

ROBB EVANS & ASSOCIATES LLC

Receiver of

White Pine Trust Corporation

Richard R. Matthews, Jr.

11450 Sheldon Street

Sun Valley, California 91352-1121

Telephone No.: (818) 768-8100

Facsimile No.: (818) 768-8802

**Commodity Futures Trading Commission v. White Pine Trust Corporation, Inc, et al.
CASE No. 04-CV-2093 J (NLS)**

**Notice of Motion and Motion of Receiver for Order Approving Receiver's
Plan for Initial Distribution on Allowed Investor and Non-investor
Claims;**

Declaration of Brick Kane in Support Thereof

**Memorandum of Points and Authorities in Support of Receiver's Motion
for Order Approving Initial Distribution to Allowed and Non-investor
Claims**

Dated June 21, 2006

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
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ATTORNEY FOR ROBB EVANS & ASSOCIATES LLC,
PERMANENT RECEIVER

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
STEPHAN BAERE, an individual,

Defendants.

LUCIA MATTHEWS, an individual,

Relief Defendant.

CASE NO. 04cv2093-J (NLS)

NOTICE OF MOTION AND
MOTION OF RECEIVER FOR
ORDER APPROVING RECEIVER'S
PLAN FOR INITIAL DISTRIBUTION
ON ALLOWED INVESTOR AND
NON-INVESTOR CLAIMS AND
DECLARATION OF BRICK KANE IN
SUPPORT THEREOF

Date: July 31, 2006

Time: 10:30 a.m.

Place: Courtroom 12

940 Front Street

San Diego, CA 92101-8900

(Hon. Napoleon A. Jones, Jr.)

TO THE HONORABLE NAPOLEON A. JONES, JR., UNITED STATES
DISTRICT COURT JUDGE, AND TO ALL PARTIES AND THEIR ATTORNEYS OF
RECORD:

PLEASE TAKE NOTICE that on July 31, 2006, at 10:30 a.m. in Courtroom 12 of
the United States District Court for the Southern District of California located at 940 Front
Street, San Diego, California 92101, Robb Evans & Associates LLC, Receiver in the above-
captioned case, will present its Motion for an Order (1) approving the Receiver's proposed

1 initial distribution on Allowed Investor and Non-Investor Claims against the receivership
2 estate of White Pine Trust Corporation in the sum of not less than \$3.2million, representing
3 21.46% of Allowed Investor and Non-Investor Claims; (2) authorizing the Receiver to
4 make an Initial Distribution in an amount higher than \$3.2 million. This would allow the
5 Receiver to include the proceeds of sale of other assets if the sale of other assets is approved
6 by the Court and the assets are sold prior to the entry of this Order.

7 The Receiver seeks the foregoing relief based on the Court's Order Approving
8 Receiver's Proposed Claims Filing and Allowance Procedures, entered January 30, 2006
9 [Docket Entry 115], Local Rule 66-1 and the authorities set forth in the supporting
10 Memorandum of Points and Authorities, filed contemporaneously with this Motion. The
11 proposed distribution of \$3.2 million represents cash turned over to the Receiver and the
12 proceeds of the sale of the following assets: real property located at 5435 Calumet, La Jolla,
13 California; gold coins; jewelry, home furnishings, office furniture, automobiles, and a 48-
14 foot yacht. The Receiver is still in the process of selling an island in Belize; real property
15 located at 1568 Oliver Ave., Unit D, San Diego, California, and additional gold coins. The
16 Receiver is also seeking to recover funds transferred to third parties. The Receiver will
17 propose a second distribution once the additional assets of the Receivership estate are sold.

18 This Motion is made and based on this Notice of Motion and Motion, the
19 Memorandum of Points and Authorities and Declaration of Brick Kane in support hereof,
20 on such pleadings, records and files of this Court and on such further oral and documentary
21 evidence and arguments of counsel as may be presented at the hearing on the Motion.


22 PLEASE TAKE FURTHER NOTICE that this Motion, Notice of Motion, and
23 Declaration, is posted on the Receiver's website at
24 <http://www.robbevans.com/html/whitepine.html>.

25 Copies of this Motion will be provided to all White Pine Trust investors and to any
26 other interested party upon receipt of a written request which may be sent to: Robb Evans
27 & Associates LLC, 11450 Sheldon Street, Sun Valley, California 91352-1121, facsimile
28 number (818) 768-8802, attention: Cherrie Eustaquio. Any person or entity opposing this

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

7
8 Dated: June 21, 2006

ROBB EVANS & ASSOCIATES LLC

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10 By: 
11 LINDA J. CANDLER, ESQ.
12 ATTORNEY FOR RECEIVER
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I.

INTRODUCTION

On October 21, 2004, Robb Evans & Associates LLC (“REALLC” or “Receiver”) was appointed as Temporary Receiver in the within action pursuant to an “*Ex Parte* Statutory Restraining Order; Order Permitting Expedited Discovery, the Appointment of a Receiver and Other Equitable Relief”. Thereafter, on November 2, 2004, the Court entered an Order of Preliminary Injunction (“Order”). Pursuant to the terms of the Order, REALLC was appointed as Permanent Receiver for defendants Richard Matthews and White Pine Trust Corporation, and all of the funds, properties, premises, accounts and other assets directly or indirectly owned by them, beneficially or otherwise, with the full powers of an equity Receiver. The Receiver was subsequently appointed as Receiver of the assets of defendant Stephan Baere and relief defendant Lucia Matthews.

Since the appointment, the Receiver has located, identified, taken control of, and sold numerous assets of the receivership estate. These assets include real property, gold coins, automobiles, jewelry, and a yacht. The Receiver has also reviewed and analyzed a large volume of financial records, and has concluded that investor funds were misappropriated and used for the defendants’ personal benefit. As a result, White Pine Trust Corporation is insolvent, and the obligations owed to investors and non-investor claimants greatly exceed the assets available to repay them. The individual defendants in this case, Richard Matthews and Stephan Baere, pled guilty to criminal charges in this case. A default judgment was entered against defendant White Pine Trust Corporation on April 24, 2006. The civil case against defendant Stephan Baere is pending and discovery is ongoing. The pretrial conference in the civil matter is set for October 16, 2006.

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II.

CLAIMS VERIFICATION PROCEDURE

The Receiver calculates that there are \$14,857,546.62 in Allowed Investor Claims and \$51,390.70 in Allowed Non-Investor Claims.

1 The Receiver proposes to make an initial distribution of at least \$3.2 million or at
2 least 21.46% on Allowed Investor Claims and Non-Investor Claims (“Initial Distribution”).

3
4 A. Claims Procedures

5 Pursuant to the Claims Procedures Order, the Receiver followed claims filing and
6 allowance procedures as follows:

7 1. Investors were identified based on the databases maintained by John Todd, a
8 consultant who maintained the investors’ database for White Pine Trust Corporation, and
9 were subsequently verified by the Receiver. All investors were merged into a single investor
10 claimant class. The Receiver proposed and the Court has ordered that their claims be
11 treated equally by being entitled to a pro rata share in all receivership assets subject to this
12 receivership proceeding.

13 2. With respect to the calculation of Allowed Investor Claims, investor account
14 balances were ordered to be credited for funds actually deposited or paid by the investor.
15 Credits characterized as interest and applied by the receivership defendants to increase
16 investor account balances were reversed. Actual payments of interest and actual payments
17 for any other purposes, such as withdrawals from investment accounts, were treated as a
18 return of capital and the investor account balance reduced accordingly.

19 3. The Receiver provided written notice to each investor of the Receiver’s
20 calculation of the investor’s account balances and the amount the Receiver calculates as the
21 claim of the investor based on the treatment of the accounts and payments and adjustments
22 as required under the Claims Procedures Order.

23 4. Each investor claimant was given a period of 30 days from the date of service
24 of written notice of the calculation of the claim to object to the proposed claim amount.
25 Any objection of the investor was required to be in writing and received by the Receiver
26 within the 30-day notice period. The notice to the investor advised the investor of the
27 objection deadline and the requirement that the objection be in writing. If the investor
28 creditor failed to timely object to the notice and the Receiver’s calculation of the investor

1 claim amount, then the amount set forth in the Receiver's notice is deemed to be such
2 investor's Approved Investor Claim upon which distributions in the case shall be based.

3 5. Similar procedures applied to Non-Investor Claimants. The Receiver
4 provided written notice of the Proposed Claim Amount based on the invoice received to the
5 respective Non-Investor Claimant. The Receiver has not received any disputes from the
6 Non-Investor Claimants.

7
8 B. Disputed Investor Claims

9 The Receiver received several responses from investors disputing or questioning the
10 amount of their claims. The Receiver has been able to resolve all disputes.

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12 **III.**
13 **CONCLUSION AND RELIEF SOUGHT**

14 Based upon the foregoing, the Receiver hereby moves this Court for an Order:

15 (1) Approving the Receiver's proposed initial distribution on Allowed Investor and
16 Non-Investor Claims against the receivership estate of White Pine Trust Corporation in the
17 sum of not less than \$3.2 million, representing 21.46% of Allowed Investor and Non-
18 Investor Claims;

19 (2) Authorizing the Receiver to make an Initial Distribution in an amount higher
20 than \$3.2 million if additional assets are sold prior to the date of distribution.

21 Dated: June 21, 2006

ROBB EVANS & ASSOCIATES LLC

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24 By: *Linda Candler*
25 LINDA J. CANDLER, ESQ.
26 ATTORNEY FOR RECEIVER
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DECLARATION OF BRICK KANE

I, Brick Kane, declare:

1. I am the Chief Operating Officer of Robb Evans & Associates LLC, who has been appointed as permanent receiver of White Pine Trust Corporation, Richard Matthews, Lucia Matthews and Stephan Baere. As Chief Operating Officer of Robb Evans & Associates LLC, I have been primarily responsible for the day-to-day supervision and management of the receivership over the White Pine Trust Defendants since we first began to act pursuant to the appointment as temporary receiver in this matter on October 21, 2004. I have been responsible for supervising personnel at Robb Evans & Associates, LLC in their review of the financial records pertaining to the Receivership Defendants, including the receivership investor data bases and the banking records pertaining to accounts of all of the entities and assets subject to the receivership, including, without limitation, bank accounts in the name of White Pine Trust Corporation, Richard Matthews, Lucia Matthews, and Stephan Baere. The matters set forth in this Declaration are based upon my personal knowledge or have been obtained by me in the course of my supervision and management of personnel at Robb Evans & Associates LLC who have performed tasks in connection with this matter under my direction.

2. I participated in the preparation of the Receiver's Motions previously filed with the Court and approved by Court orders in this case, including the Receiver's Motion for Approval of Claims Filing and Allowance Procedures, filed July 29, 2005 [Docket Entry 84], and approved by this Court on January 27, 2006 (entered January 30, 2006) [Docket Entry 115]. I have also reviewed and supervised other members of the Receiver's staff who have reviewed the financial records of White Pine Trust Corporation and the individual defendants. Based on this review, it is apparent that millions of dollars of investor funds were misappropriated by the defendants for their own personal benefit, including the purchase and sale of gold coins, the acquisition of real estate and automobiles, the purchase of jewelry, and luxury travel. Only a fraction of the investor funds were actually invested in

1 a commodity pool. The documents show that there was a lack of financial basis for the
2 transactions and investments solicited from the victims of the investment fraud perpetrated
3 by the defendants and further support the conclusion that funds paid to earlier investors as
4 “interest” or “profits” were paid with funds solicited from later investors. The Receiver’s
5 analysis indicates that White Pine Trust Corporation and the individual Defendants operated
6 a fraudulent investment scheme in effect as a Ponzi-type scheme and that White Pine Trust
7 Corporation was insolvent, with obligations owed to investors exceeding the assets available
8 to repay them.

9 3. Based on the review and reconciliation performed by the Receiver’s
10 accounting staff, including the declarant, I calculate that there are \$14,857,546.62 in Allowed
11 Investor Claims against this receivership estate. I also calculate there are \$51,390.70 in Non-
12 Investor Claims, such as claims of vendors.

13 4. As of June 21, 2006, there was approximately \$3.7 million in cash in the
14 receivership estate. The Receiver proposes to make an initial distribution on Allowed
15 Investor and Non-Investor Claims of at least \$3.2 million, or 21.46% of such Allowed
16 Claims (“Initial Distribution”). The Receiver proposes to make a pro rata distribution
17 among all Allowed Investor Claims and Non-Investor Claims of the \$3.2 million Initial
18 Distribution.

19 5. Pursuant to the Claims Procedures Order entered by the Court on January 30,
20 2006, I and the Receiver’s accounting staff followed claims filing and allowance procedures
21 as follows:

22 A. All investors identified on the databases maintained by White Pine
23 Trust Corporation through its outside consultant, John Todd, and subsequently verified by
24 the Receiver, were merged into a single investor claimant class and their claims were ordered
25 to be treated similarly by being entitled to share in all receivership assets subject to this
26 receivership proceeding.

27 B. With respect to the calculation of Allowed Investor Claims, investor
28 account balances were ordered to be credited for funds actually deposited or paid by the

1 investor. Credits characterized as interest and applied by White Pine Trust Corporation to
2 increase investor account balances were reversed. Actual payments of interest and actual
3 payments for any other purposes, such as withdrawals from investment accounts, were
4 treated as a return of capital and the investor account balance reduced accordingly.

5 C. The Receiver's office provided written notice to each investor of the
6 Receiver's calculation of the investor's account balances and the amount the Receiver
7 calculates as the claim of the investor based on the treatment of the accounts and payments
8 and adjustments as required under the Claims Procedures Order.

9 D. Each investor claimant was given a period of 30 days from the date of
10 service of written notice of the calculation of the claim to object to the proposed claim
11 amount. Any objection of the investor was required to be in writing and received by the
12 Receiver within the 30-day notice period. The notice to the investor advised the investor of
13 the objection deadline and the requirement that the objection be in writing. If the investor
14 creditor failed to timely object to the notice and the Receiver's calculation of the investor
15 claim amount, then the amount set forth in the Receiver's notice is deemed to be such
16 investor's Approved Investor Claim upon which distributions in the case shall be based.

17 E. Similar procedures applied to Non-Investor Claimants. Non-Investor
18 Claimants were provided with written notice of the amount the Receiver calculates is owed
19 to the creditor based on the records of the receivership. The Receiver has not received any
20 dispute from the Non-Investor claimants.

21 6. The Receiver received several responses from investors to the claims notices,
22 and has been able to resolve all claims of the investors.

23 7. The pro rata distribution plan proposed by the Receiver treats similarly
24 situated investors alike by dividing the receivership assets available for distribution among
25 the investor creditors according to the Allowed Claims of such investors. The plan is
26 consistent with the Court's previously approved claims filing and allowance procedures in
27 this case.

28

1 I declare under penalty of perjury that the foregoing is true and correct and that this
2 Declaration was executed this 21st day of June 2006 at Sun Valley, California.

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4 A handwritten signature in black ink, appearing to read 'Brick Kane', is written over a horizontal line.

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6 BRICK KANE
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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
7 ATTORNEY FOR ROBB EVANS & ASSOCIATES LLC,
8 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
STEPHAN BAERE, an individual,

Defendants.

LUCIA MATTHEWS, an individual,

Relief Defendant.

CASE NO. 04cv2093-J (NLS)

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
RECEIVER'S MOTION FOR AN
ORDER APPROVING INITIAL
DISTRIBUTION TO ALLOWED AND
NON-INVESTOR CLAIMS

Date: July 31, 2006

Time: 10:30 a.m.

Place: Courtroom 12

940 Front Street

San Diego, CA 92101-8900

(Hon. Napoleon A. Jones, Jr.)

**THE RECEIVER PROPOSES A PLAN OF DISTRIBUTION FOR AN
INITIAL MINIMUM \$3.2 MILLION DISTRIBUTION ON
ALLOWED INVESTOR AND NON-INVESTOR CLAIMS**

**I. Courts Have Broad Authority To Adopt Distribution Plans of Receivership
Assets**

“[A] primary purpose of equity receiverships is to promote orderly and efficient
administration of the estate by the district court for the benefit of creditors.” S.E.C. v. Hardy,
803 F.2d 1034, 1038 (9th Cir. 1986); Accordingly, courts are granted “broad powers” and “wide
discretion” in supervising and fashioning appropriate relief in an equity receivership to achieve

1 this purpose. S.E.C. v. Elliott, 953 F.2d 1560, 1566 (11th Cir. 1992); S.E.C. v. Hardy, 803 F.2d
2 at 1037; Liberte Capital Group v. Capwill, 229 F. Supp. 2d 799, 802 (N.D. Ohio 2002) *aff'd*,
3 2004 U.S. App. LEXIS 10107 (6th Cir. May 19, 2004); See also, McFarland v. Winnebago South,
4 Inc., 863 F. Supp. 1025, 1034 (W.D. Mo. 1994) (“A federal district court presiding over an
5 equity receivership has extremely broad power to supervise the receivership and protect
6 receivership assets.”).

7 With respect to a plan to distribute receivership assets, reasonably expeditious and
8 efficient procedures will generally be upheld so long as they are also fair and equitable. (See,
9 Liberte Capital Group v. Capwill, 229 F. Supp. 2d at 804 (“As a court sitting in equity, this
10 Court is governed by a fundamental principle that the method of distribution should be
11 equitable and fair.”); See also, S.E.C. v. Hardy, 803 F.2d at 1038-39 (“the rights of creditors of a
12 receivership must be balanced against the need for expeditious administration of the
13 receivership; a district court in overseeing a receivership must ‘make rules which are practicable
14 as well as equitable’ (*quoting* First Empire Bank-New York v. FDIC, 572 F.2d 1361, 1368 (9th
15 Cir.), *cert. denied*, 439 U.S. 919, 58 L. Ed. 2d 265, 99 S. Ct. 293 (1978)).

16 The pro rata distribution plan proposed by the Receiver treats similarly situated investor
17 creditors alike by dividing the receivership assets available for distribution among the investor
18 creditors according to the Allowed Claims of such creditors. The Receiver has proposed a
19 distribution plan, which provides for pro rata distribution of the receivership assets which will
20 result in a 21.46% return of capital to each investor. The plan is consistent with the Court’s
21 previously approved claims filing and allowance procedures in this case. Ninth Circuit law
22 supports the pro rata distribution. In United States v. Real Property Located at 13328 and
23 13324 State Highway 75 North, 90 F 3d. 551 (9th Cir. 1996), the district court approved an
24 SEC-administered plan to distribute the fund to the defrauded customers on a pro rata basis,
25 even though one customer claimed that he could trace his funds to a particular purchase of real
26 estate. The Ninth Circuit upheld the District Court’s ruling that “the equities demand that all
27 [customers] share equally in the fund of pooled assets in accordance with the SEC plan.” *Id.* at
28 553. See also, SEC v. Forex Asset Management, 242 F.3d 325 (5th Cir. 2001) (pro rata

1 distribution plan provided the most equitable means of addressing all of the victim's harms, and
2 district court did not abuse its discretion in approving plan that would deduct Receiver's fees
3 and expenses from total assets prior to distribution.)

4 **II. The Court May Summarily Determine the Allowance or Disallowance of** 5 **Disputed Claims**

6 There are no disputed claims at this time. The Receiver does not intend to repay any
7 imputed interest unless there is a 100% payoff of investor capital. Given the assets identified to
8 date, and the funds expended by the defendants on travel, lifestyle, and personal living
9 expenses, there will not be a 100% payoff. Similarly, the Receiver intends to treat any interest
10 paid by White Pine Trust as principal repayments, and these amounts will be deducted from the
11 investor balances due.

12 Case law supports the Receiver's decision and provides that payments received by
13 investors on investment accounts in excess of the principal amount of their investments makes
14 those excess payments recoverable as fraudulent conveyances. See, e.g., Scholes v. Lehmann,
15 56 F. 3d 750, 757 (7th Cir. 1995) (noting fairness of requiring profit payments in a Ponzi scheme
16 to be recovered from investors in receivership proceeding); In re Agricultural Research &
17 Technology Group, Inc., 916 F. 2d 528, 531 (9th Cir. 1990); In re United Energy Corp., 944 F.
18 2d 589, 595 n. 6 (9th Cir. 1991) (amounts received in excess of investment in a Ponzi scheme
19 recoverable from investor as fraudulent conveyance, because debtor as transferor did not
20 receive reasonably equivalent value for the transfer); Rafoth v. Bailey (In re Baker & Getty
21 Financial Services, Inc.), 88 B.R. 792, 796 (Bankr. N.D. Ohio 1988) (ruling that investors must
22 return profits in excess of investment amount). The fact that the account was "closed" pre-
23 receivership does not prevent the Receiver from recovering those overpayments.

24 With this distribution, the Receiver is not attempting to recover any overpayments.
25 Any effort to recover any overpayments to investors will be addressed in a separate Motion.

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II.
CONCLUSION

Based upon the foregoing, the Receiver respectfully requests that the Court grant relief as sought herein, and approve a pro rata distribution of 21.46% to each investor.

Dated: June 21, 2005

ROBB EVANS & ASSOCIATES LLC

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