

Notes From April 3, 2004 Meeting With Investors  
SEC v. James P. Lewis, Financial Advisory Consultants, et al.  
Army National Guard, Joint Forces Training Base, Los Alamitos, CA  
(notes are edited and in summary form)

## INTRODUCTION

Robb Evans introduced himself and informed the audience that this was not a formal presentation; that he and his associates were there to try and answer questions to the best of their ability. He introduced his colleagues who were present at the meeting and explained what their specialty areas are with the organization.

In response to an earlier question, Evans commented that he, his associates and staff are paid on an hourly basis. They do not get a percentage of the recovery. The Receiver and his staff members attended the meeting at no charge to the estate or to the investors, on a voluntary basis.

Evans explained the role of a Receiver. A Receiver is an agent of the Court. The Court oversees expenses, issues, orders, etc. A Federal Court Receiver has to account for all costs associated with his appointment. The mission is to get as much money back to the investors as possible. We do whatever we can to maximize the recovery to the investors. In this case, the “estate” does not have any fulltime staff assigned to this case.

The Robb Evans & Associates LLC team was originally put together to do one project more than 12 years ago, which was for the government. It was the B.C.C.I. bank fraud case, at the time the largest financial fraud in history. Since then, the company has worked on about 100 cases.

## Q&A

Q: I read on the website that you plan to go after the money my wife and I got back from FAC. I lost everything. I am 3 months behind in my car payments, and my home is in foreclosure. I have nothing. Question relates to the Receiver’s report stating he intends to recover from the investors who received more money than they invested.

A: We are investigating every possible source. It is counterproductive to get into a discussion with regard to individual situations at this point. This type of recovery effort has not yet been approved by the Court. If and when it is, the focus will be on making meaningful recoveries.

Q: I lost my husband. We were overpaid. I had no idea that the fund was fraudulent. I understand from your report that we will be asked to return the money.

A: This was a Ponzi scheme. Let me get into the theory of Ponzi schemes. Funds of later investors are used to pay off early investors. In a perfect world, we would ask those who received ANY money back to return those funds, and we would then redistribute all recovered money to the investors on an equal basis. Of course, that is not practical or possible in this case. There are investors that have each received over one million dollars more than they had put in originally. The total amount of money in overpayments is about \$80 million. We are not going to turn our backs on this large sum of money. I am not suggesting that the people who received overpayments are accomplices. We will be looking at each situation individually. I will not be aggressively litigating small amounts received by people who have been financially devastated. The overpayments will be analyzed on a case-by-case basis.

Q: Can we get a financial overview?

A: We are not completely done with the accounting and are still waiting for some bank records. However, we do believe we have a reasonably accurate overview of the situation:

Size of the fraud:

- \$311 million was raised over about 20 years (about 90% raised in the last 7 years).
- \$131 million or about 47% was raised in the last 2 years.
- \$209 million or about 75% was raised in the last 4 years.

What happened to all of the money raised in the last 7 years?

- \$206 million was paid to investors.
- \$20 million was lost in speculative foreign exchange and commodities trading.

- \$13 million was invested in 10 businesses, only 2 of which are still operating.
- \$11 million in payments to himself (high lifestyle).
- \$8 million to close “friends”.
- \$5 million to family members.

What is left (known assets) and what is owed to investors?

- \$7 million in real properties and cars (titles to real properties are being contested).
- \$2.8 million in cash (some of this is being contested).
- Marginal value in the 2 remaining operating businesses.

Investors are owed about \$170 million. If all title disputes are resolved, the current assets under our control should provide about a 6% return to the investors.

Q: I understand that James Lewis’ attorney is going to petition to get money for Lewis’ legal fees.

A: If he does, he will have to petition the Federal District Court, not the Receiver. We have seen similar situations, where people do petition. Nothing has been filed. If it is, I will vigorously oppose it.

Q: Is Lewis defended by a public defender?

A: Yes.

Q: Is he still in jail?

A: Yes.

Q: Is it possible that James Lewis has squirreled away money for himself offshore?

A: We are looking at everything. Our forensic accountants look at every check; the backs of checks; wire transfers. We start with the whole \$311 million and keep breaking it down, finding unidentified places where the money may have gone. We do not, at this stage, have reason to believe there’s a pot of gold offshore.

Q: When Lewis was arrested, they found handwritten notes with passwords.

A: We are looking at that. We think many of those kinds of notes may relate to things he planned to do but had not actually done yet.

Q: Will you pursue people who received money more than seven years ago?

A: We'll pursue any money we think we can recover cost effectively. However, money paid out more than seven years ago will largely be treated differently. There is a statute of limitations issue, and it is not economical for us to pursue most of those cases. We will keep our focus on the last seven years.

Q: What will be the distribution process?

A: We have not yet addressed distribution issues. It will be complicated and difficult to come up with the fairest program. There are precedents in the law that generally favor distributing funds proportionally between the victims without taking into consideration any individual circumstances. We've also seen cases where distribution has been weighted based on timing issues or based on the nature of the fund the investment was made to. We will make our recommendation to the Court as to what we consider to be the most equitable program, once we have further evaluated the investor data.

Q: Is anyone pursuing the staff of FAC? I felt that the secretaries were involved in the scheme.

A: I do not want to talk about any specific individuals. Lewis kept good records of money coming in. There are almost no records of the money going out (for non-investor purposes). We cannot, therefore, assume that others involved with the company necessarily knew what was really going on.

Q: My money was in an IRA. Will the IRS tax as a distribution?

A: We initially thought we could play an active role in mediating with the IRS. However it became clear we could do little in this regard and that doing so would detract us from the recovery effort. Each of you will have to

seek your own tax advice; we cannot help you individually. We have been in touch with the IRS. We've asked them to study the situation and give us a "white paper" on how victims should deal with the losses and the IRA complications. We have not yet received a response. If and when we do, it will be posted on the web site.

If you intend to list this on your tax returns as a theft, judging from other cases, my understanding is that the IRS could say you cannot take a theft loss until you can be definitive of what that loss is. At this stage, we do not know what your ultimate loss will be. When we establish that fact, we will include that in a report to the court and that may be helpful to your tax advisors in dealing with your tax issues.

Q: Lewis invested \$20 million in foreign currency?

A: In foreign exchange and commodities futures trading. He lost money and sued one brokerage firm for giving a margin call. That case is still in progress; in arbitration. There is nothing to suggest there will be any recovery from that source.

Q: What is the cost of running the receivership?

A: We report that to the Court in detail each quarter and you can see that information on our web site. So far, the figure is in the several hundred thousand dollar range.

Q: Who pays your fees? When does your job end?

A: A Receiver serves at the will of the Court. This Judge is very tough on expenses and looks into the cost/benefit ratio of everything we do. The length of a case or life of the receivership usually depends on litigation, much of which we have no control over and is not predictable. Sometimes litigation can cause a case to go on for a long time – I am sorry to give such a vague answer. My office is paid out of the Estate; our hours and time are submitted to the Court for approval and reviewed by the SEC.

Q: Will you be issuing 1099 forms?

A: No. We originally thought we would, but there are so many issues involved in that we decided not to. Again, I suggest that you seek professional tax advice.

Q: Will there be a class action suit? What is the time limit?

A: Our mission is to get as much money back to you as possible. We do cooperate with class counsel if we think it makes business sense for the investors.

We have been looking at issues regarding third party sources of possible recovery: accountants, lawyers, and other service providers – to see if any of them contributed to the loss. If there are, we will pursue them. There could be a class action organized against service providers who knew what was going on and could have blown the whistle. We have pursued such both successfully and unsuccessfully in other receiverships.

On a related subject, we are asking the Court for authority to pursue “winners” as discussed earlier. More than \$80 million was paid out to them. An application will be filed within the next week or so with a court hearing on the subject possibly sometime in May.

I am speculating, but I believe our application may be opposed by group of attorneys who wish to represent those of you who were “losers” and sue those of you who were “winners” on a class basis. If a motion is made to that effect, I will likely oppose it. I don’t think we need investors suing each other. If there’s a time for it, it is not now. I feel the Receivership is the most economic and efficient vehicle to deal with that issue.

Q: Does the State of California bear any liability?

A: I do not think so. I’ve never seen a case where funds were recovered from the State for failing to conduct an investigation.

Q: In past estates, have you ever been able to reach an agreement with the IRS regarding the handling of losses?

A: No, but we have worded our reports to the Court in a way that helps with the IRS in establishing your loss.

Q: Would you be able to obtain a Private Letter ruling from the IRS?

A: We have asked an ombudsman at the IRS to look into this situation, as a public service. We have not yet received a response. I believe private letter rulings take a long time and have not heard of them ever being issued other than to individuals, not to a whole group such as we have here.

Q: Why would you support lawyers in a class action if they were going to take 1/3 of our money to do what you're already doing?

A: I would not. The support I mentioned would be if the class action counsel were to pursue service providers if it makes sense.

Q: Would capital gains tax already paid on over-payments be credited back to the investor by the IRS? My account consisted of 2 Roth IRA's. What principal is still there? How do you determine overpayment?

A: There were no separate funds. There were no IRA's. There was no growth fund. It was all stolen money. We will be treating it as a whole. The IRS probably will not take capital gains into consideration, but I cannot speak for IRS and am not qualified to comment on tax issues.

Q: What are your ideas about interim distributions? Will you make small distributions over time as properties are sold?

A: That depends on what we have to work with. If it turns out that recovery of overpayments is a good source of funds, we might start making interim distributions. If there is major litigation, it may be difficult. If we have the money, we will try to. There's nothing on the horizon yet.

Q: What about the \$2.8 million you're holding now? Why can't you distribute that now?

A: First, the ownership to some of that money is challenged by third parties and not free yet. Second, from what is free and available, there is not enough to make a meaningful distribution and still provide for what needs to be done in the ongoing recovery effort.

Q: How transparent can you be with investors about pending legal cases?

A: Not as transparent as you might like me to be. I am hesitant to share information, here or in other public forums, which has not first been reported to the Court. Also, when we are in recovery negotiations with various parties, it is not in our best interests to prematurely disclose details of those negotiations.

Q: What would be the situation if there is a request to bring a class action suit?

A: The Judge will decide.

Q: Wouldn't a class action tie things up for years?

A: It could, and has in other cases. Each case is different.

Q: If you were to sell just the real estate, what would the assets on hand be?

A: If we liquidate all the real estate, that could bring about \$7 million. We need to clear title issues to each of those properties before we can do that, though.

Q: Will distribution be based on inflated numbers or the original investment money?

A: Just on the money invested.

Q: Was Lewis' son involved?

A: We do not have information to suggest that the son was actively involved.

Q: Do the authorities have Lewis' cooperation?

A: We don't know.

Q: Have you been notified of a trial date?

A: We are out of the loop on the criminal proceedings. As we get the information, we will post it on the website. I have not heard anything about a trial date.

Q: How thorough is your bookkeeping information – how do you know what investor money came in?

A: The investor information appears complete, but we will test it further. We will write to everyone with the figures we have and ask them if they agree. If they don't agree, we'll ask them to provide us with documentation.

Q: Is there any money offshore?

A: There's no indication that there is any money offshore but we continue to be alert to the possibility.

Q: What was the involvement of Lewis' relatives?

A: The family members got around \$5 million, and we want it back.

Q: What is the ratio of "winners" vs. "losers"?

A: There were 700 "winners" and 2,000 "losers".

Q: In the event that something was to happen to me, how could I ensure that a distribution would go to my heirs?

A: It should be treated as part of your estate. Make sure your executor is aware of this situation and that it is part of your estate.

Q: Lewis alluded to having the support of the Mormon Church. Does the Church have any culpability in this situation?

A: I'm not going there, as far as culpability is concerned. As far as donations are concerned, to the extent that there were any, we will want the money back.

Q: There's nothing we can do against the State?

A: In this case, there is only the suggestion that something did not get looked into, or that a lead did not get followed up by the State Department of Corporations. That does not result in any claim that we can take on your behalf.

Q: How long before finalization?

A: I wish I knew. These types of cases are anywhere from under a year to a several-year process. If things go well, we will make distributions throughout the process. If not, we will have to wait until the end.

Q: Is there somewhere we can check to find out if something might be fraudulent?

A: The SEC and the FTC both have good websites that include examples and warnings. ([www.sec.gov](http://www.sec.gov) and [www.ftc.gov](http://www.ftc.gov)). If you do a “Google” search of the Internet generally for “financial fraud,” you may find a wealth of things.

Q: Didn't Lewis have account or license numbers from the IRS for IRA accounts, etc?

A: This wasn't even a corporation. We believe he never mailed the other part of the 1099 forms to the government.

Q: Was Lewis filing tax returns?

A: Only as an individual.

Q: Are all assets held by family members and girlfriends in litigation?

A: There are current negotiations between counsel. Hopefully, we can resolve recovery without litigation. If not, we will litigate.

Q: Are you investigating Lewis' insurance policies? General liability insurance? Homeowners insurance?

A: We are looking into this.

Q: Will you pay commissions for the real estate sales?

A: Each property sale is a separate transaction. We generally pay normal brokerage commissions.

Q: What about the jewelry. Could it disappear?

A: It could. It better not!

Q: What has been your success level in going after overpayments?

A: There was a case in Santa Barbara with similar circumstances. In that case, the Receiver made an offer to give a substantial discount if the money was returned without litigation. If litigation was required, full payment was expected. In one of our cases with similar characteristics, we had very good recovery success from this type of effort.

Q: Is there a current figure for how much is owed to the 2,000 “losers”?

A: \$170 million.

Q: What about from the 700 “winners”?

A: More than \$80 million.

Q: How will you deal with the situation of a “winner” with no resources? No home, nothing. Will the Receiver come after a person like that?

A: We will focus on dollars that are meaningful and recoverable. We will not spend your money litigating against people with no resources with which to repay.