

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

In the Matter of the Liquidation of Noble Trust Company

Docket No. 08-E-0053

LIQUIDATOR'S INTERIM STATUS REPORT

Peter C. Hildreth, Bank Commissioner for the State of New Hampshire, as duly appointed Liquidator (the "Liquidator") for Noble Trust Company ("Noble" or "NTC"), by his attorneys, the Office of the Attorney General and Sheehan Phinney Bass + Green, Professional Association, respectfully submits his Interim Status Report in connection with the above-captioned proceeding (the "Liquidation Proceeding") and the numerous proceedings relating thereto.

The Liquidator, with the support and assistance of the New Hampshire Banking Department; the New Hampshire Attorney General's Office; outside counsel, Sheehan, Phinney, Bass + Green, and other professionals, has made tremendous progress in administering what is unquestionably a complicated and multi-faceted case, and in formulating and negotiating the key components of what will become the Plan of Liquidation to be submitted to this Court for approval. The Liquidator hopes and expects to be able to do so within the next 60 days. This Interim Report is intended to apprise the Court and Noble's clients, investors, creditors and other parties in interest of the major issues faced by the Liquidator, and his progress on those issues to date.

A. Background and Commencement of Liquidation Proceeding.

1. Noble was a nondepository bank chartered by the New Hampshire Banking Department (the "Department") in 2003. During the course of a routine

examination in early 2008, the Department uncovered certain business practices causing Bank Commissioner Peter C. Hildreth to conclude that Noble was conducting its business in an unsafe and unauthorized manner. The Commissioner further concluded that in the interests of public safety, Noble should cease transacting business.

2. On February 11, 2008, the Commissioner appointed Deputy Bank Commissioner Robert A. Fleury as Conservator for NTC (the "Conservator") pursuant to RSA 396:5, thereby vesting the Conservator with certain powers to enable him to "conserve the assets of [NTC] for the benefit of depositors and other creditors thereof." RSA 396:5. A copy of the Conservator's appointment was duly recorded at the Office of the New Hampshire Secretary of State. That same day, the Commissioner and the Conservator appeared at NTC's offices in Manchester, New Hampshire, and took possession of NTC's assets and property pursuant to RSA 395:5 and the provisions of a Temporary Restraining Order issued by this Court in connection with the Commissioner's Petition for Liquidation of NTC and his associated motion for injunctive relief.

3. The need for such urgent action was prompted by the Department's discovery that Noble had invested and lost approximately \$15 million of funds entrusted to it by clients. Noble had invested this money with Sierra Factoring, LLC ("Sierra"), a Colorado company that purportedly engaged in the high risk factoring business. Perhaps even more troubling to the Bank Commissioner was the Department's discovery that Noble had acted to conceal these losses from both its clients and the Department.

B. Asset and Property Preservation

4. On the day that NHBD took Noble into conservatorship, the New Hampshire State Police Crime Lab seized all of Noble's computers. Because of the apparent misconduct uncovered by the Department, all Noble employees were also escorted from the premises, including Colin P. Lindsey ("Lindsey"), Noble's president. The Conservator was without access to any computer information for approximately three weeks while the Crime Lab made an exact copy of Noble's servers and hard drives to preserve evidence, as necessary, for any subsequent criminal prosecutions. Thus, in the early weeks of the conservatorship, Department staff had the challenging task of understanding the business operation of Noble without the assistance of any previous employees and without access to computer records.

5. The Conservator took several immediate steps to protect existing assets immediately upon taking Noble into conservatorship. Staff inventoried all physical property then located at Noble. The Conservator froze all bank accounts belonging to Noble and its parent, Aegean Scotia. The Conservator also shut down websites and terminated unneeded relationships with existing vendors.

6. On March 27, 2008, this Court signed an Order (the "Liquidation Order") appointing the Commissioner as Liquidator of Noble and its parent company, Aegean Scotia Holdings, LLC ("Aegean Scotia"). Commissioner Hildreth appointed Deputy Commissioner Fleury as his agent, responsible for day-to-day oversight of the liquidation efforts.

7. In the early weeks, the Department was somewhat constrained even in delving into the paper records of Noble because of the need to take steps to preserve

those files in their original form in the event of a subsequent criminal prosecution. For that reason, all paper files were scanned in such a way that their original location in the Noble office could be readily identified. This labor intensive project took about ten weeks. It was only upon the return of the copies of the computer server and hard drives and the completion of the scanning that the staff (first of the Conservator and later of the Liquidator) were able to commence their in-depth investigation into the events that had transpired at Noble. In addition, the Liquidator sought and, after some initial resistance, obtained Noble's client files from a number of law firms that had rendered legal services to Noble. The Liquidator conducted his investigation on a parallel course and in close cooperation with the criminal investigation being undertaken by the Federal Bureau of Investigation and the United States Attorney's office for the District of New Hampshire.¹

8. Noble's client account histories are maintained on a proprietary system called Trust Rite. Once the computers were returned, a volunteer with Trust Rite expertise assisted the Conservator in an initial review of all Noble client accounts. Another volunteer with in depth trust experience assisted the Conservator with tracking the exact nature of Noble's fiduciary relationship with each of its client accounts. In addition, the Liquidator retained an accounting firm to provide a number of advisory and accounting services, including preparation of certain trust tax returns.

9. Once the Liquidator had completed mapping the physical location and scanning the contents of Noble's files in June 2008, the Liquidator was able to move its

¹. Ultimately, those investigations led to federal criminal charges being brought against Lindsey and Lisa Elliott, Noble's Chief Operating Officer. Lindsey pled guilty to two fraud counts on April 1, 2009. Elliott pled guilty to misprision of felony on April 21, 2009. On October 26, 2009, Lindsey was sentenced to 51 months in prison, pursuant to a plea agreement that also required him to cooperate with the Liquidator in the Liquidation Proceeding. On that same date, Elliott was sentenced to three years' probation. Other criminal investigations by the FBI, the US Attorney's Office, and other authorities continue.

office from a high rise building in downtown Manchester, New Hampshire to considerably smaller and less expensive offices just outside Concord, New Hampshire. Shortly thereafter, the Liquidator provided notice of the process for filing claims. He sent a letter directly to all known clients, creditors, and vendors of Noble. The Liquidator also arranged for Notice of the claims process to be published weekly for three consecutive weeks, as required by RSA 395:13, in the Manchester Union Leader and the Kansas City Star.

10. From the outset, responding to calls from Noble Trust Company clients has also been a central responsibility of the Liquidator's staff, who have made every effort to provide clients with all information that could be made public. The Conservator was initially hampered in these efforts by the need to preserve evidence for criminal purposes. The ongoing parallel criminal investigations also sometimes limited information that the Conservator and Liquidator could share. Upon his appointment as Liquidator, Commissioner Hildreth sent a letter to all Noble clients. The NHBD also established a tab on its website (www.nh.gov/banking) where important developments in the Liquidation Proceeding are posted.

C. Proofs of Claim.

11. The Liquidator established August 11, 2008, as the bar date for filing proofs of claim (on a form designed by the Liquidator) against both Noble and Aegean Scotia. Claims were logged in and assigned a number as they arrived. On May 4, 2009, the Liquidator filed with this court the Liquidator's Register of Claims in connection with the liquidation, as required by RSA 395:17. As of that date, 337 claims had been filed. The precise total dollar value of the claims still cannot be calculated at this time, as so

many of the claimants stated that the amount of their claims was "unknown." The Liquidator is in the process of analyzing the claims and gathering the information necessary for the ultimate adjudication of these claims.

D. Life Insurance Trusts and Policies

12. Another immediate task for the Conservator and the Liquidator was addressing demands for premium payments from various insurance companies, some of which payments were due within only days of the appointment of the Conservator and the freezing of the accounts. As a nondepository trust company, Noble had a number of irrevocable life insurance trusts under management. In most instances, these trusts hold high face value, high premium insurance policies. In some instances, funds from other trusts provided the financing for the premiums for these policies. The immediate freezing of Noble's assets meant an immediate need to communicate and work with the insurers who issued policies to Noble clients, in order to attempt to protect and preserve the interests of all parties in interest. The Conservator was able to negotiate early agreements with certain of the issuing insurance companies to suspend and accrue the premium and other obligations otherwise due under the insurance policies. The essential terms of that agreement were ultimately embodied in the injunctive provisions of the Liquidation Order, which was subsequently clarified on June 11, 2008, to confirm that the injunctive provisions extended to any purported "lapse" of an insurance policy during the effectiveness of the Liquidation Order.

13. In the course of his investigation, the Liquidator learned of what appears to have been a secondary scheme developed by Lindsey to attempt to recoup some of the Sierra losses by fraudulently procuring certain high-premium, high-valued life insurance

policies, and by using the commissions generated by the issuance of those policies to fund payments to Noble clients. As part of this scheme, Lindsey entered into an agreement with Gerald Marino, a Florida real estate broker, who was trustee of the 450 4th Avenue Trust. Together, Marino, Lindsey, other Noble staff, and others connected with Marino and/or Lindsey engaged in various fraudulent activities, as a result of which fourteen life insurance policies were issued by three insurance companies to individuals who did not properly qualify for the policies in question. PHL Variable Life Insurance Company (Phoenix) was the issuer of nine of these policies.

14. Phoenix and the Liquidator entered into settlement discussions to resolve the handling of the nine Marino policies issued by Phoenix. After extensive negotiations, the two signed a proposed settlement agreement on November 7, 2008, contingent on approval of this court. The proposed settlement provided that the Liquidator would surrender the nine Marino Phoenix policies. In return for the surrender, Phoenix agreed to waive a portion of the surrender charges and had agreed to pay a settlement amount of \$1,500,000. Phoenix would then be allowed a claim in the liquidation proceeding, subject to further administration or adjudication as to its relative priority. The Liquidator filed a Motion for Approval of Settlement and Release Agreement on December 17, 2008. On February 12, 2009, the Liquidator filed a Motion requesting that the court approve its proposed notice procedures for the hearing on the settlement. On March 23, 2009, the Court granted the Liquidator's Motion concerning the notice procedures.

15. Only one objection to the proposed settlement was filed, by Stanley Miller as trustee under certain subtrusts allegedly established under or in connection with other existing Noble trusts or client relationships. Miller claims an ownership interest in two of

the nine policies that were the subject of the proposed settlement with Phoenix. The first of several hearings was held with respect to this claim in March 2009. To keep the liquidation process moving forward, the Liquidator and Phoenix agreed to bifurcate the two policies in question from the overall settlement while Miller's disputed ownership claims were investigated and determined. On June 1, 2009, the Liquidator and Phoenix agreed to amend their settlement to provide for immediate payment to the liquidation estate of approximately \$1.17 million dollars. The balance of the \$1.5 million dollars remains in escrow pending resolution of the dispute over ownership of the other two policies. The settlement was approved by the court on July 7, 2009.

16. Several hearings have been held regarding the dispute with Miller over the ownership of these two policies, as well as five other policies that are held in trusts of which Noble is trustee. Some of the issues Miller raises are common to other life insurance policies issued to Noble clients. In addition, the role that life insurance policies may have played in an overall operation of Noble as a "Ponzi" scheme are common to other creditors and parties in interest, who, like Miller, have subjected their claims to administration and adjudication in the Liquidation Proceeding.

17. The Liquidator maintains that all of these issues can and should be determined most efficiently as part of the claims adjudication process, notwithstanding Miller's efforts to force the adjudication of his claims at this stage of the Liquidation Proceeding. Most recently, a structuring conference was held on this matter on October 2, 2009. Following that hearing, the court issued an order requiring the Liquidator to report to the court at a further status hearing as to his overall progress in the Liquidation Proceeding, at least from the date of that order until the next status conference, which is

now scheduled for March 5, 2010. Miller's Motion for Reconsideration of that Order was denied.

18. The Liquidator has had discussions, both before and after the October 2 conference, both with Phoenix and with other insurance companies that issued policies to Noble clients, as to how to proceed with respect to the other policies issued. There are a total of approximately 110 policies held in trusts associated with Noble, 46 of which policies were issued by Phoenix and not included in the previous Phoenix settlement. The Liquidator has conducted an in depth review of the policy applications and the insurance policies in connection with those discussions. The Liquidator also retained Invotex Group, a Maryland-based consulting firm with insurance experience, to assist him in gathering information important to discussions with the insurance carriers involved.

19. The Liquidator's settlement discussions with Phoenix have progressed substantially, and the Liquidator is close to announcing a definitive agreement with Phoenix which will provide a resolution to all or substantially all of the remaining Phoenix policies, as well as providing a central component to the Liquidator's formulation of his Plan of Liquidation.

20. The Liquidator's work on the Plan of Liquidation has also progressed significantly in recent months and, as mentioned previously, the Liquidator plans to file this Plan within the next 60 days. Preparation of the plan has involved attempts at an in-depth analysis of the complex history of Noble's business transactions despite incomplete and sometimes inconsistent books and records. The Liquidator has also undertaken an analysis of the activity in Noble's multiple bank accounts, as well as performing a cash

flow analysis, all as part of formulating the most appropriate approach to a plan of liquidation. The Liquidator has also sought to obtain bank records, wherever possible, in his effort to fill in information missing from Noble's records.

21. As part of the Liquidator's recent efforts, he has also reviewed and analyzed records and information provided by the claimants in support of their claims. These efforts will also serve as an underpinning to the claims adjudication process that will follow approval of a liquidation plan.

E. Litigation and Claims Recovery.

22. The Liquidator has attempted, where feasible, to recover assets and property without resorting to litigation. The Liquidator filed a Proof of Claim with Federal Insurance Company, a division of Chubb, against Noble's \$1 million fidelity bond that provided insurance for losses resulting from dishonest acts. On August 19, 2009, Federal paid the liquidation estate the full bond amount of \$1 million. The Liquidator has also commenced litigation proceedings where necessary or appropriate.

23. On January 7, 2008, about one month prior to the filing of the Petition for Liquidation against Noble, Lindsey and three other individuals (who are also claimants in the Noble liquidation) filed suit in a Colorado state court against Sierra (together with some of the businesses and individuals associated with Sierra) alleging that Sierra had been a Ponzi scheme. The Liquidator retained Colorado counsel, successfully intervened, and has sought a stay of the Colorado litigation to preserve the rights of Noble and its claimants, particularly since the claims alleged therein were properly characterized as claims belonging to Noble, not to Lindsey, and to prevent Lindsey from potentially settling or prejudicing those claims without an adequate opportunity for the Liquidator to

assert the interests of this liquidation estate. That matter had been set for trial in October 2009 prior to the liquidator becoming involved with the case. Subsequent to the Liquidator's intervention, none of the plaintiffs pursued this litigation actively. Plaintiffs' counsel's Motion to Withdraw was granted after plaintiffs failed to continue to pay them.

24. On April 27, 2009, the Liquidator brought suit against all the directors and officers of Noble (the "Director and Officer Proceeding"), which raises a more comprehensive set of issues and claims relating to the conduct of Noble's business than were raised in the Colorado litigation, including the directors' and officers' numerous breaches of their fiduciary duties. The Director and Officer Proceeding is complex litigation involving over a dozen different defense attorneys. The Liquidator has successfully obtained a structuring order in the case and discovery has begun. The Liquidator negotiated a settlement with Lindsey in which Lindsey consented to judgment against him in the amount of \$15,781,000, with limited credit against that judgment for funds subsequently distributed by the Liquidator to creditors in the Liquidation Proceeding. This Court approved the Lindsey settlement by Order dated February 9, 2010. A trial on the case is scheduled for January 2012.

25. The Liquidator also commenced a proceeding against Walsh & Company, Noble's former certified public accountants, alleging that Walsh had failed to notify Noble's Board of Directors (among others) when Walsh learned from Lindsey and Elliott that Noble had lost all the money its clients had invested in Sierra and was concealing that information from its clients and others. Instead, Walsh abruptly resigned as Noble's

accountants. That case has been consolidated with the case against the directors and officers for purposes of discovery.

26. The Liquidator also commenced other proceedings in this Court seeking recovery on a variety of other claims. Those claims include (a) fraudulent transfer claims against certain Noble clients who received distributions on their investments; and (b) assets and property of Balcarres Group, LLC, a company of which Lindsey was a principal. The Liquidator holds a judgment against Balcarres against which, in December 2009, he received \$389,324.36 in proceeds from a Balcarres bank account. He anticipates that additional litigation and proceedings will likely be necessary in order to continue to marshal the assets of Noble's estate for the benefit of its creditors.

F. Plan of Liquidation

27. All of the foregoing activity funnels toward the Liquidator's ultimate proposal of a Plan of Liquidation, which will classify claims against the liquidation estate in accordance with applicable law and equitable principles, and provide for the distribution of the proceeds of assets and recoveries obtained by the Liquidator for the benefit of the estate and its creditors. The Liquidator has obtained orders from this Court and implemented other procedures designed to provide adequate protection of the interests of all creditors and other parties during the time in which he administers the estate and formulates the Plan of Liquidation.

28. The Liquidator's goal from the outset has been to attempt to reach consensus where possible, which in a case of this size and complexity simply takes time. The Liquidator believes that he has made significant progress toward all those ends, particularly since the last status conference held in this matter on October 2, 2009. He

continues to proceed to discharge his duties as efficiently and expeditiously as possible.
He hopes and expects to be able to file his Plan of Liquidation within approximately sixty days.

Respectfully submitted,

PETER C. HILDRETH,
BANK COMMISSIONER OF
THE STATE OF NEW HAMPSHIRE,
AS LIQUIDATOR OF NOBLE TRUST
COMPANY

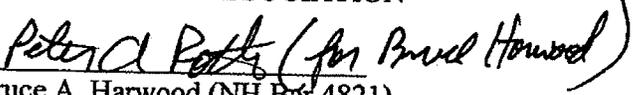
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Dated: March 4, 2010

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Interim Status Report was served via first class mail, postage prepaid, upon the following individuals on March 4, 2010:

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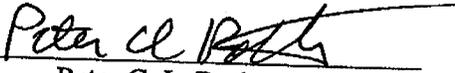
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