

This is the sixth and final report since my appointment as Receiver.

***Background***

On November 19, 1998, this receivership commenced. Western Gift Distributors, Inc. ("Western") had distribution offices located in Fresno, Sacramento, and Concord in Northern California. In Southern California, there were offices in Colton, San Diego, and Oxnard with the head office in Montclair. Within a few days of appointment, I evaluated the company's financial condition, liquidity, outstanding liabilities, and potential to operate profitably and to repay creditors. With more than \$1.3 million owed secured creditors, about \$1.7 million owed vendors and other creditors, a history of continuous operational losses over the years in an extremely competitive market, it became clear that the operations had to be shut down in some offices sooner rather than later to preserve the value of the remaining assets. I tried to maximize the recovery by first attempting to sell the whole operation intact. After a few weeks of negotiations with competitors, including a secured creditor in the same line of business, I concluded that the ultimate recovery could only be maximized by selling select offices as going concerns, selling physical assets of other offices in public auctions, and by pursuing an aggressive collection strategy, over a period of time, for collection of accounts receivable.

Over the next eight months, I closed operations of all the offices, and sold the inventory and other assets either by bulk sale or in retail by public auctions, at the respective locations, with the approval of the court for each such sale. I collected, in June 1999, a sum of \$275,000, by a public auction, from the sale of a promissory note and the membership units that Western held in Sierra Gaming Properties, LLC ("Sierra Gaming").

***Recoveries and Operating Expenses***

Total recoveries from sale of branch offices, inventory and receivables aggregated to about \$1,763,000. Total business operating expenses were about \$675,000, the details of which are provided under **Tab 1**. A brief description of important expenses is provided hereunder.

During the first eight months of the receivership, I operated several offices to ensure an orderly liquidation and wound them up as expeditiously as possible. Total wages of about \$304,000 included about \$55,000 in sales commission. Rent expenses were kept to less than \$95,000 by closing several offices and transferring inventories to neighboring offices. About \$121,000, or approximately one fifth of the total operating expenses, represented interest payable to the first secured creditor. To minimize interest expenses, I made several partial payments to the first secured creditor as and when tangible and intangible assets were converted to cash.

The total receivership expenses from November 1998 through June 30, 2000 were about \$208,000 including about \$60,000 in legal expense. A detailed breakdown is provided under **Tab 4**.

***Collection of Receivables, Judgments and Claims***

\$960,000 of the delinquent accounts receivable, about \$350,000 higher than original estimates, were collected. Default judgments and writs of execution were obtained against several debtors. There remain several claims against delinquent debtors in various stages of legal process. The total of remaining judgments, writs of executions, pending lawsuits, and claims aggregates about \$183,000. The details are furnished under **Tab 2**.

## *Settlements to Secured Creditors*

A total of \$1,089,724 was remitted to Merrill Lynch, the first secured creditor and the plaintiff in this action, in full satisfaction of its claims. I negotiated with Merrill Lynch and reduced their total eligible claim (by reducing the penalty and late charges) by about \$25,000.

Stuart Entertainment, Inc. ("Stuart"), the second secured creditor, filed a cross-complaint, on December 8, 1998, against Western, Merrill Lynch and other defendants in the receivership action, seeking several forms of relief including right to possession of Western's property, and for recovery of the actual value of the converted property. The cross-complaint asserted that the damages of \$1,316,750.84 included \$325,431.29, the outstanding obligation under a promissory note (the "note") dated April 29, 1997. Stuart further claimed that the entire debt and damages in excess of \$1,316,000 is secured by a September 1994 security agreement, which provided for extending the agreement to future indebtedness as well. Stuart perfected its security interest by filing a UCC-1 on all tangible and intangible assets of Western on January 7, 1998. A copy of the UCC-1 is attached under **Tab 3**.

Western filed a general denial to Stuart's cross-complaint on March 18, 1999 denying the material allegations and asserting certain affirmative defenses. I was not able to verify the exact amount of Stuart's claim or whether the entire debt of about \$1,316,000 claimed by Stuart as 'secured debt' is in fact secured under its perfected UCC-1 filing. Nevertheless, from the documents provided in the cross-complaint and from the records of Western, I believe that an amount of about \$295,000 unpaid under the note as well as approximately \$582,000 owed to Stuart as a vendor can be deemed secured debt covered by the security agreement and the perfected UCC-1 filing.

I have not seen any evidence in Western's records nor has any evidence been produced to me by any of Western's other creditors, which identifies or asserts a security interest senior to Stuart. Under the circumstances, it is the position of the receivership that at a minimum, the note amount of \$295,000 plus applicable interest at the maximum rate provided under the note, is treated as 'secured', next only to Merrill Lynch, and ranking in priority over all other creditors of record.

As Stuart is the only remaining secured creditor, I recommend that in exchange for Stuart's dismissal of the cross-complaint against Western that we remit the remaining cash balance of \$38,726, and we assign to Stuart, all the judgments, actions and pending claims, aggregating to about \$183,000, as 'in-kind' distribution. Stuart is in the same line of business as Western was and it may have existing relationship with many of the parties against whom Western has claims; and therefore, I believe the total recovery for Stuart would be maximized if it pursued collection of these judgments and claims.

## *Claims on the Receivership Estate*

Included under **Tab 5** are three lists of claimants that are owed a total of about \$1,797,000. These pre-receivership debts include secured debts of about \$877,000 (\$295,000 and \$582,000) owed to Stuart and addressed earlier in the report. The details of remaining unsecured claims from seventy-seven other creditors aggregating to about \$920,000 are provided under **Tab 5**. As approved by this Court on November 18, 1999, all these claimants were notified on January 12, 2000 of the insolvent financial condition of Western and the status of their claims. Samples of such notices sent to the claimants are included under **Tab 5**.

## *Tax Refunds and Other Related Matters*

In February 1999, I engaged the accounting offices of Curtis R. Eakin, CPA, ("Eakin"), who had functioned as the outside accountant for Western and had prepared and filed income tax returns for Western. Prior to their engagement, Eakin represented in writing that there was potential of about \$90,000 in refunds to Western from carry back of net operating losses from the September 30, 1997 and September 30, 1998 tax years. The scope of the engagement letter included the assignment to complete and amend the outstanding tax returns and apply for Internal Revenue Service refunds. .

For several months following engagement, my staff had contacted Eakin several times to request that he immediately pursue the tax refund that he had represented would be available. Eakin did not respond and the follow up phone calls had little effect. In September 1999, it was determined that due to Eakin's refusal to return calls or complete the pending work; the estate was facing potential injury from Eakin's delay. Eakin was terminated and a new accountant was employed to complete the required tax filings.

The new accountant discovered that, apparently under Eakin's direction, Western had filed an irrevocable election to forego the available net operating loss carry back with the Federal Income Tax return for the fiscal year ended September 30, 1997. Consequently, the operating loss for 1997 could be applied only to future income, and not to the \$53,000 (not \$90,000 as Eakin represented) federal income taxes paid for the fiscal year ended September 30, 1995. Eakin further compounded his errors by not meeting the filing date for an amended return, although the previously filed election foreclosed any possible refund.

Because of Eakin's incorrect advice and lack of any work product, at my request a letter was recently sent to Eakin demanding that he immediately return to Western the \$15,000 he was paid for services which were never completed. This total demand/claim of \$15,000 is also included under the other claims listed under Tab 2. Realistically, it is unlikely that Eakin will voluntarily remit any funds to Western and therefore, I am recommending that this claim also be assigned to Stuart.

### ***Completion of Receivership***

I submit my final report with the following summary to the Court.

- Total recoveries from all available assets amounted to \$1,763,171.
- Total business operating expenses were \$674,944.
- Total receivership expenses were \$207,837.
- Total of settlement paid to the plaintiff and first secured creditor was \$1,089,724.
- Total cash available for transfer to second priority secured creditor is \$38,726.
- Total value of in-kind distribution to second priority secured creditor is \$183,169.
- All other creditors and claimants have already been notified on January 12, 2000 of the insolvent financial condition of Western and the status of their claims. A list of all claimants so notified, with the details of claims, is provided under **Tab 5**.

### ***Final Accounting***

My final accounting is under Tab 4. It provides for a small budget for estimated expenses from July 1, 2000 through completion. These expenses include legal expense for this filing and assignment documentation to formally assign all the judgments, actions and claims to Stuart, and outside accountant's expenses for filing the tax returns for 1999 and 2000. I have negotiated a flat fee of \$2,000 towards legal expense until completion. I have filed Federal and California tax returns for Western and Sierra for 1997, and 1998. I have negotiated a flat fee of \$4,000 with the accountant, who is currently preparing the 1999, and 2000 closing Federal and State tax returns.

I have arranged and prepaid for storage of records of Western, affiliated entities and that of the receivership estate for three years in conformity with IRS regulations.

An amount of \$13,364 towards receivership expenses (explained above) budgeted for the next several weeks up to completion, will be held as reserve to pay for these expenses as and when they are incurred. If the actual expenses are less than this reserve, surpluses, if any, will be remitted to Stuart. If the actual expenses are in excess of the budget shown under Tab 4, no additional claim will be made.

## ***Receiver's Fees and Expenses***

Copies of the time records summarizing the Receiver's activities from October 1, 1999 through June 30, 2000 are under Tab 6. I request approval of those fees and expenses totaling \$2,588, and any fees included in the budget through completion.

## ***Conclusion***

I have completed my duties and respectfully request that I be discharged from any further duties, obligations, and liabilities whatsoever, upon the Court's approval of this report. I ask the Court for an Order:

1. Approving this final report;
2. Approving payment of the Receiver's expenses, including but not limited to my fees and expenses totaling \$2,588 and any fees included in the budget through completion;
3. Ratifying, confirming and approving all of the acts, transactions and forbearances by the Receiver, or his deputies, staff, counsel or other agents or representatives, as appropriate and in the best interest of the estate and parties herein;
4. Authorizing cancellation of the Receiver's Bonds.
5. Authorizing the Receiver's assignment to Stuart of any and all assets, claims and rights held by the Receivership Estate.
6. Authorizing the Receiver's abandonment of any unknown assets, claims and rights Western might have; and
7. Discharging the Receiver from any further duties, obligations and liabilities whatsoever.

Dated: July 10, 2000

Respectfully Submitted,

Robb Evans  
Receiver