

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Charlottesville Division**

SECURITIES AND EXCHANGE)	CASE NO. 3:01CV00116
COMMISSION,)	
Plaintiff,)	
)	
v.)	JAMES H. MICHAEL, JR.
)	U.S. DISTRICT JUDGE
TERRY L. DOWDELL, et al.,)	
)	
Defendants.)	B. WAUGH CRIGLER
)	U.S. MAGISTRATE JUDGE

TENTH REPORT OF RECEIVER

Roy M. Terry, Jr. and the law firm of DuretteBradshaw, PLC (“Receiver”) respectfully submit the following tenth report of acts and transactions in its official capacity as Receiver.

PROCEDURAL HISTORY

On April 30, 2002, the Securities and Exchange Commission (“SEC”) filed its First Amended Complaint (“Complaint”) against the Defendants and Relief Defendants in this matter. On June 4, 2002, the SEC filed its Joint Motion for Order Directing Appointment of Receiver Over Defendants Terry L. Dowdell (“Dowdell”); Dowdell, Dutcher & Associates (“DDA”); Emerged Market Securities, DE-LLC (“EMS”) and affiliated entities.

By Order entered July 12, 2002, this Court appointed Roy M. Terry, Jr. and the law firm of DuretteBradshaw PLC, as Receiver over Terry L. Dowdell; Dowdell, Dutcher & Associates; Emerged Market Securities, DE-LLC; and affiliated entities (the “Original Appointment Order”). The Original Appointment Order provides as follows:

7. Within thirty (30) days after the filing of the inventory, and at regular intervals of not less than three (3) months thereafter until discharge, the Receiver shall file reports of his acts and transactions in his official capacity as Receiver.

Accordingly, the Receiver filed with the Court the inventory, first, second, third, fourth, fifth, sixth, seventh, eighth and ninth reports of acts and transactions on September 10, 2002, October 10, 2002, January 10, 2003, April 10, 2003, July 10, 2003, October 10, 2003, January 16, 2004, April 15, 2004, July 9, 2004, and January 12, 2005, respectively.

This Court also appointed Roy M. Terry, Jr. and the law firm of DuretteBradshaw PLC, as Receiver over Relief Defendant Authorized Auto Service, Inc. and Defendant Vavasseur Corporation by Orders entered September 12, 2002 and February 18, 2003, respectively (the “Supplemental Appointment Orders”). (Because Vavasseur Corporation is the subject of a separate receivership with its own reporting requirements, the Receiver will exclude them from this report.)

SUMMARY OF ACTIVITIES

The activities conducted by the Receiver subsequent to the *Ninth Report of the Receiver* pursuant to the Original Appointment Order and the Supplemental Appointment

Orders may be categorized as follows: General Case Administration, Asset Administration, Claims Administration, Related Litigation, and Ongoing Activities.

A. General Case Administration.

1. Accounting. Contemporaneously herewith, the Receiver is filing financial statements for month ending December 31, 2004 and year ending December 31, 2004.

2. Investor Database. The Receiver's accountant is creating a database with investor names and contact information.

B. Asset Administration.

1. Loans due from Stephen Pierce and Cynthia Pierce. On March 17, 2004, the Court entered an order approving and adopting the terms of a settlement set forth in the Compromise and Settlement Agreement entered into by Stephen Pierce (Terry Dowdell's brother-in-law) and Cynthia A. Pierce (Stephen Pierce's spouse) (collectively the "Pierces"), the SEC, and the Receiver. The Receiver is holding \$90,000.00 in settlement funds in escrow, and has engaged a Florida law firm to file suit in Florida to quiet title so that the settlement may be consummated.¹ Although the Receiver's complaint was uncontested (*i.e.*, no answers were filed nor has any party other than the Receiver made an appearance) and default and default judgments against the non-

¹ The loans were secured by a mortgage held by "T. L. Dowdell, LLC". Because the Receiver does not know if T. L. Dowdell, LLC is even a valid legal entity, much less who the officer(s) and member(s) are, it is not clear whether the Receiver has the authority to release this mortgage. Accordingly, the Receiver has brought suit in Florida to quiet title.

appearing defendants have been entered, the state trial court has insisted on setting the matter for trial. The Receiver is filing a motion for summary judgment in an attempt to find out what the trial court thinks the triable issues of fact might be under these circumstances.

3. Garth Bailey and Guyons International, Inc. Terry Dowdell sent approximately \$500,000 to a lawyer in Alberta, Calgary in Canada, Garth Bailey. Terry told the SEC that the money was for an investment in a Canadian corporation. When pressed, Bailey produced unexecuted stock certificates, unsigned stock transfer agreements, a purported loan agreement and other documents supposedly created to facilitate a stock purchase transaction.

Terry and Mary Dowdell transferred their interest in Guyons International, Inc. (“Guyons”), a corporation formed under the laws of Alberta, Canada to the Receiver. The Receiver engaged Canadian counsel to assist the Receivership in obtaining information needed to evaluate this asset.

To make a long story short, the company in which Dowdell purported invested has collapsed, and was put into the Canadian version of involuntary bankruptcy. Bailey, who was already in trouble with the securities officials in Alberta for his involvement in a ponzi-like scheme, has had his law license suspended on an emergency basis. Bailey’s law practice is now under the control of a receiver appointed by the Alberta Law Society.

The Receiver's Canadian counsel is now working with the receiver over the Bailey law practice to trace the \$500,000 payment from Dowdell to wherever it actually went, which might have been to Guyons International, Inc., to Bailey, or to someplace else. It is likely that the money was spent by either Guyons or Bailey.

4. The Receiver continues to negotiate the return of Vavasour funds from other individuals and entities.

C. *Claims Administration.*

On July 11, 2003, the Court entered an order approving the *Amended and Restated Summary Procedures for Claims Administration and Plan of Distribution*, a Proof of Claim Form, and a Notice to File Claims.

Achieving coordination with the U.K. Liquidator is now a precondition to the U.S. Receiver initiating the claims process. The U.S. Receiver and the U.K. Liquidator have not reached an agreement with respect to claims administration because there is insufficient information available to determine in a principled manner to whom, and by whom, the recovered assets should be returned.

D. *Related Litigation.*

The discussion of litigation that follows is limited in scope to cases filed in the United States. (Litigation occurring in foreign jurisdictions will be discussed in the Vavasour Report.)

1. Receiver v. Robert June, Jr. et al., No. 3:03cv00021 (W.D. Va.).

Robert June, Jr. (“June”) has absconded. On March 15, 2005, the Court entered an order extending the time in which to serve him with the summons and complaint.

2. Receiver v. David Dowdell et al., No. 3:03cv00036 (W.D. Va.). This

matter is closed.

3. Receiver v. Wicoff Overseas Corp., No. 3:03cv00045 (W.D. Va.).

This matter is closed.

4. Receiver v. Timothy Pierce et al., No. 3:03cv00046 (W.D. Va.).

This matter is closed.

5. Receiver v. Earl Crowley et al., No. 3:03cv00091 (W.D. Va.). This

matter is closed.

6. Receiver v. Virginia June, No. 3:03cv00047 (W.D. Va.). The

Receiver filed this case against Virginia June (sister of Robert June, Jr. (Terry Dowdell’s associate)) to disgorge investor profits. On July 31, 2003, the Court entered an order granting the defendant’s request for an extension of time in which to move, answer or otherwise respond to the complaint, and stating the defendant’s responsive pleading will be due within ten (10) days of written notice by the plaintiff’s counsel requesting the entry of responsive pleadings. Because the informal discovery agreement between the parties broke down as part of a larger dispute between the June family and the Receiver, on

March 1, 2005, the Receiver requested that the defendant file a responsive pleading. On March 10, 2005, the defendant filed an answer.

On February 1, 2005, the Receiver served a subpoena on the Duke law firm requesting information relating to the defendant, the defendant's family, and offshore entities that she has or may have had an interest in.² The Duke law firm sent responsive documents to the Court along with a cover letter requesting the Court determine whether the documents were covered by attorney-client and/or work product privileges. By Order entered March 23, 2005, the Court found the form of the request was an inappropriate response to a subpoena, and denied the request without prejudice.

The present status on these documents is not clear. When the Receiver asked if it could look at these documents, the Court stated it did not consider them to be public at that point in time. On April 11, 2005, the Receiver wrote a letter to counsel for the Duke law firm stating that the subpoena was still outstanding, it would not wait indefinitely, and asserting that documents in possession of the Court are public documents unless the subject of a protective order or a pending motion.

The Receiver believes that defendant has interests in one or more foreign bank accounts. However, defendant claims to know little or nothing about these accounts and has not produced any records related thereto. On March 2, 2005, the Receiver filed a

² The Duke law firm specializes in creating offshore entities, and set up VRJ, Ltd., a Bahamian corporation that the Receiver believes was used to launder funds for the June family and others. According to Terry Dowdell, Robert June, Jr. was instrumental in creating and operating these offshore entities as part of defendant's investment in Vavasseur.

motion to compel the defendant to sign disclosure directives authorizing foreign banks to disclose accounts over which the defendant had signatory authority or a beneficial interest. Because the defendant subsequently voluntarily signed the directives, the Court denied the motion as moot. The Receiver has sent the disclosure directives to several foreign banks and is awaiting their responses. The Receiver must note that getting responses to offshore bank inquiries is a time consuming process.

7. Receiver v. Michael Boyd, No. 3:03cv00048 (W.D. Va.). This matter is closed.

8. Receiver v. Robert June, Sr., No. 3:03cv00052 (W.D. Va.). The Receiver filed this case against Robert June, Sr. (father of Robert June, Jr. (Terry Dowdell's associate and close friend)) to disgorge investor profits. Virginia June (daughter of Robert June, Sr. and sister of Robert June, Jr.) was subsequently appointed as guardian for the defendant.

On July 2, 2004, the Receiver filed a motion for partial summary judgment to narrow the issues for trial. By order entered July 9, 2004, the Court stayed all proceedings in this case except as to matters relating to the Court's choice of law as presented in Section VI of the Receiver's motion for partial summary judgment. The Magistrate Judge filed his Report and Recommendation on December 8, 2004, as modified by supplemental order entered December 16, 2004. Both parties filed objections to the Report and Recommendation. By Order entered February 23, 2005, the Court declined to adopt

Magistrate Judge's Report and Recommendation, and held that the Federal common law applied. The defendant filed a motion to amend the order and certify this issue for an interlocutory appeal. By Order entered March 15, 2005, the Court lifted the stay imposed by Order entered July 9, 2004. By order entered March 23, 2005, the Court again froze all proceedings pending the Court's ruling on the defendant's motion. By order entered April 5, 2005, the Court denied the defendant's motion, but it did not specifically lift or modify the stay order entered March 23, 2005.

Hearing was held April 18, 2005 on the following:

- (a) Receiver's Renewed Motion to Partial Summary Judgment on Ponzi Scheme Issue (filed March 14, 2005);
- (b) Receiver's Motion for Scheduling Order on remaining motion for partial summary judgment matters (filed March 14, 2005); and
- (c) Defendant's Request for Scheduling Conference (filed April 6, 2005); and
- (d) Receiver's Motion to Lift Stay and for Scheduling Order (filed April 7, 2005).

By order entered April 19, 2005, the Court *inter alia* dismissed the motion for partial summary judgment without prejudice, denied the Defendant's request for a scheduling conference, and lifted the discovery freeze.

On November 22, 2004, the Court granted the Receiver's motion for preliminary injunction requiring the defendant to perfect a mortgage securing a promissory note that he holds within ten days from entry of the order. That order has been modified by order entered December 3, 2004 (extending compliance date to December 31, 2004), order

entered January 7, 2005 (extending compliance date to January 31, 2005) and order entered March 15, 2005 (continuing compliance until defendant is reasonably able to comply and ordering defendant to show cause by March 15, 2005 and every 45 days thereafter to show what has been done to obtain recordation of the mortgage).

9. Receiver v. Keswick Club, No. 3:03cv00086 (W.D. Va.). This matter is concluded.

10. Receiver v. Bank of America, No. 3:98cv00098 (W.D. Va.). On November 20, 2003, the Receiver filed this complaint against Bank of America (“BOA”) for damages caused by BOA’s violation of this Court’s Asset Freeze Order. By Order entered February 20, 2004, the case was reassigned to the Honorable Glen E. Conrad. The Receiver appealed an adverse ruling from Judge Conrad to the Fourth Circuit Court of Appeals and has subsequently agreed to settle the case. Settlement documents are under preparation.

11. In re Rebecca Dowdell, No. 03-04800 (W.D. Va.). This matter is closed.

12. In re Kenneth Mason, No. 03-44922 (Bankr. N.D. Ill.). This matter is closed.

13. Receiver v. M. Wayne Hensley, No. 3:04cv00028 (W.D. Va.). This matter is closed.

14. Receiver v. Jack Dempsey et al., No. 3:04cv00040 (W.D. Va.). On May 28, 2004, the Receiver filed this complaint against Jack and Dorothy Dempsey to recover funds siphoned-off when the Dempseys and the Smyths assisted Dowdell in repatriating funds in violation of the Court's asset freeze orders. By order entered March 11, 2005, the Court approved the compromise and settlement agreement between the parties. On or about April 8, 2005, the Dempseys, by counsel, sent the Receiver three checks totaling \$79,800.00 (the amount of the settlement). One of the checks, in the amount of \$12,957.62, is drawn on a frozen account at Pacific Western Bank, successor to Harbor National Bank. In order to cash the check, the Receiver will shortly be filing a motion for relief from stay to lift the asset freeze.

15. Receiver v. Karen Wells, No. 3:04cv00045 (W.D. Va.). On June 14, 2004, the Receiver filed this complaint against Karen Wells (family friend of Robert June, Jr. (Terry Dowdell's associate)) to disgorge investor profits. The parties have settled this matter in principle. By Report filed April 4, 2005, the Magistrate Judge reported the case back to the presiding District Judge to await the submission and entry of an agreed order of dismissal which the parties are to submit within thirty (30) days thereof. On April 22, 2005, a Motion to Approve Settlement and Compromise was filed whereby Defendant would pay \$30,000.00 to the Receiver.

16. Receiver v. Thomas R. Walker et al., No. 3:04cv00064 (W.D. Va.). On August 2, 2004, the Receiver filed this complaint against Thomas and Christine

Walker (friends of Robert F. June, Jr.), and Automix, Inc. (the Walkers' offshore investment company) to disgorge investor profits. On April 7, 2005, the defendants filed a motion for counsel to appear *pro hac vice*, and a motion to dismiss for lack of jurisdiction and quash service of process. On April 14, 2005, the Receiver filed a response in opposition to defendant's motion to dismiss for lack of jurisdiction and quash service of process, and to strike defendants' affidavits for lack of signatures of affiant and notary. The defendants' motions and the Receiver's objection are currently before the Court. No hearing date has been set.

17. Receiver v. Werner Schwandt, No. 3:04cv00065 (W.D. Va.). On August 2, 2004, the Receiver filed this complaint against Werner Schwandt to disgorge investor profits. On March 18, 2005, the Court entered an order holding that the Uniform Fraudulent Transfer Act applies. The parties are currently engaged in discovery.

18. Receiver v. Arlene Schwandt, No. 3:04cv00066 (W.D. Va.). On August 2, 2004, the Receiver filed this complaint against Arlene Schwandt to disgorge investor profits. The parties are currently in settlement discussions.

19. Receiver v. Chris Dowdell, No. 3:04cv00067 (W.D. Va.).³ On August 2, 2004, the Receiver filed this complaint against Christopher Dowdell (Terry Dowdell's nephew) to recovery transfers to the defendant. By order entered January 11, 2005, the Court order granted the Receiver's motion for partial summary judgment in part,

awarding judgment to the Receiver in the principal amount of \$6,200.00 together with prejudgment interest on each delinquent loan installment plus prejudgment interest. The defendant has satisfied that judgment. The Receiver believes the remaining amounts can be set aside as fraudulent conveyances.

On October 22, 2004, the Receiver propounded upon the defendant its first set of interrogatories and requests for production of documents. Because the Receiver has not received any discovery to date and the pretrial scheduling order entered November 8, 2004 required all discovery to be completed by February 4, 2005, on January 14, 2005, the Receiver filed a motion to amend the pretrial scheduling order to enlarge discovery cutoff date, or in the alternative, issue an order for the Defendant to show cause why he should not be compelled to respond to the Receiver's discovery request. By order entered January 21, 2005, the Court set the hearing for February 11, 2005. By order entered February 14, 2004, the hearing was continued to March 24, 2005. Based upon the belief that the parties had reached an agreement, on March 28, 2005, the court entered an order dismissing the Receiver's discovery motion as moot. To date, the Receiver has not received any discovery, nor a signed settlement agreement.

20. Receiver v. Matthew Johnson et al., No. 3:04cv00070 (W.D. Va.).

On August 2, 2004, the Receiver filed this complaint against Susan Johnson (Terry Dowdell's niece) and Matthew Johnson (Susan Johnson's spouse) to recovery transfers to

³ Although Chris Dowdell does not have an attorney of record on file with the Court, he is represented by Michael Hrabcak (an Ohio attorney who represents the defendant's sister and brother-in-law in *Receiver v. Matthew Johnson*

the defendant. On February 14, 2005, the Court entered an order giving the parties until March 8, 2005 to conduct settlement negotiations and requiring the parties to contact the Magistrate Judge if such negotiations failed to produce an agreement by that date. On March 8, 2005, the Receiver, in an abundance of caution, propounded discovery on the defendants. Notwithstanding, based upon representations that the parties were in the final stages of settlement negotiations, by order entered March 14, 2005, the Court gave the parties until April 8, 2005 to conduct settlement negotiations and required the parties to contact the Magistrate Judge if such negotiations failed to produce an agreement by that date. The Receiver has since received Fifteen Thousand Dollars (\$15,000.00 USD) from the defendants, which it has put into escrow, pending the execution of a settlement agreement.

21. Receiver v. Michael J. Hardesty et al., No. 3:04cv00084 (W.D. Va.).

On October 21, 2004, the Receiver filed this complaint against Michael Hardesty, Innovative Business Consulting, Inc. (Hardesty's U.S. business) and Hatchlands Finance Ltd. (Hardesty's offshore investment company) to disgorge profits. Many of the investors of record in the Vavas seur Program were actually entities that promoters used to pool subinvestor funds. Included among the Vavas seur investors of record was Hatchlands, which pooled funds raised by Michael Hardesty. While the defendants told the subinvestors that funds pooled in Hatchlands would ultimately be invested into Vavas seur and managed by Dowdell, they did not tell the subinvestors how much the Vavas seur

and Susan Johnson, No. 3:04cv00070 (W.D. Va.).

“profits” were. The Receiver alleges this allowed the defendants to perpetrate their own scam whereby the defendants skimmed the difference between the 85% per annum received from Vavasseur (net of commissions), and the 36% per annum the defendants paid to the subinvestors. Hatchlands paid some of the fictitious profit distributions to its sub-investors via the IOLTA trust account of Thomas E. Nelson, Attorney at Law, Salt Lake City, Utah.

On October 27, 2004, the Receiver issued a subpoena from the U.S. District Court for the District of Utah, for Nelson to produce and permit inspection and copying of certain documents. After consulting with the defendants, on November 18, 2004, Nelson, by counsel, filed a *Motion to Quash and/or for Protective Order* (“Motion to Quash”) in the U.S. District Court for the District of Utah asserting, *inter alia*, his motion should be granted “on the grounds that no attorney planning conference has been held and Rule 26 of the Federal Rules of Civil Procedure precludes discovery until that conference has been held.” *Terry v. Hardesty*, No. 04cv1071 (D. Utah)(docket no. 1). The Receiver obtained Utah counsel to file an objection to the Motion to Quash and enforce the subpoena. Hearing was held February 23, 2005 (D. Utah), on the Motion to Quash. At the conclusion of the hearing, the court (D. Utah) took the motion under advisement. Meanwhile, on December 1, 2004, the Receiver filed with this Court (W.D. Va.) a motion to modify the timing and sequence of discovery. On February 25, 2005, this Court (W.D. Va.) entered an order granting the Receiver’s motion to modify the timing and sequence

of discovery. The Receiver believes the magistrate judges in W.D. Va. and Utah have been in contact with each other but the matter in Utah is still under advisement and the Receiver has not received any discovery.

The Receiver has served defendants Hardesty and Innovative Business Consulting with the summons and Complaint, but is still in the process of serving Hatchlands Finance (a British Virgin Island company) in accordance with the Hague Convention. The Court has not set a pretrial conference because process has yet to be served upon Hatchlands in the British Virgin Islands.

Hardesty and Innovative Business Consulting served their First Set of Interrogatories and Request for Production of Documents upon the Receiver. On February 24, 2005, the Receiver served its First Set of Interrogatories and Request for Production of Documents upon Hardesty. Hearing was held February 25, 2005 in W.D. Va. on the Receiver's motion to modify the timing and sequence of discovery. Counsel for the defendants promised to provide a list of Hatchland's subinvestors. On February 28, 2005, the Receiver served its First Set of Interrogatories and Request for Production of Documents upon Innovative Business Consulting. By letter from Douglas Scott (Counsel for Receiver) to William Bayliss (Counsel for Hardesty and Innovative Business Consulting), dated March 15, 2005, the Receiver stated that Rule 26 of the Federal Rules of Civil Procedure precluded discovery until the hearing was held on February 25, 2005 (a position similar to that of the defendants and Nelson in Utah). By letter from William

Bayliss to Douglas Scott, dated March 21, 2005, the defendants stated that was unacceptable, served their Second set of Interrogatories and Request for Production of Documents, and stated the defendants would not respond to the Receiver's first set of discovery until fifteen (15) days after the Receiver responded to the defendant's first set of discovery. The Receiver responded to defendant's discovery on March 25, 2005 (thus defendant, according to their promise, should have responded to the Receiver's discovery by April 11, 2005). The defendant has yet to provide the list of Hatchland's subinvestors or respond to the Receiver's discovery.

22. Receiver v. Modern Investment Co., No. 3:04cv00085 (W.D. Va.).

On October 27, 2004, the Receiver filed this complaint against Kevin O'Keefe, Karen O'Keefe and Collin O'Keefe (friends of Robert F. June, Jr.), and Modern Investment Company Ltd. (the O'Keefes' offshore investment company) to disgorge investor profits. On February 16, 2005, the defendants filed a motion to dismiss for lack of jurisdiction and quash service of process. On February 21, 2005, the Receiver filed a response in opposition to defendant's motion to dismiss for lack of jurisdiction and quash service of process. On March 23, 2005, the defendants filed a motion for counsel to appear *pro hac vice*. The defendants' motions and the Receiver's objection are currently before the Court. No hearing dates have been set.

23. Receiver v. Christina Thompson, No. 3:04cv00088 (W.D. Va.).

On November 4, 2004, after several attempt to informally discuss transfers to Christina

Thompson ((former girlfriend of Terry Dowdell's son) and her husband, the Receiver filed this complaint to recover transfers to the defendant. On December 4, 2004, the complaint was served upon the defendant. To date, the defendant has failed to file an answer. By letter from counsel for defendant's husband to the Court, dated April 1, 2005, the defendant's husband inquired about the suit. By letter from Douglas Scott to Counsel for defendant's husband, dated April 22, 2005, the Receiver responded to the letter from counsel for the defendant's husband. The Receiver anticipates adding the husband as a defendant in the suit.

24. Other Litigation. In addition to the lawsuits mentioned above, the Receiver has filed other lawsuits in this Court and will add them to future Reports once the summons and complaints are served. The Receiver has filed a motion for order reappointing the Receiver so that notices may be timely filed in accordance with 28 U.S.C. § 754 in district courts where Receivership Property is believe to be located. Once reappointed, the Receiver anticipates filing several more lawsuits to recover Receivership Property.

E. Ongoing Activities.

1. Causes of Action. The SEC and Receiver continue to identify persons and entities in possession of Receivership Property to seek return of such property and continue to initiate legal actions against those who will not voluntarily return such

Receivership Property to the Receiver. Increasingly, these efforts are taking place outside the United States.

2. Consolidation. The Receiver continues to believe that consolidation of the Receivership entities created by the Original Appointment Order and Supplemental Appointment Orders would provide the most equitable, efficient and economical method for returning assets to the rightful owners. The Receivership has devised a method of accounting sufficient to permit the proper allocation of receipts and expenditures against the various judgment and disgorgement orders entered by this Court, so one of the principal objections to consolidation has been overcome.

Respectfully submitted, this the 25th day of April, 2005.

Roy M. Terry, Jr. and DuretteBradshaw PLC
Receiver
By Counsel

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CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of April, 2005, a true copy of the foregoing Report was mailed by first class mail, postage fully prepaid, or electronically served via ECF, to:

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