

**ROBB EVANS & ASSOCIATES LLC**  
Receiver of  
Assail, Inc.  
Infinium, Inc.  
Market-Rep.com, Inc.  
Summit Communications International, Inc. dba  
Advantage Capital  
Capital First Benefits, Inc.  
Premier One Benefits, Inc.  
Par 3, Inc.  
Valdine Management Company, Inc.  
And the assets of Kyle Kimoto

**REPORT OF RECEIVER'S ACTIVITIES**  
**SEPTEMBER 16, 2004 THROUGH JULY 31, 2005**

This report covers the activities of the Receiver since the last report. This is the Sixth Report to the Court. The purpose of this report is to provide updated information on the progress of the receivership. This report does not constitute an audit of the financial condition of the receivership; it is intended only for the information of the Court and should not be relied upon for other purposes.

**Continuing Financial Investigation**

In previous reports, the Receiver has documented that Kyle Kimoto and others acting in concert with him have devised and executed an elaborate money laundering scheme in an attempt to disguise the true ownership of the Receivership Defendants' assets. Many of the overt acts in furtherance of the scheme were conducted after the Court issued the Temporary Restraining Order and Preliminary Injunction Orders in this matter. The Receiver has continued the investigation into disbursements from entities controlled by Kyle Kimoto.

**Movement of Funds**

The following paragraphs discuss the status of demands made to various individuals and entities, which the Receiver has identified as recipients of estate assets or active participants in the scheme to hide assets from the Court.

***Alliance Solutions, Inc. (Alliance)***

In a previous report, the Receiver reported that Alliance received \$4,205,383 from entities owned or controlled by Kyle Kimoto (Kimoto Entities) and detailed disbursements from Alliance to Par 3, Inc. (\$908,479), Global Benefits, Inc. (\$711,927), Valdine Management

Company, Inc. (\$116,431) and Robert M. Draskovich (\$200,000), an attorney that represented Kyle Kimoto.

The Receiver made demand on Robert M. Draskovich (Draskovich) for return of the \$200,000 in addition to another \$10,000 he received from an account of Valdine Management Company, Inc. Mr. Draskovich refused to return these funds and pursuant to the stipulated final judgment Kimoto entered into with the Federal Trade Commission, Draskovich filed an application to be allowed to keep the \$210,000. The Court refused his request and he appealed this ruling to the 5<sup>th</sup> Circuit Court of Appeal. On May 19, 2005, the Court of Appeals for the Fifth Circuit issued a written opinion affirming the District Court's order regarding the fees paid to Draskovich. Draskovich has filed a petition for writ of certiorari seeking review of the Fifth Circuit's decision by the U.S. Supreme Court.

### ***Global Benefits, Inc. (Global)***

As previously reported, on January 10, 2003, Global issued a check for \$400,000 to Members Express, Inc. The Receiver believed the payment of \$400,000 to Members Express was a sham transaction designed to hide assets from the Receiver. Immediately after the funds cleared, Eric Bowen, the principal of Members Express, transferred \$275,000 to Brian Lorenz, doing business as Mediatel Data USA, purportedly for software development and licensing of an improved voicemail product. Mr. Lorenz is the sole officer and director of Mediatel Data.

The Receiver made demand on Members Express, Inc. and Mediatel Data for return of these funds and the demand was refused. The Receiver commenced litigation against Eric Bowen, Members Express, and Mediatel Data to recover these funds.

The Receiver entered into a stipulation for entry of judgment with Eric Bowen to resolve the Receiver's claims against him. Bowen defaulted on the stipulation by failing to make the settlement payment required thereunder, and the Receiver caused judgment to be entered against him in the sum of \$50,000. Defendant Mediatel Data filed a motion for summary judgment on September 14, 2004. The Receiver filed extensive opposition to the motion, and Mediatel filed a reply. The motion for summary judgment has been fully briefed before the District Court of Nevada since October 22, 2004. Under the Local Rules for the District Court of Nevada, the filing of the motion for summary judgment automatically vacated any deadlines for the filing of a pretrial conference order and for the conduct of the pretrial conference. Counsel of record for Mediatel filed a motion to withdraw as counsel on March 31, 2005, and Mediatel's counsel was allowed to withdraw by order entered June 29, 2005. The Receiver has not been served with notice that Mediatel has obtained new counsel. As of this date, there has been no ruling on Mediatel's motion for summary judgment, and no hearing has been set by the Court on the motion.

As previously reported, Mr. Lorenz made two transfers of \$175,000 and \$5,000 on February 20, 2003. Mr. Lorenz testified in his deposition that the two transfers totaling \$180,000 were for the purpose of purchasing a ten percent (10%) interest in a company called Desert Valley Marketing, Inc. (DVM). Mr. Lorenz stated that an associate of Mr. Kimoto advised him that

DVM would be a good investment. Mr. Lorenz claims that he has never met the owner of DVM, never visited the offices of DVM, and has no idea where DVM is located.

On March 24, 2003 DVM issued a \$50,000 check to Ideal Financial Group. Based on information provided by Wells Fargo Bank in response to a subpoena, the Receiver determined that the check was deposited to the account of Ideal Financial Solutions Corp. on March 27, 2003. Bank documents list the president of Ideal Financial Solutions Corporation (IFS) as Steven L. Sunyich.

On January 25, 2005, the Receiver conducted an interview of Mr. Sunyich. Mr. Sunyich was cooperative with the Receiver. Mr. Sunyich reported that Kyle Kimoto directed the investment of \$50,000 be paid to IFS to secure exclusive marketing rights to the services offered by IFS. According to Mr. Sunyich, Joel Best, a former officer of Assail, was running a telemarketing call center for Kimoto. Mr. Sunyich reported that Joel Best did not meet the sales quotas required to maintain the exclusive rights to market IFS services and the arrangement was terminated. On September 24, 2004, IFS issued 500,000 shares of common stock to Desert Valley Marketing. On February 15, 2005, the Receiver sent a letter requesting Mr. Sunyich to surrender the original stock certificate. Mr. Sunyich complied with the Receiver's request. The Receiver believes the original transfer by Brian Lorenz from Mediatel Data to Desert Valley Marketing was done under the direction of, and for the benefit of Kyle Kimoto and that 500,000 shares of common stock are properly an asset of the receivership estate. Restrictions on the IFS stock do not expire for several months. The Receiver will prepare a motion seeking an order from this Court for a finding that the IFS common stock is an asset of the estate and authority for the Receiver to liquidate the stock.

***Movement of Funds Involving Kyle Kimoto, Richard Fritzler, Sr., Richard Fritzler, Jr., and Madge Fritzler***

In previous reports, the Receiver detailed a complex money laundering scheme carried out with Kyle Kimoto and the Fritzlers. Kimoto entities transferred \$3,389,332 to the web of companies set up by the Fritzlers. The Receiver accounted for all but approximately \$480,000 of the distributions, which represented the fees charged by the Fritzlers for their participation in the scheme. The Receiver demanded return of the funds from the Fritzlers, which demand was initially refused. The Receiver filed a contempt application and the Court set a hearing for June 21, 2004. In previous depositions, the Fritzlers refused to testify and asserted their Fifth Amendment privilege. The Receiver agreed to stipulate to a continuance of the contempt hearing based on the Fritzlers' agreement to be deposed and answer all factual questions. The Receiver conducted depositions of the Fritzlers and prior to the contempt hearing the Receiver reached a settlement agreement whereby the Fritzlers would pay the Receiver \$300,000 to settle the contempt action. This amount was paid as agreed.

Of the \$3,389,332 laundered through the Fritzlers, \$2,869,652 was deposited with Worldwide Creation Management (Worldwide). Worldwide then transferred \$450,000 to Caubo Holdings, \$2,000,000 to Animo LLC (a portion of which was transferred through Southern

Utah Title Company) and \$400,000 to Par 3 for a real estate transaction also through Southern Utah Title Company.

### Caubo Holdings

The Receiver interviewed the principals of Caubo Holdings and reviewed the company's financial statement. The company had been operating at a loss and without additional funding would most likely cease operations. The Receiver negotiated an agreement to sell the Receiver's interest in Caubo subject to approval from the Court. On November 23, 2004, the Court entered an order approving the sale, which resulted in a net return to the estate of \$60,000.00.

### Animo LLC – James Fales

As previously reported, of the funds received from Worldwide Creation Management, about \$234,000 was paid to companies related to James Fales, about \$566,000 was used for a real estate transaction involving what is known as the Hurricane property and \$1,200,000 was paid to Light House Capital Corporation (Light House Capital). Light House Capital maintained its bank account at the Federal Bank of The Middle East Ltd. in Nicosia, Cyprus.

The Receiver made demand upon Mr. Fales for return of the funds and properties. Mr. Fales rejected this demand. Thereafter, the Receiver filed a contempt application as to Mr. Fales. After hearings in October, 2003 and January, 2004, Fales was held in contempt and briefly incarcerated on January 6, 2004. However, he was released in exchange for his promise to deed the Hurricane property to the Receiver, turn over \$107,000 to the Receiver immediately, and turn over \$1,293,000 to the Receiver within six months. While the Hurricane property was deeded over to the Receiver and approximately \$107,000 deposited with the Court, no further payments were made by Mr. Fales to the Receiver as required by the Court, although certain tanzanite stones of minimal value were deposited with the Court. A new show cause order was issued at the request of the Federal Trade Commission, and at the conclusion of the hearing held on September 10, 2004, the Court again found Fales to be in contempt and ordered him incarcerated until he turned over \$1,293,000 in order to purge his contempt. Subsequently, Mr. Fales entered into a Stipulation Resolving Contempt Proceedings Against James Fales and For Entry of Judgment ("Fales Judgment"), which was approved by the Court resulting in a judgment of \$1,293,000.

### Compliance with Fales Judgment

The Receiver conducted an extensive interview with James and Lyndi Fales on December 29, 2004 to review the terms of the Fales Judgment, identify all assets subject to the Fales Judgment and discuss the ongoing monitoring duties of the Receiver. Mr. Fales turned over all real and personal property held in his name, or for his benefit, to the Receiver.

To date, Mr. Fales has paid \$357,636, which includes rental income, the sale of personal and real property assets and payment of 15% of his sales commissions. The Receiver reviewed

documents submitted by Mr. Fales and as outlined in the Fales Judgment, agreed to a credit of \$43,000 for monies expended post-receivership on behalf of Par 3, Inc. to maintain its assets. The Receiver has advanced \$35,104 in expenses to preserve the assets turned over by Mr. Fales including utilities, insurance, mortgage payments and required maintenance. After deducting the advanced expenses, Mr. Fales has paid a total of \$365,532 toward the Fales Judgment.

Mr. Fales' real estate company, Sure Development, has been successful in selling, at reduced commissions, properties owned by Par 3, Inc., and properties Mr. Fales turned over to the Receiver. The liquidation of these assets is described in detail later in this report.

Mr. Fales continues to provide monthly reports of his business activities to the Receiver, including an accounting of all income received, and continues to pay 15% of his income to the Receiver as payment toward the Fales Judgment.

### **Kyle Kimoto bankruptcy**

As a result of Kimoto's failure to disclose all of his assets fully and completely to the Federal Trade Commission as part of his final settlement, the Commission sought to invoke the avalanche clause of the stipulation and sought entry of a \$106 million judgment. Immediately before the hearing on the Commission's motion, Kimoto filed for bankruptcy under Chapter 11 in Las Vegas, in order to attempt to preserve for himself the equity in certain residential real property he purchased last January located on Stony Ridge Drive in Las Vegas and which he had attempted to resell. Ultimately, the Commission and Kimoto reached an agreement pursuant to which Kimoto was permitted to retain only \$10,000 from any resale of the property with the balance of the equity being paid to the Receiver and the bankruptcy was ordered dismissed. The Receiver monitored the sale, negotiated escrow instructions and received \$30,530 from the sale of the property located on Stony Ridge Drive in Las Vegas.

### **Liquidation of Assets**

On January 28, 2004 the Court approved a motion outlining procedures governing the liquidation of assets. Pursuant to that Order, the Receiver commenced the liquidation process. In the Fifth Report, the Receiver discussed the liquidation of various assets, including office furniture and equipment, various automobiles, trailers, snowmobiles, jet skis, all terrain vehicles, the Kimoto residence in St. George, Utah and a cabin owned by Par 3, Inc., in Brianhead, Utah. After payment of various liens and mortgages, the liquidation of these assets resulted in a net return to the estate of \$715,059.

The remaining assets are comprised of real property owned by Par 3, Inc., Tower Holdings (Julie Kimoto), GMF Holdings (Lyndi Fales), Animo Inc., and James Fales.

### **Par 3, Inc.**

As previously reported, the issues faced by the Receiver on the two remaining properties purchased by Par 3 were difficult. The Receiver previously reported the difficulty of locating two certified appraisal companies in Southern Utah willing to accept new clients. It took almost four months to obtain two appraisals on the remaining properties. The opinions contained sharply conflicting values. The appraisals containing the lower values for the properties would lead the Receiver to recommend that the properties should be abandoned because of insufficient equity to support marketing costs and mortgage payments. Alternatively, assuming the values of the properties are consistent with the higher appraised values, the Receiver would market the properties. The Receiver decided to obtain a third appraisal for these properties. The third appraisals were consistent with the higher of the previous appraisals. The Receiver listed the properties using the average of the highest two appraisals for each property.

420.67 Acres of Agricultural Property West of Cedar City, Utah: Based on recommendations of real estate professionals, the Receiver determined that combining two contiguous pieces of agricultural acreage would result in the highest return to the receivership estate. The Receiver listed the combined property for \$1.275 million. The Receiver accepted an initial offer at the listing price, but required an overbid process. During the overbid process, a second party submitted a higher offer and the Receiver terminated the first contract. Both parties continued to express an interest in the property and the Receiver facilitated a bidding process, which resulted in a sale of the property for \$1.98 million, which was \$732,500 more than the average appraised value of the property. After payment of commissions, mortgages and closing costs, the net proceeds to the receivership estate totaled \$1,175,039.

Commercial Property in Cedar City, Utah (8.6 acres on Sage Drive & 19.37 acres near the Providence Center): The properties were listed individually for \$312,500 (8.6 acres) and \$617,500 (19.36 acres). The Receiver accepted an offer to purchase both parcels for 100% of the average appraised value. The Receiver was advised that a lien existed against the property in the amount of \$174,182. The Receiver investigated the facts supporting the lien and learned that the Internal Revenue Service was investigating the beneficiaries of the deed of trust giving rise to the lien. The Receiver does not consider the deed of trust to be a legitimate business transaction and has filed a quiet title action to extinguish the cloud on title. Utah law requires a bond of 150% of the lien amount. The Receiver agreed to deposit \$261,750 in the escrow fund until the quiet title action is resolved<sup>1</sup>. After payment of commissions, mortgages, bonding against the lien and closing costs, the net proceeds to the estate totaled \$387,432. The Receiver expects to recover most, if not all, of the remaining funds in escrow at the conclusion of the quiet title action.

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<sup>1</sup> The Receiver anticipates the quiet title action will be resolved this year.

## **Tower Holdings and GMF Holdings**

Ace Storage: Julie Kimoto ostensibly sold all property interests held by Tower to GMF Holdings, a company owned by Lyndi Fales, who is the wife of James Fales, including a 50% interest in Ace Storage. The Court included GMF as a receivership entity resulting in the receivership estate owning a 50% interest in Ace Storage. The other 50% interest is owned by LCM Holdings, a company owned by James Fales and his father Steven Fales. Ace Storage has been managed by and under the exclusive control of James Fales and Steven Fales during the term of the receivership.

Prior to the time Mr. Fales was incarcerated for contempt, the Receiver repeatedly demanded an accounting for the operations of Ace Storage and Mr. Fales did not provide a meaningful accounting of income and expenses regarding Ace Storage. Once Mr. Fales' contempt was resolved by entry of the Fales Judgment, Mr. Fales has cooperated fully with the Receiver in investigating Ace Storage.

The Receiver learned that rental income for Ace Storage had declined during the past year and concluded that the business was not being properly managed. The principals agreed that rental income needed to be stabilized before the property was listed for sale. With agreement from Steven Fales, the Receiver interviewed the current manager and decided to immediately terminate his employment. The Receiver interviewed and hired a new manager. Rental income has risen steadily since the new manager was hired. The property was recently listed for sale at \$1.2 million and is currently being marketed.

100 South 100 East, Cedar City, Utah – Vacant Lot: The lot appraised for \$30,000. The Receiver accepted an offer for \$45,000 and the sale is scheduled to close in September 2005.

## **Animo LLC Properties**

The commercial property in Hurricane, Utah titled to Animo LLC was deeded to the Receiver by Mr. Fales pursuant to the Court's January 2004 Contempt Order. The Receiver obtained two appraisals, selected a broker to market the property and listed it for \$517,000, the average appraised value. An offer to purchase the property for \$452,000 was received on October 1, 2004 and the Receiver countered the offer at \$517,000. The purchaser accepted the counter offer and the sale closed on November 30, 2004. After payment of commissions and closing costs the net proceeds to the estate totaled \$461,624.

Animo LLC also owned 320 acres of undeveloped land west of Cedar City, Utah. Animo used the property as security for a trust deed in favor of Worldwide for \$2,000,000. The Court previously concluded that this was a sham transaction. Mr. Fales originally purchased the property for \$30,000. Mr. Fales deeded the property to the Receiver pursuant to the Fales Judgment. Based on the advice of Mr. Fales, the Receiver listed the property for \$100,000. Mr. Fales marketed the property and secured an offer to purchase at the full listing price of \$100,000. After payment of commissions and closing costs the net proceeds to the estate totaled \$91,761.

**James Fales Properties**

James and Lyndi Fales deeded to the Receiver all properties identified in Section N of the Fales Judgment. The Fales' personal residence at 305 Queensgate Court, Las Vegas, Nevada was sold and after payment of commissions and closing costs, the net proceeds to the receivership estate totaled \$214,182.

Sure Development was retained to sell all of the remaining properties. Many of the properties are in escrow and scheduled to close within the next 60 days. Two of the lots in Cedar Valley Acres, Utah and three lots in Serenity Hills, Utah have closed. After payment of commissions, mortgages and closing costs, the net proceeds to the estate for these five lots totaled \$19,005.

Respectfully submitted,

/s/

Robb Evans & Associates LLC  
Receiver