



*Robert Sonnenschein, et. al. v. PVPE, LLC, et. al.*

*CV 2013-012420*

*Receivership Status Report*

*Of*

*Peter S. Davis*

*Court Appointed Receiver*

*April 7, 2015*

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## **1.0 Background**

On September 27, 2013, Lynne H. Anthony Revocable Trust dated 11/30/2001, Lynne H. Anthony as Trustee; Robert Sonnenschein, as an individual; Gerald R. Hale, as an individual; C. Scott Anthony, as an individual; Janie B. Hale, individually and as Trustee of Janie B. Hale Revocable Trust dated 11/4/1994; Carolyn Sue McMillon, as an individual; Larry McMillon, as an individual; James Stanley Powers, as an individual; and Patricia Ann Powers Trust, Patricia Ann Powers as Trustee (collectively the “Plaintiffs”) filed a Plaintiff’s Verified Complaint for Receivership (“Complaint”) against Palo Verde Capital, L.L.C., an Arizona limited liability company; PVPE, L.L.C., an Arizona limited liability company, Palo Verde Fund, L.P., a Delaware limited partnership; Palo Verde Private Equity Fund, L.P., a Delaware limited partnership; and Anthony R. Stacy, a married man (“Defendants”).

Plaintiffs alleged in both the Complaint and in the Amended Complaint (“Complaints”) for Receivership that they relied on and trusted Defendant Stacy as their investment advisor to properly manage monies entrusted to him, and that Defendant Stacy failed to do so.

## **2.0 Appointment of Receiver**

On October 9, 2013, Peter S. Davis (“Receiver”) of Simon Consulting, LLC (“Simon”) was appointed Receiver over PVPE, LLC (f.k.a. Palo Verde Capital, LLC, f.k.a. Paragon Capital Advisors, LLC); Palo Verde Fund, L.P.; and Palo Verde Private Equity Fund, L.P., (collectively referred to throughout as “the Fund”) with full power of an equity receiver. The appointment of the Receiver was by stipulation of the Plaintiffs and Defendants. The Receivership Order requires the Receiver to, among other things, identify, locate, recover, take control of and liquidate the receivership assets.

## **3.0 Previous Report**

The Receiver hereby incorporates the information contained in prior receivership reports in this report. The Receiver’s analyses are ongoing; therefore, information contained herein is preliminary and tentative, and subject to change.

## **4.0 Investor Committee**

Section 8(a) of the Order requires the formation of an Investor Committee consisting of representatives of the following five limited partners of the Funds: Craig Jackson Trust, Robert Sonnenschein, C. Scott Anthony, Gerald R. Hale and Larry McMillon.

The Receiver is required to obtain Committee approval prior to employing any attorneys, accountants, contractors or other specialists in the administration of the receivership. The Receiver is also required to consult with and gain approval of the Committee prior to becoming involved with other actions or proceedings in state, federal or foreign courts. Further, the Receiver must obtain Committee approval prior to undertaking any forensic accounting activities relating to the Receivership Defendants, their accountants, auditors or other advisors/agents.

The Receiver continues to maintain regular communication with the investor committee, and updates individual investors as necessary. To date, the Receiver has conducted six investor committee meetings, and continues to keep committee members apprised of events impacting the receivership.

## **5.0 Engagement of Lang and Klain, PC**

During the course of his work on this matter the Receiver has discovered several potential causes of action against various individuals connected to the case. Bill Klain of Lang and Klain, P.C. was asked to analyze and investigate all potential causes of action of the receivership entities against any agents, professionals for, or fiduciaries of the Fund or the Fund's investments. Mr. Klain agreed to do this work and proposed a fixed fee of \$30,000 to perform the investigation. He has also agreed to pursue, on a modified contingency fee arrangement, claims that he uncovers and that are collectively agreed upon by the Receiver, with input from the Investor Committee

The Receiver initially requested Court approval to retain Lang & Klain in his November 14, 2014 Motion to Approve Lang and Klain as Special Counsel. Retention of Mr. Klain was objected to by a group of investors in their December 1, 2014 *Objection to Receiver's Motion to Approve Lang and Klain*. The Court approved the engagement of Lang and Klain P.C. as Special Counsel on February 18, 2015, but modified the fixed fee amount to \$20,000. Since his engagement, the Receiver and his staff participated in a lengthy meeting with Mr. Klain, who has begun his investigation. The Receiver will keep the Court apprised of progress in future reports.

## **6.0 Forensic Accounting**

The Receiver is working to finalize an analysis of the sources and uses of cash flowing through bank accounts associated with the receivership entities. The Receiver will issue a report detailing his findings shortly.

## **7.0 Fund Tax Status**

The Receiver recently began the process of reconstructing historical financial statements for the receivership entities in order to calculate each investor's position in the Fund. This information will eventually be utilized to prepare tax returns for the receivership entities and K-1's for the limited partners.

## **8.0 Update on Asset Liquidation**

As noted in prior reports the Receiver has successfully liquidated five investments to date. In addition, funds have been received from other investments for a variety of reasons. Recoveries to date, by investment, are detailed in Exhibit 1.

There have been no material changes to the following investments since the last report to the Court; therefore, a detailed summary is not included in this report:

- Aeromedical Collection Services
- AF-1 Investments
- Aviary II & III
- BOAI Pharmaceuticals
- Empire Financial Services
- FF Arabian
- Palo Properties
- Palo Verde Energy
- SDX
- TCP Mach Speed (Apollo)
- TCP Peds Rehab

- TCP Success Ed
- WP Bistro

Updates on the remaining investments are detailed below.

**8.1 Acumen Energy Solutions, Inc. (formerly American Energy Solutions, Inc.)**

Palo Verde Fund, LP is a secured creditor of Acumen. Since the payment in full of the first secured creditor in September 2014, CrossFirst Bank, the Receiver has been working to secure Acumen assets for the Fund. To date, \$234,123 has been recovered.<sup>1</sup>

**8.2 TCP GBS**

The Receiver, through counsel, formally requested TCP-GBS I, LLC purchase the Funds interest in this investment on December 29, 2014. TCP responded on January 13, 2015 indicating their interest in purchasing this interest. The Receiver, his counsel and his staff have since been working with TCP representatives to arrive at a price agreeable to both parties. The Receiver anticipates finalizing liquidation of this asset in Q2 2015.

**8.3 USDA Loan J00046**

As previously noted, the fund recouped its initial investment in December 2012 and continues to receive interest payments, although sometimes sporadically, from this investment. The Receiver was notified on February 20, 2015 that the underlying loan had been paid in full and the Fund would therefore receive one final interest payment of \$26,822.78. The total interest payments received on this investment during the course of the receivership is \$91,123.86

**8.4 HPCG Hospital Investments, LLC (“HHI”)**

HHI was formed to provide financing in the form of loans to HMC/CAH (“HMC”) for the purpose of providing capital for operations; hospital acquisition and renovation; and the building of new hospitals. HMC acquires and operates acute care hospitals in rural areas throughout the Midwest.

HMC filed for Chapter 11 bankruptcy protection in October 2011. HHI emerged from this bankruptcy with \$5,000,000 in secured debt and approximately \$10,000,000 in preferred & common equity. The Fund is due \$11,154 per month against its portion of the debt, and received 1,122,933 and 513,341 Series B and C shares of HMC, respectively.<sup>2</sup>

HHI began making pro-rata distributions to members in March 2014. The Fund received the March distribution of \$11,154.00 on April 24, 2014 and the April and May distributions, totaling \$22,308, on July 2, 2014. No further payments have been made. The Receiver was notified on March 5, 2015 that HMC has been experiencing severe cash shortages, making it impossible to satisfy all accounts payable.<sup>3</sup> HMC management is focused on implementing their business plan, and are utilizing all available cash to keep hospital doors open. HMC has not yet provided an estimate of when debt payments will resume. The Receiver will continue to monitor the situation and include any new information in future reports.

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<sup>1</sup> This represents \$106,358 received from the sale of assets, cash in Acumen’s bank account, and collections of outstanding accounts receivable owed to Acumen by customers.

<sup>2</sup> February 12, 2014 Investor Update Memorandum provided by HPCG Hospital Investment, LLC

<sup>3</sup> March 4, 2015 letter from David Harbour at HPCG Hospital Investment, LLC

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### 8.5 Ice Now, LLC

Ice Now, LLC is an ice distributor based in Mesa, Arizona focused on providing bulk bagged ice to restaurants, bars, hotels, golf courses, special events and commercial companies. The Fund currently holds an 11% ownership in Ice Now.<sup>4</sup>

Nolan de Graaf, majority shareholder of Ice Now, recently contacted the Receiver with an offer to purchase the Fund's interest. The Receiver is currently evaluating the offer and what other options may or may not exist to liquidate this asset.

### 8.6 Bees Free

As noted in the last status report, the Receiver fully liquidated the Fund's 75,000 shares of unrestricted stock as of December 2014. Wells Fargo issued a check in March 2015 for the balance owed on these shares. See Table 1 for a summary of the proceeds received from the sale of this stock.<sup>5</sup>

<b>Total Shares Held</b>	<b>75,000.00</b>					
<b>Total Shares Sold</b>	<b>75,000.00</b>					
<b>Shares Remaining</b>	<b>-</b>					
				<b>Comm/Comm</b>		
<b>Date Settled</b>	<b># of Shares</b>	<b>Price</b>	<b>Principal</b>	<b>Equiv</b>	<b>Fee</b>	<b>Credit Amt.</b>
2/26/2014	1,040.00	\$ 0.66150	\$ 687.96	\$ (15.60)	\$(0.02)	\$ 672
2/27/2014	1,000.00	\$ 0.65500	\$ 655.00	\$ (15.00)	\$(0.02)	\$ 640
3/6/2014	2,500.00	\$ 0.51000	\$ 1,275.00	\$ (37.50)	\$(0.03)	\$ 1,237
3/10/2014	3,000.00	\$ 0.52500	\$ 1,575.00	\$ (45.00)	\$(0.03)	\$ 1,530
3/26/2014	5,000.00	\$ 0.45000	\$ 2,250.00	\$ (75.00)	\$(0.05)	\$ 2,175
12/17/2014	62,460.00	\$ 0.03000	\$ 1,873.80	\$ (100.00)	\$(0.05)	\$ 1,774
						<b>\$ 8,028</b>
Cash Received - liquidated Feb 2014						\$ 282
<b>TOTAL PROCEEDS</b>						<b>\$ 8,311</b>

### 9.0 Receivership Accounting

Details of the cash processed through the receivership bank account are attached hereto as Exhibit 2. The current balance of the receivership account is \$320,214 as of March 31, 2015. This balance includes monies surrendered to the Fund by Acumen against the secured debt owed.

### 10.0 Receivership Fees and Expenses

The Receiver and his firm have incurred a total of \$612,992 in fees and expenses from inception to February 28, 2015. In addition, Guttilla, Murphy & Anderson, counsel for the Receiver in this matter, have incurred \$249,346 in fees and expenses from inception to January 31, 2015. An additional \$26,400 in fees and expenses was incurred during the same time period for other legal and professional services necessary to run the receivership. See Exhibit 3 for a detailed professional fee summary.

<sup>4</sup> December 31, 2012 Loan Modification Agreement

<sup>5</sup> The January 7, 2015 Receiver's report incorrectly noted the proceeds as \$6,537.00. Table 1 represents the correct liquidation amount.

**11.0 Conclusion**

As noted previously, this report is preliminary and tentative, and subject to change. The Receiver's investigation is ongoing; future updates to the Court will reflect any changes or additions to the information contained herein.



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Peter S. Davis, Receiver

April 7, 2015

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Date