

1 LINDA J. CANDLER, ESQ. [State Bar No. 181805]
2 ROBB EVANS & ASSOCIATES LLC
3 11450 SHELDON STREET
4 SUN VALLEY, CA 91352
5 TELEPHONE: (818) 768-8100
6 FACSIMILE: (818) 768-8802

05 JUL 29 AM 10:15

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DEPUTY

ATTORNEY FOR ROBB EVANS & ASSOCIATES LLC,
PERMANENT RECEIVER

AUG 04 2005 PM 01:43

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

11 COMMODITY FUTURES TRADING
12 COMMISSION,

12 Plaintiff,

13 v.

14 WHITE PINE TRUST CORPORATION,
15 a California corporation, RICHARD
16 MATTHEWS, an individual, and
STEPHEN BAERE, an individual.

17 Defendants.

18 LUCIA MATTHEWS, an individual,

19 Relief Defendant.

CASE NO. 04cv2093-J (NLS)

NOTICE OF MOTION AND MOTION FOR
AN ORDER (1) APPROVING RECEIVER'S
PROPOSED CLAIMS FILING AND
ALLOWANCE PROCEDURES, AND (2)
APPROVING PROCEDURE FOR
LIMITED NOTICE THEREOF;
DECLARATION OF BRICK KANE IN
SUPPORT THEREOF

Date: September 6, 2005
Time: 10:30 A.M.
Place: Courtroom 12
940 Front Street
San Diego, CA 92101-8900
(Hon. Napoleon A. Jones, Jr.)

[ORAL ARGUMENT NOT REQUIRED]

22 TO THE HONORABLE NAPOLEON A. JONES, JR., UNITED STATES
23 DISTRICT JUDGE, AND TO ALL PARTIES IN INTEREST:

24 PLEASE TAKE NOTICE that on September 6, 2005, at 10:30 a.m. in Courtroom
25 12 of the United States District Court for the Southern District of California located at 940
26 Front Street, San Diego, California 92101, Robb Evans & Associates LLC, Receiver in the
27 above-captioned case, will and does hereby move the Court for an Order (1) approving the

1 Receiver's proposed claims filing and allowance procedures as set forth in this Motion and
2 (2) approving the Receiver's proposed procedures for limited notice thereof ("Motion").

3 PLEASE TAKE FURTHER NOTICE that this Motion is made pursuant to Local
4 Rule 66.1 and is based upon this Notice of Motion, the Memorandum of Points and
5 Authorities; the Declaration of Brick Kane annexed hereto, and the Court's records and
6 pleadings on file in this action, and all other evidence, both oral and documentary, as may be
7 presented at the time of hearing, if one occurs. The Receiver respectfully submits that this
8 matter does not require oral argument, unless opposition to the Motion is subsequently
9 submitted to the Court.

10 Any person or entity opposing this Motion must timely file with the Court and serve
11 upon the Receiver a written opposition which complies in all respects with the
12 rules of this Court. Failure to timely file an opposition may be deemed by the Court to be
13 consent to the granting of the Receiver's Motion.

14 PLEASE TAKE FURTHER NOTICE that this Motion is posted on the Receiver's
15 website at <http://www.robbevans.com/html/whitepine.html>, where it may be reviewed in
16 its entirety. A copy of this Motion will be provided to any interested party upon receipt of a
17 request therefore which may be directed to: Robb Evans & Associates LLC, Attn: Judi
18 Ehrlich, 11450 Sheldon Street, Sun Valley, CA 91352 telephone: (818) 768-8100, facsimile:
19 (818) 768-8802.

20

21 Dated: July 28, 2005

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ROBB EVANS & ASSOCIATES LLC

By: Linda J. Candler
LINDA J. CANDLER, ESQ.
ATTORNEY FOR RECEIVER

I.

INTRODUCTION

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4 On October 21, 2004, Robb Evans & Associates LLC (“REA” or “Receiver”) was
5 appointed as Temporary Receiver in the within action pursuant to an “*Ex Parte* Statutory
6 Restraining Order; Order Permitting Expedited Discovery, the Appointment of a Receiver
7 and Other Equitable Relief”. Thereafter, on October 28, 2004, the Court entered an Order
8 of Preliminary Injunction (“Order”). Pursuant to the terms of the Order, REA was
9 appointed as Receiver for Defendants White Pine Trust Corporation and Richard Matthews,
10 and all of the funds, properties, premises, accounts and other assets directly or indirectly
11 owned, beneficially or otherwise, by them with the full powers of an equity Receiver. The
12 Order states that the Receiver shall be the agent of the Court in acting as Receiver under the
13 Order, and charges the Receiver with managing the assets of Receivership Defendants for
14 the purpose of preserving the interests of, and preventing any loss, damage or injury to,
15 customers or clients of Receivership Defendants. On November 18, 2004, the CFTC filed
16 an Amended Complaint which added Lucia Matthews as a Relief Defendant and Stephen
17 Baere as a Receivership Defendant. By Order dated May 4, 2005, the Court also approved
18 the sale of certain real and personal property. Pursuant to that Order, the gold coins have
19 been sold, and there is an offer pending for the sale of real property located at 5435 Calumet
20 Avenue, La Jolla, California, which has been submitted to this Court for approval and
21 confirmation of sale.

22 The October 28, 2004 Order of Preliminary Injunction (“Order”) directed the
23 Receiver, in part, to do the following things:

- 24 • Take exclusive custody, control and possession of all the funds, property, mail
25 and other assets of, in the possession of, or under the control of the
26 defendants, wherever situated. The Receiver shall have full power to sue for,
27 collect, receive and take into possession all goods, chattels, rights, credits,
28 moneys, effects, land, leases, books, records, work papers, and records of
accounts, including computer-maintained information, and other papers and
documents of the defendants, including documents related to customers or
clients whose interests are now held by or under the direction, possession,
custody or control of the defendants...(.)

- 1 • Preserve, hold and manage all receivership assets, and perform all acts
2 necessary to preserve the value of those assets in order to prevent any loss,
3 damage or injury to customers or clients.
- 4 • Collect all money owed to the defendants.
- 5 • Liquidate any assets of the defendants which may depreciate during the course
6 of this litigation, and hold the proceeds of such liquidation until further order
7 of this Court.

8 II.

9 **THE RECEIVER SEEKS APPROVAL OF A CLAIMS FILING** 10 **AND ALLOWANCE PROCEDURE**

11 The Receiver has analyzed the financial records of the receivership and for each
12 investor has calculated and determined what the Receiver believes is (a) the amount the
13 investor paid to the Receivership Defendants for investment purposes, and (b) the amount
14 the Receivership Defendants paid to the investor on account of the investment. The
15 Receiver contends that the investment scheme operated by the Receivership Defendants is a
16 Ponzi scheme by which "interest" or investment "returns" were paid with funds paid into
17 the scheme by later investors, that the investments in fact generated only losses, and that the
18 investment enterprise did not generate "profits" from which interest or returns could
19 legitimately be paid.

20
21 As a result, the Receiver proposes the following treatment of investor accounts and
22 claims:

- 23 1. Investor account balances will be credited for funds actually deposited
24 or paid by the investor to the Receivership Defendants;
- 25 2. Credits characterized as interest and applied by the Receivership
26 Defendants to increase investor account balances will be reversed;
- 27 3. Actual payments of interest and actual payments for any other
28 purposes, such as withdrawals of investment amounts will be treated as a return of
capital and the investor account balance reduced accordingly.

1 Provided that the Court approves this procedure, the Receiver will provide written
2 notice to each investor of the Receiver's calculation of the investor's account balance and
3 the amount the Receiver calculates as the claim of the investor based on the treatment of the
4 account and payments and adjustments set forth above. The Receiver proposes that the
5 investor/creditor be provided 30 days from the date of service of written notice of the
6 calculation of the claim amount to object to the proposed claim amount. The objection by
7 the investor must be in writing and received by the Receiver within this 30-day period. If
8 the investor/creditor fails to timely object to the notice and the Receiver's calculation of the
9 investor claim amount, then the amount set forth in the notice shall be the Approved
10 Investor Claim upon which future distributions in the case will be made.

11 The Receiver proposes that non-investor claimants be provided with a similar written
12 notice of the amount the Receiver calculates is owed to the creditor based on the records of
13 the receivership. The Receiver proposes that the creditor have 30 days from the date of
14 service of the notice to object to the proposed allowed amount of the creditor's claim and
15 that if no timely written objection is received by the Receiver within that 30-day period, then
16 the amount stated in the notice will become the creditor's Approved Creditor Claim.

17 If the Receiver receives a timely objection to any proposed claim amount, the
18 Receiver will attempt to resolve the claim dispute through negotiation. If the parties are
19 unable to resolve the dispute through negotiation, the Receiver will file a motion to seek
20 *resolution disputed claims*.

21 The Receiver is not yet in a position to make distributions to claimants and will make
22 a subsequent motion to authorize distributions when the claims filing and allowance
23 procedures have been approved and implemented. Nevertheless, by this Motion, the
24 Receiver seeks approval to pay Approved Investor Claims on a pro rata basis. As used in
25 these claims procedures, "pro rata" means the ratio of the amount that the Approved
26 Investor Claim bears to the total amount of all Approved Investor Claims. The Receiver is
27 evaluating whether to recommend subordination of Approved Creditor Claims to Approved
28 Investor Claims, and will make a recommendation once the claims process has been

1 completed and in conjunction with the Receiver's first motion to authorize distributions.

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3 **III.**

4 **THE RECEIVER REQUESTS APPROVAL OF THE PROCEDURE FOR**
5 **LIMITED NOTICE OF THIS MOTION**

6 The Receiver has served the parties to this action by mail and proposes to serve all
7 investors and potential creditors of the estate by posting a copy of the motion on the
8 Receiver's website, and by serving a detailed Notice of the Motion on each investor and
9 creditor by mail. There are approximately 200 known investors and approximately 31
10 known creditors, and it is more cost-effective to serve the Motion and accompanying
11 exhibits by posting on the website. The Receiver will also provide a written copy to any
12 investor or creditor, upon request. The expense associated with copying and serving this
13 Motion on all such parties would be unduly burdensome and expensive.

14 This Court, as a court of equity supervising the receivership estate, may make
15 appropriate administrative orders governing the receivership, including limitations on and
16 changes in notice and other procedures. See F.R. Civ. P. 5(a) and (c) (authorizing the court
17 to modify service procedures when numerous defendants are involved in litigation). Orders
18 limiting notice when the Bankruptcy Code or Rules would otherwise require notice to all
19 creditors are routinely granted in bankruptcy cases to promote the expeditious and
20 economical administration of bankruptcy estates. See In re First Alliance Mortgage Co., 269
21 B.R. 428, 442 (C.D. Cal. 2001) (referencing in dicta in the court's recitation of facts the
22 bankruptcy court's order limiting notice issued in that case); 11 U.S.C. § 102(1)(A) (defining
23 the phrase "after notice and a hearing" to mean "after such notice as is appropriate in the
24 particular circumstances, and such opportunity for hearing as is appropriate in the particular
25 circumstances"); 11 U.S.C. § 105(a) and (d) (granting broad equitable powers to the court to
26 issue orders "necessary or appropriate to carry out the provisions" of title 11 including
27 "prescribing such limitations and conditions as the court deems appropriate to ensure the
28 case is handled expeditiously and economically").

1 In light of the fact that the Motion is being served on the parties to the action and
2 will be posted on the Receiver's website, the Receiver submits that it is reasonable and cost-
3 effective to serve all creditors/investors of the Receivership entities by posting the Motion
4 on the Receiver's website and by serving the Notice of Motion and instructions for
5 requesting a written copy on all known investors and creditors by mail. The Receiver
6 requests approval to proceed based on this procedure. In order to maximize notice of this
7 situation, the Receiver has taken the following steps:

- 8 1. This Motion has been served on all parties named in this action;
- 9 2. The Notice of Motion will be served on all known investors and creditors by
10 mail. Notice has been given in the Notice of Motion that the Receiver will provide a copy
11 of the Motion to any interested party upon request. Parties may direct such a request to:
12 Robb Evans & Associates LLC, Attn: Judi Ehrlich, 11450 Sheldon Street, Sun Valley, CA
13 91352 telephone: (818) 768-8100, facsimile: (818) 768-8802; and
- 14 3. The Motion has been posted on the Receiver's website at the following
15 address: <http://www.robbevans.com/html/whitepine.html>.

16 A copy of the Notice which will be served upon investors and creditors is attached
17 hereto as Exhibit "A". The foregoing procedure for limited service of this Motion
18 minimizes the cost of reproducing and mailing. The Receiver submits that the notice
19 provided for herein is reasonable and designed to provide fair notice and an opportunity to
20 be heard to all creditors and interested parties in the Receivership Estate while minimizing
21 the expense of service that would otherwise be borne by those creditors.

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IV.

CONCLUSION

For the reasons set forth herein, it is respectfully requested that this Court issue an Order approving the Receiver's proposed claims filing and allowance procedures.

Dated: July 28, 2005

ROBB EVANS & ASSOCIATES LLC

By: Linda J. Candler
LINDA J. CANDLER, ESQ.
ATTORNEY FOR RECEIVER

1 **DECLARATION OF BRICK KANE**

2 I, BRICK KANE, declare as follows:

3 1. I am the Chief Operating Officer of Robb Evans & Associates LLC, the duly
4 appointed, qualified and acting Receiver in the within action. I have reviewed the foregoing
5 Motion and know the contents thereof, and the same is true of my own knowledge, except
6 as to those matters which are stated upon information or belief, and as to those matters, I
7 believe them to be true.

8 2. The foregoing Motion seeks to implement a claims administration
9 procedure described more fully in the Motion whereby the Receiver hopes to make an initial
10 distribution to investors prior to December 31, 2005.

11 3. Based on the Receiver's reconstruction of the financial records of the
12 Receivership Defendants, there are approximately 200 investors who will have claims in the
13 Receivership Estate. The estimated total dollar amount of these investor claims is
14 \$15,329,292.17. Additionally, there are approximately 31 non-investor creditors who will
15 have claims in the estimated dollar amount of \$31,683.61.

16 4. It is my belief that the establishment of Claims Filing and Allowance
17 Procedures in accordance with the proposed methods outlined in the within Motion is in the
18 best interests of the Receivership Estate and its creditors.

19 I declare under penalty of perjury under the laws of the United States of America that
20 the foregoing is true and correct. Executed this 25 day of July, 2005, at Sun Valley,
21 California.

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23 

24 BRICK KANE

EXHIBIT "A"

1 LINDA J. CANDLER, ESQ. [State Bar No. 181805]
2 ROBB EVANS & ASSOCIATES LLC
3 11450 SHELDON STREET
4 SUN VALLEY, CA 91352
5 TELEPHONE: (818) 768-8100
6 FACSIMILE: (818) 768-8802

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8 ATTORNEY FOR ROBB EVANS & ASSOCIATES LLC,
9 PERMANENT RECEIVER

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

WHITE PINE TRUST CORPORATION,
a California corporation, RICHARD
MATTHEWS, an individual, and
STEPHEN BAERE, an individual.

Defendants.

LUCIA MATTHEWS, an individual,

Relief Defendant.

CASE NO. 04cv2093-J (NLS)

NOTICE TO INVESTORS AND
CREDITORS OF MOTION FOR ORDER
(1) APPROVING RECEIVER'S
PROPOSED CLAIMS FILING AND
ALLOWANCE PROCEDURES, AND (2)
APPROVING PROCEDURE FOR
LIMITED NOTICE THEREOF

Date: September 6, 2005

Time: 10:30 a.m.

Place: Courtroom 12

940 Front Street

San Diego, CA 92101-8900

(Hon. Napoleon A. Jones, Jr.)

[ORAL ARGUMENT NOT REQUIRED]

TO ALL INVESTORS, CREDITORS AND OTHER PARTIES IN INTEREST:

PLEASE TAKE NOTICE that on September 6, 2005, at 10:30 a.m. or as soon thereafter as counsel may be heard in Courtroom 12 of the above-entitled court, located at 940 Front Street, San Diego, California 92101-8900, there will be a hearing on a Motion being filed by Robb Evans & Associates LLC, the Permanent Receiver ("Receiver") of White Pine Trust Corporation, Richard Matthews, Jr. and Stephen Baere, for an Order (1) Approving Receiver's Proposed Claims Filing and Allowance Procedures, and (2) Approving Procedure for Limited Notice Thereof ("Motion").

EXHIBIT A

1 The Receiver's Motion seeks approval of a claims filing and allowance procedure
2 which proposes, among other things, the following:

3 **Investor Claims:**

- 4 • Investor account balances will be credited for funds actually deposited or paid by
5 the investor to the Receivership Defendants;
- 6 • Credits characterized as interest and applied by the Receivership Defendants to
7 increase investor account balances will be reversed;
- 8 • Actual payments of interest and actual payments for any other purposes, such as
9 withdrawals of investment amounts will be treated as a return of capital and the
investor account balance reduced accordingly.

10 Provided that the Court approves this procedure, the Receiver will provide written
11 notice to each investor of the Receiver's calculation of the investor's account balance and
12 the amount the Receiver calculates as the claim of the investor based on the treatment of
13 the account and payments and adjustments set forth above. The Receiver proposes that
14 the investor/creditor be provided 30 days from the date of service of written notice of the
15 calculation of the claim amount to object to the proposed claim amount. The objection by
16 the investor must be in writing and received by the Receiver within this 30-day period. If
the investor/creditor fails to timely object to the notice and the Receiver's calculation of
the investor claim amount, then the amount set forth in the notice shall be the Approved
Investor Claim upon which future distributions in the case will be made.

17 **Non-Investor Claims:**

18 The Receiver proposes that non-investor claimants be provided with a similar
19 written notice of the amount the Receiver calculates is owed to the creditor based on the
20 records of the receivership. The Receiver proposes that the creditor have 30 days from
21 the date of service of the notice to object to the proposed allowed amount of the creditor's
22 claim and that if no timely written objection is received by the Receiver within that 30-day
23 period, then the amount stated in the notice will become the creditor's Approved Creditor
24 Claim.

25 If the Receiver receives a timely objection to any proposed claim amount, the
26 Receiver will attempt to resolve the claim dispute through negotiation. If the parties are
27 unable to resolve the dispute through negotiation, the Receiver will file a motion seeking
28 resolution of the disputed claims.

PLEASE TAKE FURTHER NOTICE that the Motion will be posted on the
Receiver's website at www.robbevans.com/html/whitepine.html, where it may be viewed
in its entirety. A copy of the Motion will also be provided to any interested party upon
receipt of a written request which may be sent to: Robb Evans & Associates LLC, 11450

EXHIBIT A

1 Sheldon Street, Sun Valley, California 91352-1121, Attn: Judi Ehrlich, Fax No. (818) 768-
2 8802.

3 PLEASE TAKE FURTHER NOTICE that the Receiver is willing to submit the
4 Motion for decision by the Court without oral argument. Any person or entity opposing
5 this Motion must timely file with the Court and serve upon the Receiver, whose name and
6 address appear in the upper left-hand corner of the first page of this Motion, a written
7 opposition which complies in all respects with the rules of this Court. Failure to timely file
an opposition may be deemed by the Court to be consent to the granting of the Receiver's
Motion.

8 Dated: July 28, 2005

ROBB EVANS & ASSOCIATES LLC

9 By: Linda J. Candler
10 LINDA J. CANDLER, ESQ.
11 Attorney for Receiver
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EXHIBIT A

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PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California; I am over the age of 18 years and am not a party to the within action or proceeding. I am employed by Robb Evans & Associates, LLC, located at 11450 Sheldon Street, Sun Valley, CA 91352-1121, Telephone: (818) 768-8100; Facsimile: (818) 768-8802.

On July 28, 2005, I served the foregoing document described as: NOTICE OF MOTION AND MOTION FOR AN ORDER (1) APPROVING RECEIVER'S PROPOSED CLAIMS FILING AND ALLOWANCE PROCEDURES, AND (2) APPROVING PROCEDURE FOR LIMITED NOTICE THEREOF; DECLARATION OF BRICK KANE IN SUPPORT THEREOF on the interested parties in said action, as follows:

James H. Holl, Esq.
Commodity Futures Trading Commission
1155 21st Street NW
Washington DC 20581
Attorney for Plaintiff

Charles G. LaBella, Esq.
Ronald Giusso, Esq.
LaBella & McNamara LLP
401 West "A" Street, Suite 1150
San Diego, CA 92101
Attorneys for Defendant Richard Matthews, Jr.

Gregory A. Vega, Esq.
Selzer, Caplan, McMahon, Vitek
750 "B" Street, Suite 2100
San Diego, CA 92101
Attorney for Lucia Matthews

Dirk T. Metzger, Esq.
550 West "C" Street, Suite 700
San Diego, CA 92101
Attorney for Defendant Stephen Baere

- (By Mail) I caused such envelope with postage thereon, fully prepaid, to be placed in the United States mail. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal service on that same day with postage thereon fully prepaid at Sun Valley, California, in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit. Executed on July 28, 2005, at Sun Valley, California.
- (Federal) I declare that I am an employee in the offices of the Receiver, an officer of this Court at whose direction the service was made.



JUDI S. EHRLICH