

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 Second 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 Second Distribution to Allowed and Non-investor
Claims**

Filed June 20, 2007

1 LINDA J. CANDLER, ESQ. [State Bar No. 181805]
2 ROBB EVANS & ASSOCIATES LLC
3 11450 SHELDON STREET
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7
8 ATTORNEY FOR ROBB EVANS & ASSOCIATES LLC,
9 PERMANENT RECEIVER

10
11 **UNITED STATES DISTRICT COURT**
12 **SOUTHERN DISTRICT OF CALIFORNIA**

13 COMMODITY FUTURES TRADING
14 COMMISSION,

15 Plaintiff,

16 v.

17 WHITE PINE TRUST CORPORATION,
18 a California corporation, RICHARD
19 MATTHEWS, an individual, and
20 STEPHAN BAERE, an individual,

21 Defendants.

22 LUCIA MATTHEWS, an individual,

23 Relief Defendant.

CASE NO. 04cv2093-J (NLS)

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

Date: August 20, 2007

Time: 9:00 a.m.

Place: Courtroom 12

940 Front Street

San Diego, CA 92101-8900

(Hon. Napoleon A. Jones, Jr.)

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

27 PLEASE TAKE NOTICE that on August 20, 2007, at 9:00 a.m. in Courtroom 12
28 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 (approving the Receiver's

1 proposed distribution on Allowed Investor and Non-Investor Claims against the
2 receivership estate of White Pine Trust Corporation in the sum of \$1.1 million, representing
3 7.37% of Allowed Investor and Non-Investor Claims. This will represent a total
4 distribution of 28.82%. A previous distribution of 21.45% was made on January 19, 2007,
5 pursuant to this Court's Order dated January 9, 2007. The Receiver seeks the foregoing
6 relief based on the Court's Order Approving Receiver's Proposed Claims Filing and
7 Allowance Procedures, entered January 30, 2006 [Docket Entry 115], Local Rule 66-1 and
8 the authorities set forth in the supporting Memorandum of Points and Authorities, filed
9 contemporaneously with this Motion. The proposed distribution of \$1.1 million represents
10 cash turned over to the Receiver as part of a settlement with a family member of Defendant
11 Matthews, the proceeds of the sale of an island in Belize known as Mojo Caye, and the
12 proceeds of the sale of a condominium in San Diego.

13 This Motion is made and based on this Notice of Motion and Motion, the
14 Memorandum of Points and Authorities and Declaration of Brick Kane in support hereof,
15 on such pleadings, records and files of this Court and on such further oral and documentary
16 evidence and arguments of counsel as may be presented at the hearing on the Motion.
17 PLEASE TAKE FURTHER NOTICE that this Motion, Notice of Motion, and
18 Declaration, is posted on the Receiver's website at
19 <http://www.robbevans.com/html/whitepine.html>.

20 Copies of this Motion will be provided to all White Pine Trust investors and to any
21 other interested party upon receipt of a written request which may be sent to: Robb Evans
22 & Associates LLC, 11450 Sheldon Street, Sun Valley, California 91352-1121, facsimile
23 number (818) 768-8802, attention: Cherrie Eustaquio. Any person or entity opposing this
24 Motion must timely file with the Court and serve upon the Receiver, whose name and
25 address appear in the upper left-hand corner of the first page of this Motion, a written
26 opposition which complies in all respects with the rules of this Court. Failure to timely file
27 an opposition may be deemed by the Court to be consent to the granting of the Receiver's
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1 Motion. PLEASE TAKE FURTHER NOTICE that the Receiver is willing for the Court
2 to consider this Motion without oral argument.


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4 Dated: June 20, 2007

ROBB EVANS & ASSOCIATES LLC

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

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I.

INTRODUCTION

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4 On October 20, 2004, the Commodity Futures Trading Commission (CFTC) filed a
5 Complaint against White Pine Trust Corporation and Richard Matthews pursuant to Section
6 6c(a) of the Commodity Exchange Act, 7 U.S.C. § 13a-1. On October 21, 2004, Robb
7 Evans & Associates LLC (“REALLC” or “Receiver”) was appointed as Temporary Receiver
8 in the within action pursuant to an “*Ex Parte* Statutory Restraining Order; Order Permitting
9 Expedited Discovery, the Appointment of a Receiver and Other Equitable Relief”.
10 Thereafter, on November 2, 2004, the Court entered an Order of Preliminary Injunction
11 (“Order”). Pursuant to the terms of the Order, REALLC was appointed as Permanent
12 Receiver for defendants Richard Matthews and White Pine Trust Corporation, and all of the
13 funds, properties, premises, accounts and other assets directly or indirectly owned by them,
14 beneficially or otherwise, with the full powers of an equity Receiver. The Receiver was
15 subsequently appointed as Receiver of the assets of defendant Stephan Baere and relief
16 defendant Lucia Matthews. This Court granted the Motion to Terminate the Receivership
17 as to Lucia Matthews on March 2, 2007 [Docket Entry 234]. This Court Denied the Motion
18 to Terminate the Receivership as to Defendant Baere on April 13, 2007 [Docket Entry 238].

19 Since the appointment, the Receiver has located, identified, taken control of, and sold
20 numerous assets of the receivership estate. These assets include real property, gold coins,
21 automobiles, jewelry, and a 48-foot yacht. The most recent asset sold, which supports the
22 filing of this motion for an additional distribution, is an island in Belize known as Mojo
23 Caye. The Receiver is also in receipt of the proceeds of a settlement agreement and the sale
24 of a condominium in San Diego.

25 The Receiver has also reviewed and analyzed a large volume of financial records, and
26 has concluded that investor funds were misappropriated and used for the defendants’
27 personal benefit. As a result, White Pine Trust Corporation is insolvent, and the
28 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

1 Baere, pled guilty to criminal charges in this case. A default judgment was entered against
2 defendant White Pine Trust Corporation on April 24, 2006. A Motion for Summary
3 Judgment was granted against Defendant Stephan Baere on April 11, 2007 [Docket Entry
4 237], imposing a civil penalty of \$100,000 and requiring the disgorgement of profits in the
5 amount of \$600,000. Defendant Richard Matthews and the CFTC entered into a Stipulation
6 and Order of Permanent Injunction on November 28, 2006 [Docket Entry 218], which
7 requires restitution in the amount of \$14,767,579.06 plus pre-judgment interest of
8 \$1,287,162.29, reduced by any amounts recovered by the Receiver. A default judgment
9 against White Pine Trust Corporation was entered April 20, 2007, in the amount of
10 \$14,857,546.62, less any amount already returned to investors [Docket Entry 240]. To date,
11 including the proposed distribution requested here of \$1.1 million, the Receiver has
12 recovered receivership property in the sum of approximately \$4.9 million.

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14 **II.**
15 **CLAIMS VERIFICATION PROCEDURE**

16 This Court signed an Order on January 27, 2006 approving the Receiver's Proposed
17 Claims Filing and Allowance Procedures [Docket Entry 115]. This Court approved the
18 Receiver's Initial Distribution Proposal on January 9, 2007 [Docket Entry 231]. As of
19 today's date, the Receiver has determined that there are \$14,857,546.62 in Allowed Investor
20 Claims and \$59,810.67 in Allowed Non-Investor Claims.

21 The Receiver made an initial distribution of \$3.2 million, which represented 21.45%
22 on Allowed Investor Claims and Non-Investor Claims ("Initial Distribution"), on January
23 19, 2007. This proposed distribution will represent an additional 7.37% paid on a pro rata
24 basis.

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26 A. **Claims Procedures**

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

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

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

13 3. The Receiver provided written notice to each investor of the Receiver's
14 calculation of the investor's account balances and the amount the Receiver calculates as the
15 claim of the investor based on the treatment of the accounts and payments and adjustments
16 as required under the Claims Procedures Order.

17 4. Each investor claimant was given a period of 30 days from the date of service
18 of written notice of the calculation of the claim to object to the proposed claim amount.
19 Any objection of the investor was required to be in writing and received by the Receiver
20 within the 30-day notice period. The notice to the investor advised the investor of the
21 objection deadline and the requirement that the objection be in writing. If the investor
22 creditor failed to timely object to the notice and the Receiver's calculation of the investor
23 claim amount, then the amount set forth in the Receiver's notice is deemed to be such
24 investor's Approved Investor Claim upon which distributions in the case shall be based.

25 5. Similar procedures applied to Non-Investor Claimants. The Receiver
26 provided written notice of the Proposed Claim Amount based on the invoice received to the
27 respective Non-Investor Claimant. There are no pending disputed non-investor claims.

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1 B. Disputed Investor Claims

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

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III.
CONCLUSION AND RELIEF SOUGHT

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

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9 (1) Approving the Receiver's proposed distribution on Allowed Investor and Non-
Investor Claims against the receivership estate of White Pine Trust Corporation in the sum
10 of \$1.1 million, representing a pro rata distribution of 7.37% of Allowed Investor and Non-
Investor Claims;
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(2) For such other relief as is deemed just and proper.

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Dated: June 20, 2007

ROBB EVANS & ASSOCIATES LLC

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

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DECLARATION OF BRICK KANE

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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 databases 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 [Docket Entry 115], and Motion for Approval of an Initial Claims Distribution, filed June 21, 2006 [Docket Entry 167] and approved by this Court on January 9, 2007 [Docket Entry 231]. 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 through the acquisition of real estate, purchase of gold coins,

1 loans to family members, the purchase of jewelry, and luxury travel. Only a fraction of the
2 investor funds were actually invested in a commodity pool. The Receiver's analysis indicates
3 that White Pine Trust Corporation and the individual Defendants operated a fraudulent
4 investment scheme in effect as a Ponzi-type scheme and that White Pine Trust Corporation
5 was insolvent, with obligations owed to investors exceeding the assets available to repay
6 them.

7 3. Based on the review and reconciliation performed by the Receiver's
8 accounting staff, including the declarant, I calculate that there are \$14,857,546.62 in Allowed
9 Investor Claims against this receivership estate. I also calculate that as of today's date, there
10 are \$59,810.67 in Non-Investor Claims, such as claims of vendors.

11 4. As of June 19, 2007, there was approximately \$1.3 million in cash in the
12 receivership estate. The Receiver proposes to make a distribution on Allowed Investor and
13 Non-Investor Claims of \$1.1 million, or 7.37 % of such Allowed Claims. The Receiver
14 anticipates a final distribution early next year when an additional payment is made pursuant
15 to a settlement agreement. A distribution of \$3.2 million, representing a 21.45% pro rata
16 return to investors, was paid on January 19, 2007. With this proposed distribution, the total
17 distributions will represent 28.82% of the investments.

18 5. I declare under penalty of perjury that the foregoing is true and correct and that
19 this Declaration was executed this 20th day of June 2007 at Las Vegas, Nevada.

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/s/

BRICK KANE

1 LINDA J. CANDLER, ESQ. [State Bar No. 181805]
2 ROBB EVANS & ASSOCIATES LLC
3 11450 SHELDON STREET
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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.

CASE NO. 04cv2093-J (NLS)

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

Date: August 20, 2007

Time: 9:00 a.m.

Place: Courtroom 12

940 Front Street

San Diego, CA 92101-8900

(Hon. Napoleon A. Jones, Jr.)

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**THE RECEIVER PROPOSES A SECOND DISTRIBUTION
IN THE AMOUNT OF \$1.1 MILLION 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.” *SEC. 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. *SEC. v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992); *SEC. v. Hardy*, 803 F.2d at
2 1037.

3 The Receiver has implemented a pro rata distribution plan. As recognized in *SEC v.*
4 *Forex Asset Management*, 242 F.3d 325 (5th Cir. 2001), “a pro rata distribution plan provide[d] the
5 most equitable means of addressing all of the victim’s harms” even where the individual
6 investor alleged his funds were deposited into a segregated account.

7 The pro rata distribution plan proposed by the Receiver treats similarly situated investor
8 creditors alike by dividing the receivership assets available for distribution among the investor
9 creditors according to the Allowed Claims of such creditors. The Receiver’s plan is consistent
10 with the Court’s previously approved claims filing and allowance procedures in this case.
11 Ninth Circuit law supports the pro rata distribution. *See, SEC v. Capital Consultants, LLC*, 397
12 F.3d 733, 737 (9th Cir. 2005). In *United States v. Real Property Located at 13328 and 13324 State*
13 *Highway 75 North*, 90 F.3d. 551 (9th Cir. 1996), the district court approved an SEC-administered
14 plan to distribute the fund to the defrauded customers on a pro rata basis, even though one
15 customer claimed that he could trace his funds to a particular purchase of real estate. The
16 Ninth Circuit upheld the District Court’s ruling that “the equities demand that all [customers]
17 share equally in the fund of pooled assets in accordance with the SEC plan.” *Id.* at 553.

18 **II.**

19 **CONCLUSION**

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21 Based upon the foregoing, the Receiver respectfully requests that the Court grant relief
22 as sought herein, and approve a pro rata distribution of 7.37% to each investor.

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24 Dated: June 20, 2007

ROBB EVANS & ASSOCIATES LLC

25
26 By: 
27 LINDA J. CANDLER, ESQ.
ATTORNEY FOR RECEIVER

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