

Second Report to the Court

Robb Evans, Receiver of TLC Investments & Trade Co., et al.

November 9, 2000

The purpose of this report is to:

- Report upon the activities of the Temporary Receiver until his appointment as Permanent Receiver on October 30, 2000 and to receive approval of those activities.
- Provide the Court with an overview of the current status of the Receivership.
- Obtain approval or confirmation of operating procedures for the liquidation of assets; and
- Outline the major issues currently before the Receiver that may require the Court's attention.

This report does not constitute an audit of the financial condition of the Receivership, is intended only for the Court, and should not be relied upon for other purposes.

The Temporary Receivership, October 4 to October 30, 2000

The activities of the Receiver and his colleagues during this period were substantially covered in the Receiver's Initial Report to the Court dated October 12, 2000.

Attached as Tab 1 are the financial reports for the period ending October 30, 2000. The Court is respectfully requested to approve these reports, confirm the actions of the Temporary Receiver and approve the expenses identified within Tab 1, including fees and expenses of the Receiver totaling \$22,503.60.

Overview of Current Status

Investor Communications

Although there were many inquiries during the period of the Temporary Receivership, they increased significantly during the past ten days as media coverage drew investors' attention. Commencing with numerous conversations with investors in the lobby outside the courtroom on October 30, 2000, the Receiver has given high priority to prompt and frank investor communications.

Court documents, SEC releases and the Receiver's reports are posted on the Internet at <http://www.robbevans.com>. The site has already seen a high volume of activity. A newsletter, a copy of which may be found under Tab 2, was mailed to all known investors on November 3, 2000. The Receiver's office responds to phone calls and e-mails as promptly as is practicable. It is the Receiver's view that prompt and accurate response to investors will in the long run be beneficial not only to the investors individually but to the estate as a whole. Inevitably, some investors might not be satisfied with the Receiver's responses. The Receiver has attempted to explain to the best of his ability that extensive attention to individual situations must be deferred until a later stage. There are a number of existing difficult situations posed by individual investors, with which the Receiver intends to deal in the most sensitive manner as possible under the circumstances.

Tangible Assets

For convenience, the Receiver has outlined the known assets in various categories. This outline, however, should not be construed as a comprehensive inventory of Receivership estate assets, but merely as an attempt to provide the Court with an overview of the assets currently under management. A detailed asset inventory will be forthcoming.

- **Cash** consists of **\$2.8 million** in 14 bank accounts, all of which are now under the Receiver's control.
- **Portfolio Assets** are defined as those parcels of real property that were purchased and managed by the real estate professionals within the firm. In his Initial Report to the Court, the Receiver stated that there were 450 parcels of real property owned, which were located from Hawaii to Georgia. Since then, the Receiver has revised the number of parcels to 522, which includes 54 and 20 individual units in two projects in California, and to eliminate two redundant line items.
- The Receiver has separated the parcels of real property into four categories based on the dollar amount of their estimated individual property value. As of today, my staff has visited only a few of the major properties and some of the distressed residential units. With the exception of three properties we have not engaged outside appraisers or consultants to evaluate and confirm the values. Consequently, the Receiver is relying on the personal knowledge and experience of the real estate professionals within the firm for the estimated individual property values. The current estimates are for overview purposes only.
 - **\$0 to \$80,000:** 456 properties with an estimated total value of \$15,305,000
 - **\$80,001 to \$250,000:** 37 properties with an estimated total value of \$4,155,000
 - **\$250,001 to \$1,000,000:** 12 properties with an estimated total value of \$6,340,000; and
 - **Over \$1,000,000:** 17 properties with an estimated total value of \$43,573,000.

The total estimated value of the real property is \$69,000,000, which is far less than the \$108,000,000 (\$102 million, plus \$6 million for Alabama properties) discussed in the Receiver's Initial Report. The previous value was based on a three-year period to acquire additional property, to complete extensive development in three projects, and included approximately \$30 million in estimated additional costs to be incurred.

The Receiver now presents the estimated realizable values based on reasonable and orderly sales of the assets in their present condition, not including additional property purchases or substantial development. Nearly all of the value adjustments were done in the 17 properties valued over \$1.0 million, with the adjustment concentrated in the Marina Coves project and two future loft projects. A detailed review and discussion of the potential value of the Marina Coves project are provided elsewhere in the report.

- **Other Tangible Assets** are defined as those assets acquired outside the normal course of business, such as the house in La Jolla, California, acquired in connection with the Sienna Financial scheme, racehorses, greyhounds, and the office building in Brea, California, from which the defendants operated. The La Jolla and Brea properties have an estimated cost and value of \$7 million. The 250 greyhound racing dogs have an estimated value between \$250,000 and \$1.25 million and are the subject of a dispute with Mr. Cossey, who contends that they are not Receivership estate assets, and instead are his personal property acquired with funds obtained from sources unrelated to TLC. The Receiver's counsel demanded detailed information from Mr. Cossey's counsel in this regard, and, if necessary, this matter

may come before the Court. The racehorses have an estimated cost of approximately \$4.5 million. Various experts have advised the Receiver that many of the horses are young and as yet unproven. Consequently, their current market value may prove to be substantially less than cost.

Not included are Mr. Cossey's home located in Diamond Bar and the cash discovered within the home during the FBI/IRS search. The home and cash are now the subjects of asset forfeiture proceedings. The Receiver is discussing with the U.S. Attorney's office how best to recover these assets for the benefit of investors.

- **Miscellaneous Assets** office equipment consisting of approximately 125 items with an estimated value of \$5,000 to \$20,000.

In summary:

	<u>Low</u>		<u>High</u>
Cash:	\$2,800,000		
Portfolio Assets:	\$69,000,000	to	\$81,000,000
Non Portfolio Assets:	\$8,200,000	to	\$11,200,000
Miscellaneous Assets:	\$5,000	to	\$20,000
Total:	\$80,005,000	to	\$95,020,000

To reiterate, these figures should not be construed as an estate inventory, but merely a summary projection, provided for overview purposes.

Intangible Assets

The Receiver is just beginning to examine intangible assets, consisting primarily of claims against third parties. These assets are anticipated to exist in two categories: First, and of highest priority, is the recovery of funds wrongfully paid to third parties; second, are claims against individuals or entities who may have some culpability in this matter. The Receiver believes it would not be prudent to identify all such potential claims into one category at this point. However, the donation of substantial assets to a high school athletic program has already received considerable press and other attention. The Receiver's counsel has initiated dialogue with school officials to determine the complete facts and the best way to effect optimum recovery.

Numerous investors have offered suggestions to the Receiver as to parties against whom the Receiver may possess claims. The Receiver has assured investors that all possibilities will be examined in due course.

Sienna Financial Ltd. ("Sienna")

In his Initial Report of October 12, 2000, the Receiver advised the Court of a series of transactions involving Sienna, a company under the control of James F. Garro ("Garro"). Sienna operated out of what appears to be a private residence in San Diego, California. As reported on October 12, 2000, \$20 million of TLC investor funds were invested with Sienna and Garro. The funds were deposited with a San Diego escrow company, Allison McCloskey Escrow ("Allison McCloskey"). The Escrow Officer who handled the Sienna transaction was Mary Ellen Munyon.

Members of the Receiver's staff have examined many of the records relating to this transaction. It is clear from these records that the \$20 million investment was deposited into an escrow account at Allison McCloskey, which \$20 million was pooled with investor funds from other clients of Garro and other individuals. The total

aggregate investment with Allison McCloskey for this series of transactions with Sienna and other identified investors was approximately \$40 million.

From documents reviewed by the Receiver's staff, it appears that Garro represented that the funds would be invested in what is commonly referred to as a "Prime Bank Note Trading Scheme." Courts have held that such trading programs do not exist. [*Securities and Exchange Commission v. Lewis Allen Rivlin, et al., Case No. 1:99CV01455 (RCL), Order of Preliminary Injunction dated October 24, 2000.*] The scheme described in the *Rivlin* case is strikingly similar to the scheme promoted by Garro in Sienna's marketing materials and letters to Cossey.

The Receiver believes that Garro owns or controls several other companies involved in the \$20 million transaction, including Navajo Capital, Inc. ("Navajo"), and Merlin Financial. Navajo is a Wyoming corporation, and Garro is President, Secretary and CEO according to a document he signed on October 22, 1999.

The TLC \$20 million investment was transferred to the Allison McCloskey escrow account on September 13, 1999 from an account at Tokai Bank of California in the name of TLC America, Inc. Other investor funds placed in the same escrow account at Allison McCloskey included a \$10 million deposit from Paul J. Young ("Young"), an attorney acting for an organization called Child's Hope International. Young later represented Cossey in an attempt to recover the \$20 million from Garro. The remaining \$10 million came from an investment broker operating out of London, England, and two other investors.

\$10 million and a residence in La Jolla, California (that brokers have since recommended be listed for sale at approximately \$6.5 million) were recovered from activities initiated prior to the appointment of the Receiver.

Documents reviewed by the Receiver show that Garro instructed Allison McCloskey to transfer \$30 million plus interest of \$8,383.56 to an account in the name of Navajo. Also, Garro signed a taxpayer identification form for the Navajo account.

The bulk of the funds, \$25 million, were transferred by Allison McCloskey/Navajo to a company called Citation Financial Management ("Citation"). The Receiver is investigating the nature of this transfer. Documents suggest it was in exchange for shares in a company owned or controlled by Citation, but the existence of or the value of this company is unknown at this time. The Receiver has discovered that some of the investor funds deposited into the Allison McCloskey escrow account were sent to offshore accounts. The Receiver is investigating these transfers.

The Receiver will continue to investigate the transfers of funds from the Allison McCloskey escrow account and the commissions paid on these transactions, in an effort to identify and recoup investor funds.

Authority for Sale of Assets

As detailed in my Initial Report and confirmed by ongoing review, the company has never been profitable and the assets of the company are not sufficient to payoff the amounts owed to investors and creditors. As a result, continuing to operate the business or attempting to sell the business as a going concern is not in the best interest of the investors. The Receiver has, therefore, decided to liquidate the assets in a commercially reasonable manner and proposes the sale procedures outlined below.

Real Estate

It is the goal of the Receivership to convert all assets to cash and to maximize the return for the benefit of the investors. Each asset will be subject to a cost-benefit analysis that will be applied with present value

considerations in determining the pricing and timing strategies of each property. On that basis, some properties may be earmarked for early disposition. Other properties may require considerable attention and, in some cases, substantial investment prior to marketing. The costs of maintaining the asset will also be considered. All of these factors will enter into the Receiver's consideration in determining acceptable or unacceptable prices in particular circumstances.

Given the number of assets outlined in the preceding sections of this report, it is clear that it is not practical to obtain Court approval in advance for each sale. There are some instances where the Receiver believes that Court confirmation with provisions for overbidding may produce the best result. Circumstances will likely arise in the sale of the higher value assets where the buyer will insist on specific Court approval to eliminate title issues, if any. In other cases, that process may inhibit the sale or may cost too much in both time and expense. And, of course, the Receiver is concerned with the burden on the Court and avoidable expense to the Receivership.

Therefore, the Receiver recommends that the following criteria be approved, based on the estimated value of the asset, generally authorizing the Receiver with authority to sell certain real estate assets without specific Court approval, provided certain criteria are met.

Est. Property Value	Proposed Valuation Method	Court Approval Required	Other Terms
\$0 - \$80,000	<ul style="list-style-type: none"> • 1 real estate broker's opinion of value; • 1 other independent comparable value 	No further Court approval required for sale for properties with an average appraised value of \$0-\$1 million	<p>The Receiver shall be permitted to sell each piece of real estate for a gross sales price of 80% of average appraised value, or higher.</p> <p>If the Receiver does not obtain a price which is 80% of the average appraised value for any parcel, then the Receiver must follow the provisions set forth in 28 U.S.C. § 2001.</p>
\$80,001-\$250,000	<ul style="list-style-type: none"> • 1 appraisal from a licensed appraiser; • 1 real estate broker's opinion of value; • 1 other independent comparable value 		
\$250,001-\$1 million	<ul style="list-style-type: none"> • 2 appraisals from licensed appraisers; • 2 real estate brokers' opinions of value; • 2 other independent comparable values 		

Est. Property Value	Proposed Valuation Method	Court Approval Required	Other Terms
Over \$1 million	<ul style="list-style-type: none"> • 2 appraisals from MAI appraisers or 3 appraisals from licensed appraisers; • 2 real estate brokers' opinions of value; • 2 other independent comparable values 	Subject to Court approval on an <i>ex parte</i> basis	

Other Assets

Experts have advised the Receiver that the horses should continue to be raced and should be placed in “claiming races” when appropriate. In addition, experts have advised the Receiver that public auctions, as opposed to private sales, will likely maximize the return on the investment.

The Receiver’s experience in other receivership matters is that maximum value for office equipment is realized from sale at public auction.

Therefore, the Receiver requests authority to liquidate the horses and office equipment by such method as he determines will obtain the greatest return.

Pending Issues

There are several construction projects that were underway at the time of the asset freeze. Each is being given careful study by the professional staff of TLC who has managed these properties since their purchase. They are also receiving scrutiny from the Receiver and his staff. That analysis is not yet complete and the Receiver has not yet received recommendations nor is he now prepared to make recommendations to the Court. However, each situation will require either additional funding to bring the projects to the optimum point of resale, or result in substantial and irrecoverable loss. Outlined below is the largest project that falls into this category.

Marina Coves on the Colorado River

Interviews with those involved and an extensive on-site visit by one of the Receiver’s senior deputies indicates, on a preliminary basis, a positive outlook for the project. TLC has invested over \$4.4 million in Phase 1 of this lot development project since July, 1999, representing 55% ownership interest. Of that amount approximately \$440,000 represents direct development costs and for which invoices to contractors are now overdue and payable. The Receiver intends to pay these invoices as soon as his staff has completed an audit of those expenses. The Receiver estimates that the current immediate liquidation value of the investment is approximately \$2 million, and a current analysis indicates that, over a period of months, this investment could be liquidated for its \$4.4 million cost. The Receiver's analysis also indicates that a further investment of \$2.6 million may bring this project to the point where substantial additional returns may be generated.

Upon further review and study of the additional investment for Phase 1, and, as described below, possible investment in Phase 2 is required. Alternatives to cash outlays must be thoroughly researched. Although the overall viability of the project appears positive, this must be reexamined. If current estimates and forecasts related to Phase 1 are reaffirmed by further study, a return of \$14 million could be achieved against a total investment, including future costs, of \$7 million.

The immediate issue pending is the acquisition of a parcel of land that would begin the development of Phase 2. That parcel is scheduled for a State of Arizona auction sale. The company's real estate professionals had anticipated acquiring that parcel for approximately \$1.6 million. The auction is set for December 14, 2000, and the Receiver is advised that the State of Arizona cannot extend that date. The acquisition is extremely important to maximize the appeal, marketability, and value of Phase 1. The estate is presently cash poor. The Receiver will continue his efforts to determine whether the expansion of Phase 1 and the initiation of Phase 2 are viable and would produce a reasonable return on the investment. The Receiver's alternative will be to locate a venture partner to acquire the parcel and join in the project or borrow to fund the purchase and development expense, to maximize the net return.

It should be noted that the Receiver is preliminarily considering this a viable and profitable investment, should all questions be resolved favorably, all development phases be ultimately completed, and the economy remain strong. Given these considerations, the estate is expected to ultimately realize net proceeds of \$29 million from Phase 1 and Phase 2 against its total investment of \$17 million (\$7 million for Phase 1 and \$10 million for Phase 2), after allowing for the minority partner's 45% interest.

This asset was assigned a value of \$69 million in the list of assets submitted by the Defendants for the Court's consideration at the October 30, 2000 hearing. Among other things, that so-called valuation did not take into consideration (a) that TLC has only a 55% ownership in the project, or (b) the additional funds required to bring that investment to fruition.

Financial Reconstruction of Bank and Investor Records

The books and records of the company are incomplete and, in some cases, conflicting. The Receiver's colleagues have continued forensic work using original bank documents and investor records. The result of this forensic work will be a reconstruction of the company's true financial position and may enable the Receiver to determine potential additional sources of recovery.

Future Reporting

The Receiver intends to submit his next report on the overall status of the Receivership for the period ending December 31, 2000, by January 31, 2001. Thereafter, with the approval of this Court, the Receiver intends to submit comprehensive reports each quarter, unless the Court directs otherwise. Between such reports, the Receiver may submit special reports as the Court or circumstances may require.

The Receiver will submit financial reports, including expenses and income of the Receivership. He intends to pay all expenses of the Receivership when due, subject to availability of funds, except for his own fees and expenses. The Receiver will submit his own fee and expense request to the Court for approval prior to payment. The Court will receive supporting documentation only regarding the Receiver's fees and expenses, absent a specific request. Supporting documentation for expenses will be maintained and will be available to the Court on request.

It is not intended that the periodic reports to the Court will include details of individual assets unless there are unusual circumstances. The reports will explain assets held under broad categories, unless the Court requests otherwise. It has been the Receiver's experience that providing details, such as cost figures and opinions of value, regarding individual assets in the public record diminishes the Receiver's ability to negotiate the best price. In other Federal Court cases under this Receiver's management, this practice has been successfully followed, with complete details available to the Court upon request and under seal.

Line of Credit

One of the early projects of the Receivership is to produce a Cash Flow Projection. This is being prepared in conjunction with the estate inventory. Although the estate has substantial assets, it does not yet have substantial cash. Until the cash flow is established by the sale of assets, the possibility of a cash shortfall exists.

For that reason the Receiver proposes to negotiate a line of credit with a commercial bank. Attached under Tab 3 is a draft proposal letter submitted from City National Bank. The terms offered are similar to those the Receiver has negotiated under similar circumstances for other estates.

The Receiver recommends that the Court authorize him to enter into borrowing arrangements with City National Bank, or any other fully licensed bank that may offer competitive terms, substantially along the lines indicated in the City National Bank letter under Tab 3.

Requests of the Court

The Court is respectfully requested to:

1. Approve this report and the Receiver's Initial Report to the Court dated October 12, 2000;
2. Authorize all expenses of the Temporary Receivership to and including October 30, 2000, including fees and expenses of the Receiver detailed under Tab 1;
3. Authorize the Receiver to approve sales of Receivership assets as described earlier in this report;
4. Authorize the Receiver to establish a line of credit with a commercial bank as described under Tab 3;
and
5. For such other and further relief as the Court may deem just and proper.

Respectfully submitted,

/S/

Robb Evans
Receiver