Michael I. Goldberg, Receiver
Las Olas Centre II
350 East Las Olas Boulevard, Suite 1600
Fort Lauderdale, Florida 33301-2229
Toll Free (800) 223-2234
Email: michael.goldberg@akerman.com
Website: www.febginfo.com

February 3, 2011

VIA U.S. MAIL AND WEB POSTING

Re: Settlement with Susan McLeod

Securities and Exchange Commission vs. McLeod et al.,
Case No.: 10-22078-CIV-MORENO-TORRES
United States District Court, Southern District of Florida

Dear Creditors:

I have recently been contacted by several of you concerning the Motion for Order Approving Settlement with Susan McLeod and Directing Disbursement of Life Insurance Proceeds, and specifically the terms of the settlement with Kenneth Wayne McLeod's wife, Susan McLeod. I have also reviewed copies of the letters many of you have written to Special Agent J.D. Matthews. I intend to file the letters with the court.[1]

Under the terms of the settlement, the receivership estate will receive the approximate sum of $1,360,000 or 75% of the proceeds of the life insurance policies. The receivership estate will receive an additional sum estimated between $50,000 and $200,000 from the turnover and subsequent sale of the Mr. McLeod's jewelry and other personal property. However, many of you feel that the receivership estate should collect the entirety of the proceeds of the life insurance policies. I also understand that several of you are concerned by the allowance in the settlement agreement for Mrs. McLeod to retain her jewelry and other personal items, valued roughly at $200,000. I understand your frustration and concern over the settlement with Mrs. McLeod, and I assure you that I entered into the settlement after a careful evaluation of the risk factors and the law, as more fully described in this letter.

1. Insurance Proceeds

Mr. McLeod purchased three life insurance policies: (i) a policy in the amount of $1,000,000 with ING Life Insurance Corporation; (ii) a policy in the amount of $750,000 with the Prudential Life Insurance Corporation; and (iii) a policy in the amount of $20,000 with Aetna

[1] I will redact your names, addresses and any references to personal information prior to filing.

Life Insurance Company, Inc. Presently, the total value of the proceeds are $1,809,848.38 ("Insurance Proceeds"). I believe that the premiums were paid by Mr. McLeod with the monies stolen from his victims and therefore the Insurance Proceeds should become property of the receivership estate. Mrs. McLeod asserts that her interest as beneficiary of the policies is superior to my claim, and that she is entitled to the full amount of the Insurance Proceeds.

As many of you know, the courts make their decisions based on precedent, or prior court decisions deciding similar issues of law. When a court determines entitlement to property, the court looks state law for guidance. Here, the District Court will examine Florida law for the disposition of the Insurance Proceeds. In 1938, the Florida Supreme Court handed down a decision which allowed the aggrieved party to recover **only** the amount paid for the insurance **premiums** with ill-gotten funds. *See Bd. of Pub. Instruction for Bay County v. Mathis*, 181 So. 147, 149 (Fla. 1938). This case held that the insurance **proceeds** were essentially fair game, and could be retained by the wrongdoer. Since then, there does not appear to be any Florida case discussing whether the proceeds of such tainted insurance policies can be retrieved by anyone other than the beneficiary of the policies. While decisions from courts in other states – the majority view –has emerged throughout the course of the seventy years since the *Mathis* decision – and would support the receivership estate's recovery of the premiums, as well as the proceeds pro rata based on the percentage of premiums paid with stolen funds, Florida law still relies on this 1938 case and a court construing Florida law would be bound by the *Mathis* decision.

In March 2009, a Middle District of Florida court stated that the Receiver in that case could reasonably argue for an extension of the *Mathis* holding, particularly because *Mathis* did not expressly preclude recovery of a pro rata share of insurance proceeds. *See New York Life Ins. Co. v. Waxenberg*, No. 8:07-cv-401-T-27TGW, 2009 WL 632896, *8 (M.D. Fla. Mar. 11, 2009). However, the Court did not directly address the issue at hand, and furthermore, a federal court construing a state court opinion does not overrule the existing state law.

Despite the District Court discussion and the majority view, Mrs. McLeod's attorneys offered several significant points to establish that *Mathis* is still binding precedent on a court construing Florida law. Significantly, the Restatement of Law, which essentially codifies the majority view, and which supports the position for constructive trust in this instance, has not always been adopted by Florida courts. While the majority view is certainly persuasive, it is not binding, and a risk is involved in litigating an issue that requires overruling direct, binding precedent with merely persuasive authority, no matter how prevalent the determination in other jurisdictions.

Even if the Court were to agree that a receiver may establish a constructive trust for those proceeds which emanated from premiums paid for with ill-gotten funds, disposition of such proceeds would be extremely fact-determinative. The receiver would have to prepare proof of every instance when premiums were paid for with tainted funds. While I was prepared to do so, establishing the necessary proof would require additional time and expense and still pose a risk.

After a lengthy mediation and many conferences with Mrs. McLeod's attorneys, I have agreed to a settlement, subject to approval by the Court, under which the receivership estate will get about 75% of the insurance proceeds and Mrs. McLeod will get about 25%. Specifically, the settlement agreement provides that Mrs. McLeod will keep $437,500 from the ING and Prudential policies and $5,000 from the Aetna policy. Therefore, the total amount she will be entitled to under the settlement for these policies is $442,500, which is roughly 25% of the proceeds.[2] I made this decision only after considering the risks involved, the estimated costs that would be incurred to try the case, and the advantage to investors of getting money sooner rather than later. Based on the costs and uncertainty of litigation, I decided to settle and believe this is a good recovery for the receivership estate. It will enable the receivership to obtain the majority of the insurance proceeds now, which will ultimately increase the amount each of you is able to recover. It also will eliminate potentially significant costs to the estate (which would serve to reduce your recovery), and eliminates the risk of the estate receiving far less.

2. Personal Property

Additionally, as to the personal property Susan McLeod retains under the settlement agreement, several items were gifted to her several years ago, the largest of which includes her engagement ring. There has been no indication that Susan McLeod was aware of her husband's Ponzi scheme. Without proof of her knowledge that the items were procured with ill-gotten funds, Susan McLeod's personal property would not be subject to constructive trust for the benefit of the creditors of the receivership estate.

I have conferred with the staff of the Securities and Exchange Commission who fully support the agreement for the reasons set forth above.

Respectfully,

Michael I. Goldberg
Receiver

MIG/clc

[2] In addition, Susan McLeod is entitled to 25% of any future policy discovered, and 25% of the interest on the policies.