

Gary Owen Caris CA Bar No 089918
FRANDZEL ROBINS BLOOM & CSATO, L.C.
6500 Wilshire Boulevard, 17th Floor
P.O. Box 48932
Los Angeles, California 90048-4920
Telephone: (323) 852-1000
Facsimile: (323) 651-2577
Attorneys for Permanent Receiver
ROBB EVANS & ASSOCIATES

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

**WESTERN UNITED SERVICE
CORPORATION d/b/a
TITAN BUSINESS SOLUTIONS,**

and

SCOTT FORD,

Defendants.

CASE NO. 00- 11324 GAF (CWx)

**NOTICE OF HEARING ON
APPLICATION AND APPLICATION
FOR FURTHER INSTRUCTIONS
CONCERNING ADMINISTRATION OF
RECEIVERSHIP ESTATE
(DISPOSITION OF RUBIN
LITIGATION CLAIMS) ;
DECLARATION OF GARY OWEN
CARIS IN SUPPORT THEREOF**

**[Local District Court Civil
Rule 25.7(d)]**

Date: June 25, 2001

Time: 9:30 a.m.

Place: Courtroom 740

PLEASE TAKE NOTICE that on June 25, 2001, commencing at 9:30 a.m. or as soon thereafter as the parties may be heard in Courtroom 740 of the above-entitled court located at 255 E. Temple Street, Los Angeles, California 90012, Robb Evans & Associates, permanent receiver in the above-captioned matter, will and does hereby apply to the Court for further instructions concerning the administration of the receivership estate pursuant to Local District Court Civil Rule 25.7(d). This application specifically seeks further instructions regarding the appropriate disposition of the claims held by the estate against Matt Rubin and others as presented in the lawsuit entitled Western United Service Corp. v. Matt Rubin, et al., United States Bankruptcy Court, Central District of California, Los Angeles Division, Adv. No. LA 99-02411-VZ (the "Rubin Litigation") in that:

1. The Receiver, through his counsel, received an offer from a third party individual, Vito Rotunno, to purchase the Receiver's right, title and interest in and to the Rubin Litigation claims for a purchase price of \$20,000.00 cash. During the course of the negotiations with Rotunno, Rotunno repeatedly advised counsel for the Receiver that the \$20,000.00 purchase price for the Rubin Litigation claims was the highest dollar amount Rotunno was willing to offer to acquire the claims. After finally agreeing to accept \$20,000.00, the Receiver submitted proposed sale documentation to Rotunno setting forth the terms and conditions under which the Receiver would agree to sell and assign such claims to Rotunno. After a lengthy delay, Rotunno submitted a counteroffer seeking to expand the assigned claims.

2. While awaiting Rotunno's review of and response to the sale and assignment documentation, and unsolicited by the Receiver or his counsel, Tim Harris, counsel for the Rubin defendants in the Rubin Litigation, contacted counsel for the Receiver and offered the Receiver \$30,000.00 cash to settle the Rubin Litigation in full. After consultation with the Receiver, counsel for the Receiver rejected Rotunno's proposed counter-offer seeking an expansion of the assigned claims and instead accepted the \$30,000.00 offer of settlement from the Rubin defendants.

3. The Receiver agreed to accept the Rubin defendants' settlement offer based on (a) the Receiver's evaluation of the costs, burdens, risks and practical problems with the receivership estate prosecuting the Rubin Litigation, including, but not limited to, the absence of funds to pay expert witnesses that would be essential to the successful prosecution of the Rubin Litigation, (b) the fact that the settlement offer was \$10,000.00 more (and 50% higher) than the offer from Rotunno which Rotunno had indicated was the highest dollar amount he would be willing to pay to acquire the claims, (c) the fact that the sale of the Rubin Litigation claims to Rotunno would require a noticed motion and hearing to obtain court approval thereof under Local District Court Civil Rules 25.7(b) and 7 and was potentially subject to the procedures described in 28 U.S.C. § 2001 incorporated into § 2004, unless modified by the Court. A settlement of the claims by the Receiver by acceptance of the offer of settlement from the Rubin defendants was within the Receiver's authority under his orders of appointment and would not require expenditure of additional estate resources for a motion; (d) the uncertainty raised by Rotunno's insistence on a vague expansion of the assignment to include other undefined "attendant" claims; and (e) the need, prior to a noticed motion to approve a sale of the Rubin Litigation claims, to undertake expense in responding to discovery as required by Bankruptcy Judge Zurzolo, including the need to produce documents by April 20, 2001 and respond to interrogatories by June 1, 2001.

4. After receiving and accepting the \$30,000.00 cash offer of settlement from the Rubin defendants, counsel for the Receiver spoke with counsel for Rotunno and advised him of the settlement with the Rubin defendants. Counsel for the Receiver thereafter received an offer from the "Rotunno Group", through Mark Krum, to acquire the Rubin Litigation claims and "attendant claims" for \$35,000.00. For the first time, the Receiver learned that Mr. Rotunno was fronting for a group of individuals who were purchasing the Rubin Litigation claims. Counsel for the Receiver has advised counsel for Rotunno that the Receiver accepted the \$30,000.00 offer of settlement and that \$35,000.00 was an insufficient overbid. However, Mr. Krum, who has handled the Rubin Litigation on behalf of the plaintiffs and who presumably would continue to represent Rotunno if he purchased the Rubin Litigation claim, has asserted that it would be unfair not to permit open bidding to allow the Rotunno Group the opportunity to acquire the claims. Mr. Krum, on behalf of the Rotunno Group, has subsequently offered to purchase the Rubin Litigation claim for \$45,000.00. It is unclear whether this offer includes "attendant claims."

5. The Receiver contends that he has accepted and is bound to the settlement offer from the Rubin defendants. However, in light of Mr. Krum's contention that an open bidding process should be permitted to dispose of the Rubin Litigation, and verbal offer to pay \$45,000.00, the Receiver submits this application to obtain further instructions from the Court concerning the administration of this asset of the receivership estate.

6. The Receiver contends that he is entitled under the terms of his orders of appointment to settle and compromise the Rubin Litigation with the defendants therein and that he has so accepted their settlement offer. The Rubin defendants' offer of settlement of \$30,000.00 cash may be a better offer for the disposition of the asset in that no motion for approval of the settlement and no compliance with the expensive and burdensome procedures of 28 U.S.C. § 2001 are required, and no further expense will be incurred in attempting to comply with Judge Zurzolo's discovery orders. However, in light of the conflicting benefits from these competing offers, the Receiver requests an order of the Court instructing the Receiver whether to:

- (a) dispose of the asset by settlement as proposed by the Receiver for \$30,000.00; or
- (b) conduct open bidding for the acquisition of the Rubin Litigation between the Rubin defendants and the Rotunno Group.

7. If the Court determines that the estate's interest in the Rubin Litigation should be disposed of by open bidding, then the Receiver seeks instructions and an order of the Court modifying the procedures of 28 U.S.C. § 2001, et seq. as they would otherwise apply to the sale of the Rubin Litigation under the facts and circumstances of this case. If the Receiver is directed to sell the Rubin Litigation by sale and bidding procedures, the Receiver seeks an order of the

Court so instructing him and submits that in such circumstance, the following bidding, notice and sale procedures should apply:

- A. The motion and sale procedures of 28 U.S.C. §§ 2001 and 2004 should be modified to eliminate the need for the Receiver to obtain three appraisals of the Rubin Litigation claims. Also, the Receiver seeks to eliminate the need for notice to all potential creditors of the estate for the reasons set forth below at paragraph 8.
- B. The starting bid for the acquisition of the Rubin Litigation claims should be the \$30,000.00 cash offered by the Rubin defendants, with the initial overbid to be \$45,000.00 and all subsequent overbids to be in increments of \$5,000.00. The terms of the sale should be all cash. Bidding should be limited to the Rubin defendants and the Rotunno Group.
- C. A hearing on the sale of the Rubin Litigation claims with open bidding should be conducted as soon as possible before this Court without further notice, and the sale should be confirmed at the conclusion of the bidding at the hearing without further notice to creditors.

8. Local Rule 25.7(d) permits the Receiver to make application to the Court for further instructions concerning the administration of the receivership estate. That rule further requires that the application for instructions be made in compliance with Local Rule 7 concerning motions. This application is submitted in accordance with those rules, except that Local Rule 25.7 requires this application to be noticed to all known creditors of the defendants in conformity with Local Rule 7. Because the pool of potential consumers asserting a claim in the receivership estate totals approximately 14,000 individuals, comprised of consumers who were not creditors in Western United's Chapter 11 case, {[1]There are also approximately 1,900 unsecured creditors from the Chapter 11 case who elected to be paid from 20% of the recovery in the Rubin Litigation. The Receiver does not intend that such election will be affected in this receivership estate.} it would not be cost effective to serve each consumer with this application, given the small amount of assets in the estate. However, this entire motion is being posted on the Receiver's web-site at robbbevans.com concurrently with its filing, in order that it may be read and reviewed by consumers. The application has been timely mailed to all parties in this action and all other known creditors other than the approximately 14,000 consumers who may have a claim in the receivership estate and other than the unpaid creditors from Western United's Chapter 11 case who elected to be paid from 20% of the recovery in the Rubin Litigation.

WHEREFORE, the Receiver respectfully requests further instructions from the Court as set forth herein.

Date: June 1, 2001

FRANDZEL ROBINS BLOOM & CSATO, L.C.

BY: _____<signed>_____
GARY OWEN CARIS
Attorneys for Receiver
ROBB EVANS & ASSOCIATES

DECLARATION OF GARY OWEN CARIS

I, Gary Owen Caris, declare:

1. I am an attorney at law duly licensed to practice before all courts of the State of California and the United States District Court for the Central District of California, and am a member of Frandzel Robins Bloom & Csato, L.C., attorneys of record for Robb Evans & Associates ("Receiver") in the above-referenced action. I have been the attorney primarily responsible for representing the Receiver since the Receiver's appointment on October 25, 2000, pursuant to the Court's TRO. 1. I am an attorney at law, duly licensed to practice before all courts of the State of California and the

United States District Court for the Central District of California, and am a member of Frandzel Robins Bloom & Csato, L.C., attorneys of record for Robb Evans & Associates ("Receiver") in the above-referenced action. I have been the attorney primarily responsible for representing the Receiver since the Receiver's appointment as temporary receiver in the above-captioned matter on October 25, 2000. I have personal knowledge of the matters set forth in this declaration, and if I were called upon to testify as to these matters, I could and would competently testify based on my personal knowledge. I have personal knowledge of the matters set forth in this declaration, and if I were called upon to testify as to these matters, I could and would competently testify based upon my own personal knowledge.

2. I negotiated with Vito Rotunno with respect to the purchase of the Receiver's right, title and interest in and to the claims held by the receivership estate against Matt Rubin and others as presented in the lawsuit entitled *Western United Service Corp. v. Matt Rubin, et al.*, United States Bankruptcy Court, Central District of California, Los Angeles Division, adversary number LA 99-02411-VZ ("Rubin Litigation") for a purchase price of \$20,000.00 cash. During the course of my negotiations with Rotunno, he repeatedly advised me that the \$20,000.00 purchase price for the Rubin Litigation claims was the highest dollar amount he was willing to offer to acquire the claims. After the Receiver agreed to accept \$20,000.00, I caused to be prepared and sent to Mr. Rotunno a proposed Sale and Assignment Agreement pursuant to which Mr. Rotunno would purchase the Rubin Litigation for the sum of \$20,000.00. The proposed Sale and Assignment Agreement was sent under cover letter to Mr. Rotunno dated March 30, 2001. On April 11, 2001, I received back a letter from Mr. Rotunno indicating that he would proceed to purchase the Rubin Litigation claims, only if the estate also assigned "all claim [sic] incurred prior to the filing of the chapter proceeding." 2. I negotiated with Vito Rotunno with respect to the purchase of the Receiver's right, title and interest in and to the claims held by the receivership estate against Matt Rubin and others as presented in the lawsuit entitled *Western United Service Corp. v. Matt Rubin, et al.*, United States Bankruptcy Court, Central District of California, Los Angeles Division, adversary number LA 99-02411-VZ ("Rubin Litigation") for a purchase price of \$20,000.00 cash. During the course of my negotiations with Rotunno, he repeatedly advised me that the \$20,000.00 purchase price for the Rubin Litigation claims was the highest dollar amount he was willing to offer to acquire the claims. After the Receiver agreed to accept \$20,000.00, I caused to be prepared and sent to Mr. Rotunno a proposed Sale and Assignment Agreement pursuant to which Mr. Rotunno would purchase the Rubin Litigation for the sum of \$20,000.00. The proposed Sale and Assignment Agreement was sent under cover letter to Mr. Rotunno dated March 30, 2001. On April 11, 2001, I received back a letter from Mr. Rotunno indicating that he would proceed to purchase the Rubin Litigation claims, only if the estate also assigned "all claim [sic] incurred prior to the filing of the chapter proceeding."

3. While awaiting Mr. Rotunno's review of and response to the Sale and Assignment Agreement, and unsolicited by the Receiver or me, Tim Harris, counsel for the Rubin defendants in the Rubin Litigation, contacted me and offered the Receiver \$30,000.00 cash to settle the Rubin Litigation in full. After consultation with the Receiver, and after receiving Rotunno's counter-offer, I rejected Rotunno's proposed counter-offer seeking an expansion of the assigned claims and instead accepted the \$30,000.00 cash offer of settlement from the Rubin defendants.

4. The Receiver agreed to accept the Rubin defendants' settlement offer based on (a) the Receiver's evaluation of the costs, burdens, risks and practical problems with the receivership estate prosecuting the Rubin Litigation, including, but not limited to, the absence of funds to pay expert witnesses that would be essential to the successful prosecution of the Rubin Litigation, (b) the fact that the settlement offer was \$10,000.00 more (and 50% higher) than the offer from Rotunno which Rotunno had indicated was the highest dollar amount he would be willing to pay to acquire the claims, (c) the fact that the sale of the Rubin Litigation claims to Rotunno would require a noticed motion and hearing to obtain court approval thereof under Local District Court Civil Rules 25.7(b) and 7 and was potentially subject to the procedures described in 28 U.S.C. § 2001 incorporated into § 2004, unless modified by the Court. A settlement of the claims by the Receiver by acceptance of the offer of settlement from the Rubin defendants was within the Receiver's authority under his orders of appointment and would not require expenditure of additional estate resources for a motion; (d) the uncertainty raised by Rotunno's insistence on a vague expansion of the assignment to include other undefined "attendant" claims; and (e) the need, prior to a noticed motion to approve a sale of the Rubin Litigation claims, to undertake expense in responding to discovery as required by Bankruptcy Judge Zurzolo, including the need to produce documents by April 20, 2001 and respond to interrogatories by June 1, 2001.

5. After an exchange of settlement documentation and further discussion, on April 25, 2001, I communicated to Mr. Harris that the settlement documentation which he prepared was acceptable, and upon receipt of the executed

documentation and \$30,000.00 cash, our firm would hold those two items in trust until we provided Mr. Harris with an executed release and a dismissal with prejudice of the Rubin Litigation.

6. Thereafter, on May 14, 2001, and prior to receipt of the settlement payment from Mr. Harris, I met with Mark Krum at the courthouse following a scheduling conference before this Court in the main action. Mr. Krum is counsel of record for defendant Scott Ford in the main action, as well as counsel of record for Western United Service Corporation in the Rubin Litigation. At that time, I advised Mr. Krum of the settlement with the Rubin defendants. Mr. Krum indicated that he believed that Rotunno would overbid such an offer. I then received an offer from the "Rotunno Group," through Mark Krum, to acquire the Rubin Litigation claims and "attendant claims" for \$35,000.00. For the first time, the Receiver learned that Mr. Rotunno is fronting for a group of individuals who are purchasing the Rubin Litigation claims. I advised counsel for Rotunno that the Receiver accepted the \$30,000.00 offer of settlement and the \$35,000.00 was an insufficient overbid. Mr. Krum asserted that it would be unfair not to permit open bidding to allow the Rotunno Group the opportunity to acquire the claims. Mr. Krum, on behalf of the Rotunno Group, has subsequently offered to purchase the Rubin Litigation claims for \$45,000.00 in a voice mail message left with me on May 29, 2001. It is unclear whether the new offer includes "attendant claims."

7. The Receiver contends that he has accepted and is bound to the settlement offer from the Rubin defendants. However, in light of Mr. Krum's contention that an open bidding process should be permitted to dispose of the Rubin Litigation, and verbal offer to pay \$45,000.00, the Receiver submits this application to obtain further instructions from the Court concerning the administration of this asset of the receivership estate.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on June 1, 2001, at Los Angeles, California.

_____ <signed> _____
GARY OWEN CARIS
