

IN THE CIRCUIT COURT OF THE 17<sup>th</sup>  
JUDICIAL CIRCUIT, IN AND FOR  
BROWARD COUNTY, FLORIDA

CASE NO. 12-028324 (07)  
COMPLEX LITIGATION UNIT

P & S ASSOCIATES, GENERAL  
PARTNERSHIP and S & P ASSOCIATES,  
GENERAL PARTNERSHIP,

Plaintiff,

v.

ROBERTA P. ALVES, ET AL.,

Defendants.

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**CONSERVATOR’S REPLY IN FAVOR OF  
MOTION FOR SUMMARY JUDGMENT<sup>1</sup>**

Philip J. von Kahle (the “Conservator”), as Conservator for P&S Associates, General Partnership (“P&S”) and S&P Associates, General Partnership (“S&P”) (together, the “Partnerships”), by and through undersigned counsel, pursuant to the Conservator Order (as defined below) hereby files the Conservator’s Reply in Favor of Motion for Summary Judgment (the “Reply”), and in support thereof states as follows:

**Introduction**

The Partnerships are Florida general partnerships organized under the Florida partnerships laws. They were properly formed as an investment vehicle for the individual partners. Unfortunately, the Partnerships only invested with what turned out to be a complete fraud, Bernard L. Madoff Investment Securities, LLC (“BLMIS”). Accordingly, the Partnerships and ultimately, certain of its partners, were victims of the

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<sup>1</sup> Capitalized terms not defined herein shall have the meaning ascribed them in the May 31, 2013 *Conservator’s Motion for Summary Judgment to (i) Approve Determination Claims; (ii) Approve Plan of Distribution, and (iii) Establish Objection Procedures* (the “Distribution Motion”).

Madoff Ponzi Scheme. Recently, the Madoff trustee made distributions to victims of the Madoff Ponzi Scheme, including the Partnerships, based on their Net Investment Method losses. On or before July 2012, a dispute arose between the partners as to how the remaining assets of the Partnerships ought to be distributed. This Interpleader Action was commenced to, among other things, allow the Court to determine the proper distribution methodology.

To that end, on May 31, 2013, the Conservator filed his: *Motion for Summary Judgment to (i) Approve Determination Claims; (ii) Approve Plan of Distribution, and (iii) Establish Objection Procedures* (the “Distribution Motion”). The Distribution Motion apprises the Court and Partners of possible distribution methodologies. Ultimately the Conservator recommended the Net Investment Method based upon, among other things, the equities surrounding Partnerships and their relationship to the Madoff Ponzi Scheme. As part of his analysis, the Conservator explained that one construction of the Partnerships agreements would result in calculations identical to the Net Investment Method.

Certain parties filed responses to the Distribution Motion. Some support the Conservator’s recommendations and others favor alternative methods of distributing the Partnership Property. This Reply includes exhibits and explanations to illustrate how distribution would flow under these alternative methodologies.

Additionally, certain parties have objected to the Conservator’s recommendation that certain distributions be withheld until further investigation by the Conservator was complete. The Conservator has resolved certain of these disputes. Others remain pending.

## I. BRIEF STATEMENT OF THE FACTS

The Partnerships were each victims in what has become known as the largest fraud in human history, the Bernard L. Madoff Investment Securities, LLC (“BLMIS”) ponzi scheme (the “Ponzi Scheme”).

Each Partnership was formed pursuant to a separate written partnership agreement dated December 11, 1992. In 1994 the partnership agreements were amended (the “Partnerships’ Agreements”). The Partnerships’ stated purpose was to invest in “all types of marketplace securities.” In practice, the Partnerships invested solely in BLMIS.

In late 2008 it was discovered that BLMIS was a ponzi scheme orchestrated by, among others, Bernard Madoff. Thereafter, a liquidation proceeding was commenced in the Southern District of New York to liquidate BLMIS pursuant to the Securities Investment Act (“SIPA”) (the “BLMIS Liquidation”).

The Partnerships asserted claims in the BLMIS liquidation based on its statement balance losses. The Madoff Trustee objected. The Partnerships and the Madoff Trustee ultimately settled and the Partnerships were allowed, among other things, claims against the BLMIS liquidation based on their Net Investment losses.

Based on such Net Investment loss claims, each Partnership received a distribution. On or before July 2012, a dispute arose between the partners as to how the remaining assets of the Partnerships ought to be distributed.

To resolve the dispute, in July of 2012, the Partnerships commenced the instant interpleader action (the “Interpleader Action”).

On January 17, 2013, this Court appointed Philip Von Kahle as Conservator of the Partnerships in a parallel proceeding<sup>2</sup> by entering the *Order Appointing Conservator* (the “Conservator Order”). The Conservator Order provides, among other things, that the Conservator’s powers include:

Winding down of the affairs of the Partnerships and distribution of assets of the Partnerships, **including following up on the Interpleader Action filed with the Court in determining how the partnership funds are to be distributed, making all necessary and appropriate applications to the Court in order to effect such wind-down and distributions.**

Conservator Order at 5.(a) (emphasis added).

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<sup>2</sup> *Matthew Carone, et. al. v. Michael D. Sullivan*, Case No. 12-24051 (07) (the “Conservator Suit”).

To that end, on May 31, 2013 the Conservator filed his Distribution Motion.

## **II. Partnership Property**

The principal sources of Partnerships' Property are: (i) the claims asserted by the Partnerships in the BLMIS Liquidation; (ii) funds the Partnerships held in certain bank accounts prior to the discovery of the Ponzi Scheme; and (iii) claims and causes of action the Partnerships have against certain individuals, professionals, and entities.

As discussed more fully in the Distribution, at this time, S&P funds available for the initial interim distribution, net of holdbacks for administrative costs and other claims, is approximately \$3,900,000.00. Likewise, P&S funds available for the initial interim distribution, net of holdbacks for administrative costs and other claims, is approximately \$1,000,000.00.

## **III. PARTNER CLAIMS ANALYSIS/CAPITAL ACCOUNT**

### **A. Overview of the Conservator's Claims Analysis**

Based upon the books and records of the Partnerships in the Conservator's possession, the Conservator and his professional staff at Michael Moecker and Associates, Inc. have reviewed and analyzed the Partners' interests in the Partnerships and their relative rights in the current assets of the Partnerships' Property.

To accurately determine each individual Partner's capital account, the Conservator and his team were required to recreate each account based on the total cash contributions made by the Partner and total cash distributions received by the Partner from the beginning of the Partnerships. Moreover, as the original Partnership records reflected hundreds and hundreds of transactions accounting for reductions of each Partner's capital account for fees and other costs, adjustments were required to determine each Partner's true 'net' position.

Attached hereto and incorporated by reference herein as **Exhibit “A” (P&S)** and **Exhibit “B” (S&P)** are spreadsheets reflecting the results of the Conservator’s analysis (the “Spreadsheets”).

Based on the review of the available documents, the Conservator has determined that the Partners generally fall within one of two classes:

1. The first class of Partners is comprised of Partners who contributed more cash to the Partnerships than they received distributions from the Partnerships. On a ‘net’ basis, these Partners – Net Losers – lost at least some investment dollars that originated outside of the Ponzi Scheme (“Net Loss”).
2. The second class of Partners is comprised of Partners who received more distributions from the Partnerships than they made contributions to the Partnerships. On a ‘net’ basis, these Partners – Net Winners – received 100% of their investment dollars plus at least some amount of money (‘fictitious profits’) which originated from the Ponzi Scheme (“Net Winnings”).

To protect the identities of all of the Partners, the Spreadsheets identify Partners only by Investor Account Number.<sup>3</sup> In the Distribution Motion the Conservator provided spreadsheets demonstrating how Partnerships Property would be distributed pursuant to the Net Investment Method.<sup>4</sup> Certain Partners filed papers which recommended the

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<sup>3</sup> If you are a Partner and you do not know your Investor Account Number, please contact the attorneys for the Conservator at the undersigned law firm by calling 954-712-7400. Please have available information to help confirm your identity.

<sup>4</sup> Importantly, the Net Investment Method calculates the Partner’s net position if ‘profits’ are not considered. The Net Investment Method accurately reflects the application of the Partnerships’ Agreements if the false ‘profits’ are omitted.

Rising Tide Method and/or the Last Statement Method.<sup>5</sup> Accordingly, the Conservator attaches Exhibit “A” and “B” Spreadsheets hereto to illustrate how distributions would occur pursuant to the Net Investment, Rising Tide, and the Last Statement methods.

Each of the Spreadsheets contain: 1) the Partners’ Investor Account Number; 2) the amount of Net Loss or Net Winnings; 3) a proposed interim distribution amount for each methodology; and 4) remarks or footnotes with specific information for certain Partners. Please note, in certain circumstances accounts held by the same investor were combined (consolidated) to reach a total ‘net’ figure for the particular Partner.<sup>6</sup> For example, if John Doe is a Partner with two accounts: Account #1 which is a Net Winner of \$10,000; and Account #2 which is a Net Loser of \$15,000, Account #1 and Account #2 were consolidated resulting in John Doe being treated as a Net Loser in the consolidated amount of \$5,000.<sup>7</sup>

## **B. The Partners’ Positions**

### *P&S Net Losers*

Based on the Conservator’s analysis, there are forty-seven (47) P&S Net Losers.

### *S&P Net Losers*

Based on the Conservator’s analysis, there are approximately fifty-seven (57) S&P Net Losers.

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<sup>5</sup> Under the Last Statement balance, false profits derived by the ponzi investment are credited to the Partners accounts.

<sup>6</sup> Corporate formalities have been respected such that accounts were not consolidated where an individual Partner is also the owner of an entity Partner. For Example, John Doe is a Partner with Account #1. John Doe is also the owner of Company ABC. Company ABC is a Partner with Account #2. Account #1 and Account #2 were not consolidated.

<sup>7</sup> The right of setoff (also called "offset") allows entities that owe each other money to apply their mutual debts against each other, thereby avoiding "the absurdity of making A pay B when B owes A." *Studley v. Boylston Nat. Bank*, 229 U. S. 523, 528 (1913); *see also Wiand v. Meeker*, 8:10-CV-166-T-EAK, 2013 WL 298335 at \*4 (M.D. Fla. Jan. 25, 2013) (noting that set-off is appropriate in certain instances where investors have multiple accounts).

All Net Losers are projected to receive an initial distribution under the Net Investment and Last Statement Methods. Under the Rising Tide Method 23 of 47 P&S Net Losers and 21 of 57 S&P Net Losers would be excluded from an initial distribution. Under Last Statement Balance all of the Net Losers will receive a smaller distribution than under the Net Investment Method.

#### Net Winners

Based upon the review of the Partnerships books and records, the Conservator has identified approximately ninety-seven (97) S&P Net Winners and thirty-one (31) P&S Net Winners. The Last Statement Method is the only method under which Net Winners would receive an initial distribution.

#### **IV. Distribution Methods Available to the Conservator**

In the Distribution Motion the Conservator identified the following methodologies for distribution of the Partnership Property:

Equitable Methodologies:

1. Net Investment or Cash-In-Cash-Out-Method
2. Rising Tide Method

Partnership Law Methodologies:

1. Partnership Agreement Method
  - a. Last Statement Balance Interpretation
  - b. Pure Partnership Interpretation
2. Statutory General Partnership Law Method

The Distribution Motion provided a detailed description of each method and why certain courts have advocated in favor of a particular method.

Ultimately, the Conservator recommended distribution based upon the Net Investment Method as this method is equitable and was utilized in the BLMIS Liquidation from which most of the Partnerships Property originated. *In re Bernard L. Madoff Inv. Sec. LLC*, 654 F.3d 229, 238 (2d Cir. 2011). Importantly, a strict interpretation of the Partnerships Agreements essentially results in the same distribution as the Net Investment Method. One significant difference is that under the Partnerships Agreement method, Net Winners would be required to give back their net winning to share in the losses of the Partnership.

Additionally, the Net Investment Method has been applied by several United States Circuit Courts as well as Florida Federal Courts. *See, e.g., CFTC v. Topworth Int'l, Ltd.*, 205 F.3d 1107, 1115-16 (9th Cir. 2000); *Focht v. Athens (In re Old Naples Sec., Inc.)*, 311 B.R. 607, 616-17 (M.D. Fla. 2002).

In response to the Complaint or the Distribution Motion, approximately 57 parties have filed pleadings, in support or opposition.<sup>8</sup>

In summary,<sup>9</sup>

Takes no position/ Requests Court Make Determination <sup>10</sup>	Net Investment	Rising Tide	Partnership Agreement/ Last Statement Balance		Florida Statute	Total Responses
31	11	7	Partnership Agreement 5	Last Statement Balance	0	58

<sup>8</sup> Recognizing that Partners who support the Conservator's recommendation were not required to respond.

<sup>9</sup> Attached as Exhibit "C" is a spreadsheet reflecting the interested parties' responses.

<sup>10</sup> Wayne Horwitz as Trustee for Howard H. and Joyce Living Trust response does not endorse any particular distribution method (the "Horwitz Objection"). However, he objected to the Distribution Motion on the basis that the Conservator's scheduled amount was for less than that parties claim. This may favor a distribution based upon the last statement balance. The Conservator replies to the Horwitz Objection by stating that the statement balance includes false profits which ought not be considered if the Court adopts an Equitable Method. However, in the event that the Court adopts the Last Statement view of the Partnership Agreements Method then Horwitz Objection would be moot.



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As was the case prior to the commencement of the Interpleader Action, parties generally selected the distribution method which favored them. Of the Partners who suggested a method other than Net Investment, only the Rising Tide and Last Statement were recommended. Accordingly, the Conservator's Reply is limited to the virtues and consequences associated with the Rising Tide and the Last Statement Balance Methods.

### ***1. Rising Tide Method***

The Rising Tide Method has steadily gained approval when equitable distribution of assets is appropriate. *S.E.C. v. Huber*, 702 F.3d 903, 904 (7th Cir. 2012). Rising Tide Method attempts to spread losses as evenly as possible across the parties on a percentage basis. To do so, the Rising Tide Method treats all interim distributions to investors as 'deemed' recoveries paid from the hypothetical pool of total assets available for recovery.

"Imagine that three investors lose money in a Ponzi scheme. *A* invested \$150,000 and withdrew \$60,000 before the scheme collapsed, so his net loss was \$90,000. *B* invested \$150,000 but withdrew only \$30,000; his net loss was \$120,000. *C* invested \$150,000 and withdrew nothing, so lost \$150,000. Suppose the receiver gets hold of \$60,000 in assets of the Ponzi scheme--one-sixth of the total loss of \$360,000 incurred by the three investors (\$90,000 + \$120,000 + \$150,000). We'll call these recovered assets 'receivership assets'...In our example, the total of withdrawn plus receivership assets is \$150,000 (\$60,000 + \$30,000 + \$0 [the withdrawals] + \$60,000 [the receivership assets]), but there is only the \$60,000 in such assets to distribute. *A*, having been deemed (as a consequence of the rising tide approach) to have "recovered" \$60,000 before the collapse of the Ponzi scheme, is entitled to nothing from the receiver, as otherwise the remaining sum of withdrawals and receivership assets--a total of \$90,000 (\$30,000 in withdrawals, all by *B*, and \$60,000 in receivership assets)--would be insufficient to bring the remaining investors up to anywhere near *A*'s level. For remember that under the net loss method each investor would have received the same fraction of receivership assets as his fraction of the loss, and thus *A* would have received \$15,000, *B* \$20,000, and *C* \$25,000. The result, since under the rising tide method withdrawals are treated as compensation, is that *A* would have been 'compensated' to the tune of \$75,000 (\$60,000 withdrawn + \$15,000 in receiver

assets), *B* \$50,000 (\$30,000 + \$20,000), and *C* \$25,000 (the balance of receiver assets, *C* having had no withdrawals). For the ‘tide’ to raise *B* and *C* as close to *A* as possible, *B* has to receive \$15,000 in receiver assets, for a total ‘recovery’ of \$45,000, and *C* the remaining receiver assets, giving him \$45,000 too. The division of withdrawals plus receiver assets is then 60–45–45, as shown in the next chart, versus 75–50–25 under the net loss method. *A* and *B*, the withdrawers, are thus disadvantaged in the litigation by the rising tide method compared to the net loss method; they correspond to the eleven appellants. *C*, the non-withdrawer, is advantaged; he corresponds to the investors in Huber’s scheme who had made no withdrawals.”

*S.E.C. v. Huber*, 702 F.3d 903, 904-906 (7th Cir. 2012)

Like the Net Investment Method, the Rising Tide Method disregards the fictitious profits inherent in ponzi schemes, only recognizes the actual capital contributions, and treats all withdrawals as return of capital. Additionally, neither the Net Investment Method nor Rising Tide Method include any allowance for the time value of money. The Partnerships were established in December of 1992 and operated until December 2008. While Partners invested at different times; an investment made at the inception is treated the same as an investment made at the conclusion under both Equitable Methodologies.

A key distinction in the Rising Tide Method is that not all Net Losers receive a distribution. In fact, Net Losers only receive a distribution to the extent required to make all of the Net Loser’s loss percentage the same. This is because the interim distributions the partners received are treated differently.

Certain Partners who the Conservator recommended withholding their distributions due to, among other things, their ‘insider’ status favor the Rising Tide Method. These Partners include:

- Burt and Susan Moss, Burt Moss and Associates, Inc., and Burton Harold Moss IRA (collectively “the Moss Parties”) filed an objection to the Distribution Motion on June 30, 2013 (the “Moss Objection”);

- Steven Jacob,<sup>11</sup> Guardian Angel Trust, LLC (“Guardian Angel”), and SPJ Investments, Ltd. (“SPJ”) (collectively the “Insiders”) filed an objection to the Distribution Motion on July 1, 2013 (the “Jacob Objection”).<sup>12</sup>

The Rising Tide Method benefits the Insiders. It appears that, the Insiders received improper fees which would not be viewed as returns of capital under this method. If approved, the Rising Tide Method would allow these Insiders to receive more dollars at the expense of other net losers. The Conservator recommends holding back the proposed interim distribution, or at least the amount of the impermissible commissions and fees until a trial on the matter or the parties resolve issue.<sup>13</sup>

Under the circumstances here, under the Rising Tide Method not all Net Losers would receive a distribution. For example, 23 of 47 P&S Net Losers and 21 of 57 S&P Net Losers will not receive an initial distribution under the Rising Tide Method. Accordingly, the Rising Tide Method penalizes certain good faith investors who did not know of the fraudulent scheme.

## **2. *Actual Capital Account Method v. Last Statement Balance Method***

Certain Partners favor Partnership Agreement Method. However, there two interpretations of the Partnership Agreement Method. The first view provides that the Partnership Agreement would pro-rata distribution based upon the last statement balance received from the Partnerships (the “Last Statement Method”). Partners in favor of the Last Statement interpretation suggest that the Last Statement purportedly reflects each Partner’s capital account balance. Another view, favored by the Conservator, as reflected

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<sup>11</sup> The Conservator has not located records which reflect that Steven Jacob (“Jacob”) was a partner in his individual capacity.

<sup>12</sup> Jacob’s Objection ought to be stricken as it is a pro se pleading on behalf of two business entities, Guardian Angel and SPJ, which must be represented by a Florida licensed attorney.

<sup>13</sup> Moss Objection agrees with holding back only the disputed portion. Moss Objection at pp. 4, 6, and 8.

in the Distribution Motion is that all Partner's capital accounts be recalculated pursuant to the Partnership Agreements to ignore false profits.<sup>14</sup> Such method is essentially the Net Investment Method.<sup>15</sup> The Net Investment interpretation of the Partnership Agreements, among other things, adjusts the Partner's capital account balances to ignore the false profits purportedly generated by investing in the Madoff Ponzi and does not require supplementing the Partnership Agreements with RUPA which would require all Partners who have negative capital accounts to supply capital.

*Last Statement Interpretation of Partnership Agreements*

The Partners who suggest that the Partnership Agreements require pro rata distributions based upon the Last Statement may rely on certain references to the Partnerships' books in the Partnerships' Agreements.

Among the negative features of the Last Statement interpretation of the Partnership Agreements is the legitimization of the false profits of the Ponzi Scheme. Such interpretation is contrary to Florida law which presumes that parties to a contract intend a lawful purpose. *Umbel v. Foodtrader.com, Inc.*, 820 So.2d 372, 375 (Fla. 3<sup>rd</sup> Dist. Ct. App. 2002) ("It is true that the law presumes that contracts are created for legal purposes.") The Last Statements reflect years of false profits which 'accumulated' in a Partner's account. By providing pro rata distributions based upon the Last Statements certain Net Winners will receive a windfall; while Net Losers will receive a reduced share compared to the Equitable Methods. It is contrary to partnership law that the Partnerships could be overall Net Losers; while certain Partners who are Net Winners receive additional funds upon wind down.

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<sup>14</sup> See Distribution Motion at pp. 26-29.

<sup>15</sup> Certain de minimis operating expenses not considered in the Net Investment Method would reduce Partner's capital accounts.

Moreover, a large portion of the Partnerships' funds were derived upon the Partners Net Investment losses as paid by the Trustee. Accordingly, such distributions ought to be paid fore benefit of those Net Losers whose claims were paid.

Proponents of the Last Statement interpretation argue that the use of this method protects the ponzi investor's reasonable reliance on the statements produced by the company (however fraudulent) and accounts for the time value of money lost as a result of the investment.

#### *The Net Investment Interpretation of the Partnership Agreements*

The Conservator disagrees with the Last Statement interpretation of the Partnership Agreements. Among other things, the Last Statement fails to account for the losses suffered by the Partnerships and does not eliminate the false profits.

The Partnerships' Agreements provide that the partnership interest should be "adjusted" to include "net profits or losses not previously credited or charged against the income or capital accounts." (S&P Partnership Agreement Article 11.01); (P&S Partnership Agreement Article 11.01). However, here, the Last Statement provided to the Partners is silent about net losses not previously charged against the income or capital accounts.

Accordingly, the Partner's partnership interests must be reduced to reflect the losses suffered by the Partnerships as a result of their investments in the Ponzi Scheme.

The Internal Revenue Service ("IRS") has indicated that partners of a general partnership that directly invested in a ponzi scheme, such as the Partnerships, should treat these losses as "theft losses". Revenue Ruling 2009-9. The Partnerships' Agreement approach to losses is consistent with the IRS position that theft losses should be passed

through to the partners and reflected on the partner's individual returns. IRS PLR 2009-0154 ("Partnerships (or entities that may elect to be taxed as partnerships, such as limited liability companies) that qualify as direct investors may use the safe harbor treatment and pass the loss through to the indirect investor (partner)").

Additionally, the partners' capital accounts should be adjusted to reflect prior distributions as returns of capital because the sole investment was in the Madoff Ponzi. *Perkins v. Haines*, 661 F.3d 623, 627 (11th Cir. 2011) (in ponzi schemes, the general rule is that defrauded investors may receive returns of their principle investment as being for 'value'). To the extent a partner received more in distributions than actual contributions of capital, i.e. Net Winners, these partners will have negative capital accounts.

Partners with negative capital accounts are not entitled to any distribution under the Partnerships Agreements until all other partners have received 100% of their capital contributions.

As a final concern, the Partnerships' Agreements do not explicitly contemplate Net Winners, i.e., Partners with negative capital accounts at the time of liquidation. Instead, one must look to the Florida RUPA default rules. Fla. Stat. §620.8103(1).

When a partner has a negative capital account at the time for liquidation, FL RUPA provides that, **"a partner shall contribute to the partnership an amount equal to any excess of the charges over the credits in the partner's account."** Fla. Stat. § 620.8807(2).

Accordingly, a partner with a negative capital account, a Net Winner, owes a debt to the respective partnership and is required to return their capital account to zero upon

liquidation by contributing the Partnerships. This result is reflected in Uniform Comment 3 of RUPA § 807 which provides:

Any partner with a negative account balance must contribute to the partnership an amount equal to the excess of charges over the credits in the account provided the excess relates to an obligation for which the partner is personally liable under Section 306. The partners may, however, agree that a negative account does not reflect a debt to the partnership and need not be repaid in settling the partners' accounts.

RUPA § 807 Cmt. 3.

In this case, because certain of the Partners (the Net Winners), received more from the Partnerships than they contributed, they have negative capital accounts.<sup>16</sup>

Accordingly, the Conservator would contend that even if this Court were to determine that the Partnerships' Agreements govern distribution, the Last Statements should not be used to determine the pro rata distribution. Rather, the Net Investment accurately reflects the Partners' capital accounts. Notwithstanding the Conservator's view that the Net Investment is correct, the Conservator has included an illustration within the Spreadsheet to of how distribution would occur under Last Statement.

### ***3. The Court Should Not Enforce the Partnerships Agreements to the Extent They Further an Illegal Activity***

The Partnerships Agreements provide that their purpose was to invest in securities. However, in practice the Partnerships invested solely with Madoff in an illegal Ponzi Scheme. “W]hen a contract or agreement, express or implied, is tainted with the vice of such illegality, no alleged right founded upon the contract or agreement

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<sup>16</sup> Recovery of transfers to the Net Winners is the subject of a related case styled: *Margaret Smith as General Partner of P&S Associates, General Partnership and S&P Associates, General Partnership, Plaintiffs v. Janet A. Hooker Charitable Trust, et. al.*, Case No. 12-034121 (21) (the “Net Winners Suit”) presently pending in the Complex Litigation Division in the Circuit Court of the Seventeenth Judicial Circuit, in and for Broward County, Florida.

can be enforced in a court of justice”” *Jupiter Med. Ctr., Inc. v. Visiting Nurse Ass'n of Florida, Inc.*, 72 So. 3d 184, 186 (Fla. 4<sup>th</sup> Dist. Ct. App. 2011), *quoting* *Schaal v. Race*, 135 So.2d 252, 256 (Fla. 2d Dist. Ct. App. 1961). Accordingly, this Court ought not distribute pursuant to the Last Statement Method as doing so would attempt to legitimize the illegal Ponzi enterprise which provided false profits to the Partnerships.

## **V. Disputes Concerning Particular Parties**

In the Distribution Motion the Conservator recommended holding back distributions to certain parties while the Conservator investigated their accounts. These parties include:

### **S&P Partners**

1. Fox Family Trust
2. Ralph C. Fox, Trustee
3. Guardian Angel, LLC
4. SPJ Limited Investment, LTD
5. Michael or Ann Sullivan
6. Ann Sullivan, with Michael Sullivan as beneficiary
7. James E. Yonge

### **P&S Partners**

1. Vincent T. Kelly
2. Vincent T. Kelly Irrevocable Trust
3. Burt Moss 401K
4. Burt and Susan Moss, TBE
5. Sam and Edith Rosen
6. Rebekah & Richard Wills

The Conservator requested that these parties voluntarily turnover over certain documents to assist with his investigation.

In response to the Distribution Motion, three objections were filed based upon the Conservator’s recommendation to reserve and withhold all interim distributions. The following objections were filed:

1. An affidavit filed by Carol Fox on behalf of Fox Family Trust;



2. the Jacob Objection; and
3. the Moss Objection.

Based upon, among other things, a review of documents provided, the Conservator has determined that his holdback recommendation ought to be withdrawn as to:

1. Fox Family Trust<sup>17</sup>
2. James E. Yonge<sup>18</sup>

Additionally, certain parties agree with the Conservator's recommendation to reserve and withhold all interim distributions until further order of the Court. These parties include:

1. Vincent T. Kelly
2. Vincent T. Kelly Irrevocable Trust

Accordingly, it appears only the Moss Objection and Jacob Objection remain outstanding.

#### *The Moss Objection*

The Moss Objection agrees that the Conservator has correctly computed the amount of his claim for two his three accounts.<sup>19</sup> However, the Moss Objection disagrees with the Conservator's recommendation to holdback payments to Moss pending an investigation of the Moss' accounts.

The Conservator requested and has since been provided with certain documents related to the Moss' accounts. Based upon, among other things, the review of these documents the Conservator has determined that a deposition of Burt and Susan Moss is

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<sup>17</sup> The Fox Family Trust provided documentation which reflects that the person who received commissions and fees would not receive a distribution from the Partnerships.

<sup>18</sup> The Conservator has completed his investigation of Yonge and believes distribution to same is appropriate.

<sup>19</sup> One of Moss' "accounts" was not directly invested with either of the Partnerships. Rather, it was a purportedly a limited partner in SPJ which in turn invested in the Partnerships.

appropriate. Accordingly, the Conservator recommends that the Court reserve, but withhold interim distributions to the Moss Parties as noted in the Distribution Motion. If the Court determines that a complete holdback is inappropriate, the Conservator recommends holding back the amount of the impermissible commissions and fees as part of the initial distribution until a trial on the matter or the parties resolve issue.<sup>20</sup>

*Jacob Objection on behalf of Guardian Angel and SPJ*

Initially, the Conservator notes that Jacob's Objection is improper and untimely. This Court's Third Order Resetting Deadlines and Case Management Conference provided that interested parties had until June, 30, 2013 to file a response to the Conservator's Distribution Motion. Jacob received notice of the deadline. Accordingly, this Court ought not consider Jacob's Objection as it was filed on July 1, 2013 and is therefore untimely.

Additionally, the Jacob Objection is a pro se filing purportedly on behalf of Guardian Angel and SPJ. Such action is impermissible under Florida law. Florida law requires business entities to be represented by attorneys. *Szteinbaum v. Kaes Inversiones y Valores, C.A.*, 476 So. 2d 247, 248 (Fla. 3d Dist. Ct. App. 1985) ("It is well recognized that a corporation, unlike a natural person, cannot represent itself and cannot appear in a court of law without an attorney.") Jacob, as a non-attorney, is not authorized to represent entities before this Court. *James D. Pauls, Ltd. v. Pauls*, 633 F. Supp. 34, 35 (S.D. Fla. 1986) (Standing for the proposition that general partner, who is not a licensed attorney, may not represent a limited partnership in a *pro se* lawsuit).

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<sup>20</sup> Moss Objection does not dispute holding back only the disputed portion. Moss Objection at pp. 4, 6, and 8.

Further, Jacob Objection attempts to create a factual dispute where non-exist. Jacob Objection states that “[t]he Plaintiffs are not a Ponzi Scheme...A Ponzi Scheme is not a Ponzi scheme just because the Conservator calls it a Ponzi scheme.” However, the Distribution Motion does not provide that the Partnerships are ponzi schemes. Rather, the Distribution Motion reflects that the Partnerships invested exclusively in a Ponzi Scheme and therefore this Court ought to consider equitable methods utilized in cases where the funds were derived from a Ponzi scheme.

In the event that this Court considers the Jacob’s Objection, the Conservator replies as follows.

*Guardian Angel*

Guardian Angel appears on the books and records of S&P as a Partner.

Based upon, among other things, the Conservator’s review of the available books and records of the Partnerships, it appears that certain Partners were unknowingly transferred from being partners in one of the Partnerships to being partners of Guardian Angel Trust, LLC (“Guardian Angel”). In fact, certain partners of Guardian Angel have contacted the Conservator in writing and have requested that he oversee the distribution to the partners of Guardian Angel.

Guardian Angel appears to be an entity formed by the insiders of the Partnerships and still appears to be controlled by insiders of the Partnerships.

The Conservator requested certain information from the purported general manager of Guardian Angel, Jacob (“Jacob”). Initially, Jacob refused to turnover the requested information.

The Conservator obtained an Order compelling Jacob to turnover information related to the Guardian Angel. Jacob turned over certain documents related to Guardian Angel and the Conservator has reviewed the same.

Based upon, among other things, the Conservator's review of certain documents the Conservator recommends reserving but withholding all proposed distributions to Guardian Angel. Among other things, the records reflect that Jacob received approximately \$800,000.00 in the form of improper fees. Accordingly, the Court ought not require the Conservator to turnover Partnerships funds to the defendants of the Insider Suit.

In the event that this Court determines that a complete holdback is not appropriate, the Conservator recommends distributing directly to any members of Guardian Angel who are not also not defendants in the Insider Suit. Further, the Conservators recommends that the same distribution methodology applied to the Partners of the Partnerships also be applied to the partners of Guardian Angel. Jacob appears to agree with this view. Jacob Objection at p. 6.

*SPJ Limited Investments, Ltd.*

SPJ Limited Investments, Ltd. ("SPJ") appears on the books and records of S&P as a Partner. It appears that SPJ was formed by insiders of the Partnerships to create a conduit for self-directed IRA monies ("IRA Investors") to be invested in the Partnerships.

Like Guardian Angel, SPJ still appears to be controlled by insiders of the Partnerships and Jacob purports to be one of its managing general partners.

Like Guardian Angel, certain partners of SPJ have contacted the Conservator in writing and have requested that he oversee the distribution to the partners of SPJ.

According to Jacob, the IRA Investors were required to go through a qualified custodian to invest in SPJ (a “Custodian”).

As of this date, Jacob has failed to identify a Custodian. Jacob Objection reflects that certain of these accounts likely do not have Custodians.

Accordingly, the Conservator recommends reserving but withholding all proposed distributions to Guardian Angel until a Custodian is in place to receive the distribution or until an alternative method of distributions is authorized. If this Court does not deem a complete holdback appropriate the Conservator recommends providing each partner of SPJ of notice of the forthcoming distribution and distribute it to each partner of SPJ, who is not a defendant in the Insider Suit, directly so as to bypass interference by insiders. In such a case, the Conservator recommends sending letters to each partner of SPJ and requesting that they respond to the Conservator within 60 days (i) the name of the Custodian they wish to receive the funds; or (ii) a request to receive the distribution directly with a 1099.<sup>21</sup> In the event the Conservator is unable to locate a partner in SPJ, the Conservator recommends distributing the funds to an independent Custodian until the partner can be located.

## **VI. Improper Defenses**

Additionally certain parties,<sup>22</sup> asserted the defense that the Third Amended Complaint fails to state a cause of action for relief. The Conservator has moved to strike such defense. Another party, Mildred Richardson (“Richardson”) has filed a motion to

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<sup>21</sup> Jacob agrees with this approach. Jacob Objection at p. 6.

<sup>22</sup> These parties include Robert A. Uchin Revocable Trust (“Uchin”), Kathleen G. Walsh, James R. (deceased) & Kathleen Walsh, Margaret B. Gwinn Trust, Walsh Family Trust #1, Walsh Family Trust #2, Walsh Family Trust #3, Robert G. Walsh Family Trust #1, Robert G. Walsh Family Trust #2, Robert G. Walsh Family Trust #3, Robert G. Walsh Family Trust #4 (collectively, the “Walsh Family Claimants”), Dalores Barone, Carl Boschetti, Annette Boschetti, and Denise Bryan (Collectively, the “Boschetti Defendants”), Sam and Edith Rosen (“Rosen Defendants”).

dismiss on the basis that this Court lacks personal jurisdiction over her. However, as a Partner of the Partnerships which as Florida general partnerships she subject to this Court's personal jurisdiction.

WHEREFORE, the Conservator respectfully requests that this Court enter an Order:

(i) Approving the Conservator's determination of Allowed Claims as set forth in herein and in attached as **Exhibits "A" and "B"** to the Distribution Motion; (ii) Approving the Net Investment Method as set forth herein and attached as **Exhibits "A" and "B"** to the Distribution Motion as the proper method for determining the Partners' Allowed Claims; (iii) Approving the amount of initial distributions to Net Losers as proposed herein and pursuant to **Exhibits "A" and "B"** attached to the Distribution Motion; (iv) Approving withholding distributions to certain Partners as proposed herein and identified in **Exhibits "A" and "B"**; (v) Authorizing the Conservator to make the interim distributions to the Partners as proposed herein pursuant to **Exhibits "A" and "B"** attached to the Distribution Motion within a reasonable time of the entry of an Final Non-Appealable Order granting this Distribution Motion; and (vi) (vii) for any further relief that this Court deems necessary and appropriate.

Dated: September 30, 2013

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**Exhibit “A”**

**P&S Spreadsheet Without Names**

**P&S Investors - Account Number Only**  
**Distribution Analysis Utilizing Net Investment, Rising Tide, and Statement Balance Methods.**

\*For comparison purposes, all investors are included.  
All claims are not approved.

Investor Account Number	NET INVESTMENT				RISING TIDE			STATEMENT BALANCE			
	Combined Accounts	Net Loser Claim Amount	Net Winner Amount	*Proposed Interim Distribution (10.264%)	Claim Amount/ Net Investment	Total Distribution As Percentage of Total Investment	*Proposed Interim Distribution	Combined Accounts	Ending Balance as of 12/31/2008	Statement Balance Claim Amount	* Proposed Interim Distribution (5.467%)
PS A071-AB		\$ 100,000.00		\$ 10,264.00	\$ 100,000.00	0.000%	\$ 20,970.10		\$ 105,076.72	\$ 105,076.72	\$ 5,744.54
PS A071		\$ 100,000.00		\$ 10,264.00	\$ 100,000.00	0.000%	\$ 20,970.10		\$ 105,098.51	\$ 105,098.51	\$ 5,745.74
PS B21-1	\$ 53,146.52							\$ 186,015.64			
PS B21-2	\$ (68,000.00)							\$ 103,367.41			
PS B021-3	\$ 1,266.29							\$ 44,552.92			
total for PS B21-1, PS B21-2, & PS B021-3	\$ (13,587.19)		\$ (13,587.19)	\$ -	\$ (13,587.19)	102.950%	\$ -	\$ 333,935.97	\$ 333,935.97	\$ 333,935.97	\$ 18,256.28
PS B01			\$ (11,000.00)	\$ -	\$ (11,000.00)	114.865%	\$ -	\$ 253,625.80	\$ 253,625.80	\$ 253,625.80	\$ 13,865.72
PS C058-AB		\$ 245,000.00		\$ 25,146.80	\$ 245,000.00	26.866%	\$ -	\$ 359,634.99	\$ 359,634.99	\$ 359,634.99	\$ 19,661.24
PS C28-AB		\$ 294,986.00		\$ 30,277.36	\$ 294,986.00	37.896%	\$ -	\$ 670,461.23	\$ 670,461.23	\$ 670,461.23	\$ 36,654.12
PS C054-AB		\$ 388,000.00		\$ 39,824.32	\$ 388,000.00	31.206%	\$ -	\$ 604,183.74	\$ 604,183.74	\$ 604,183.74	\$ 33,030.73
PS C055-AB		\$ 440,000.00		\$ 45,161.60	\$ 440,000.00	33.333%	\$ -	\$ 697,708.10	\$ 697,708.10	\$ 697,708.10	\$ 38,143.70
PS C41-AB		\$ 75,486.00		\$ 7,747.88	\$ 75,486.00	49.839%	\$ -	\$ 158,735.98	\$ 158,735.98	\$ 158,735.98	\$ 8,678.10
PS C30	\$ 1,629.23							\$ 8,321.70			
PS H63	\$ (3,467.98)							\$ -			
combined total for PS C30 & PS H63	\$ (1,838.75)		\$ (1,838.75)	\$ -	\$ (1,838.75)	101.361%	\$ -	\$ 8,321.70	\$ 8,321.70	\$ 8,321.70	\$ 454.95
PS C002-1	\$ (129,911.63)							\$ (942.18)			
PS C28-2	\$ 176,463.64							\$ 468,241.82			
combined total for PS C002-1 & PS C28-2	\$ 46,552.01	\$ 46,552.01		\$ 4,778.10	\$ 46,552.01	87.588%	\$ -	\$ 467,299.64	\$ 467,299.64	\$ 467,299.64	\$ 25,547.27
PS C29			\$ (182,532.35)	\$ -	\$ (182,532.35)	191.266%	\$ -	\$ -	\$ -	\$ -	\$ -
PS C033			\$ (33,490.39)	\$ -	\$ (33,490.39)	126.723%	\$ -	\$ -	\$ -	\$ -	\$ -
PS C03			\$ (61,707.18)	\$ -	\$ (61,707.18)	212.195%	\$ -	\$ -	\$ -	\$ -	\$ -
PS D-064			\$ (10,320.00)	\$ -	\$ (10,320.00)	105.160%	\$ -	\$ 22,108.85	\$ 22,108.85	\$ 22,108.85	\$ 1,208.69
PS D040		\$ 4,827.36		\$ 495.48	\$ 4,827.36	95.611%	\$ -	\$ 10,202.60	\$ 10,202.60	\$ 10,202.60	\$ 557.78
PS D067		\$ 200,000.00		\$ 20,528.00	\$ 200,000.00	0.000%	\$ 41,940.21	\$ 214,467.56	\$ 214,467.56	\$ 214,467.56	\$ 11,724.94
PS F062		\$ 216,000.00		\$ 22,170.24	\$ 216,000.00	6.087%	\$ 32,147.28	\$ 273,854.70	\$ 273,854.70	\$ 273,854.70	\$ 14,971.64
PS F04		\$ 78,915.77		\$ 8,099.91	\$ 78,915.77	69.257%	\$ -	\$ 273,235.87	\$ 273,235.87	\$ 273,235.87	\$ 14,937.81
PS F031		\$ 500,000.00		\$ 51,320.00	\$ 500,000.00	0.000%	\$ 104,850.51	\$ 801,692.97	\$ 801,692.97	\$ 801,692.97	\$ 43,828.55
PS G039		\$ 285,018.00		\$ 29,254.25	\$ 285,018.00	0.000%	\$ 59,768.57	\$ 398,175.81	\$ 398,175.81	\$ 398,175.81	\$ 21,768.27
PS G073		\$ 200,000.00		\$ 20,528.00	\$ 200,000.00	0.000%	\$ 41,940.21	\$ 204,706.31	\$ 204,706.31	\$ 204,706.31	\$ 11,191.29
PS H05			\$ (263,764.54)	\$ -	\$ (263,764.54)	157.187%	\$ -	\$ 718,456.23	\$ 718,456.23	\$ 718,456.23	\$ 39,278.00
PS H030		\$ -	\$ -	\$ -	\$ -	100.000%	\$ -	\$ -	\$ -	\$ -	\$ -
PS H030			\$ (127,286.32)	\$ -	\$ (127,286.32)	110.775%	\$ -	\$ -	\$ -	\$ -	\$ -
PS H036			\$ (472,624.27)	\$ -	\$ (472,624.27)	132.554%	\$ -	\$ -	\$ -	\$ -	\$ -
PS-060		\$ 325,000.00		\$ 33,358.00	\$ 325,000.00	0.000%	\$ 68,152.83	\$ 489,209.41	\$ 437,761.36	\$ 437,761.36	\$ 23,932.41
PS-H070		\$ 50,000.00		\$ 5,132.00	\$ 50,000.00	0.000%	\$ 10,485.05	\$ 53,431.70	\$ 53,431.70	\$ 53,431.70	\$ 2,921.11
PS H06		\$ 116,801.84		\$ 11,988.54	\$ 116,801.84	0.462%	\$ 23,953.72	\$ 610,267.81	\$ 610,267.81	\$ 610,267.81	\$ 33,363.34
PS H07			\$ (157,884.63)	\$ -	\$ (157,884.63)	363.141%	\$ -	\$ -	\$ -	\$ -	\$ -
PS H08			\$ (117,000.00)	\$ -	\$ (117,000.00)	176.471%	\$ -	\$ 87,314.23	\$ 87,314.23	\$ 87,314.23	\$ 4,773.47
PS H29			\$ (28,045.98)	\$ -	\$ (28,045.98)	133.013%	\$ -	\$ 73,156.66	\$ 58,156.66	\$ 58,156.66	\$ 3,179.42
PS H25		\$ 106,000.00		\$ 10,879.84	\$ 106,000.00	69.096%	\$ -	\$ 947,267.46	\$ 947,267.46	\$ 947,267.46	\$ 51,787.11
PS H051		\$ -	\$ -	\$ -	\$ -	100.000%	\$ -	\$ -	\$ -	\$ -	\$ -
PS H062		\$ 105,167.12		\$ 10,794.35	\$ 105,167.12	37.089%	\$ -	\$ 192,631.70	\$ 192,631.70	\$ 192,631.70	\$ 10,531.18
PS J0707		\$ 50,000.00		\$ 5,132.00	\$ 50,000.00	0.000%	\$ 10,485.05	\$ 52,549.26	\$ 52,549.26	\$ 52,549.26	\$ 2,872.87
PS J042		\$ 400,000.00		\$ 41,056.00	\$ 400,000.00	0.000%	\$ 83,880.41	\$ 643,831.95	\$ 643,831.95	\$ 643,831.95	\$ 35,198.29
PS K26			\$ (742.32)	\$ -	\$ (742.32)	103.112%	\$ -	\$ -	\$ -	\$ -	\$ -
PS K10		\$ 10,000.00		\$ 1,026.40	\$ 10,000.00	0.000%	\$ 2,097.01	\$ 58,477.43	\$ 58,477.43	\$ 58,477.43	\$ 3,196.96



**P&S Investors - Account Number Only**  
**Distribution Analysis Utilizing Net Investment, Rising Tide, and Statement Balance Methods.**

\*For comparison purposes, all investors are included.  
All claims are not approved.

Investor Account Number	Combined Accounts	NET INVESTMENT			RISING TIDE			STATEMENT BALANCE			
		Net Loser Claim Amount	Net Winner Amount	*Proposed Interim Distribution (10.264%)	Claim Amount/ Net Investment	Total Distribution As Percentage of Total Investment	*Proposed Interim Distribution	Combined Accounts	Ending Balance as of 12/31/2008	Statement Balance Claim Amount	* Proposed Interim Distribution (5.467%)
PS K11		\$ 30,000.00		\$ 3,079.20	\$ 30,000.00	0.000%	\$ 6,291.03		\$ 175,478.22	\$ 175,478.22	\$ 9,593.39
PS k029-K-1		\$ -	\$ -	\$ -	\$ -	100.000%	\$ -		\$ -	\$ -	\$ -
PS K034-K-2			\$ (40,463.20)	\$ -	\$ (40,463.20)	141.329%	\$ -		\$ -	\$ -	\$ -
PS K035		\$ 270,000.00		\$ 27,712.80	\$ 270,000.00	41.304%	\$ -		\$ 527,625.70	\$ 527,625.70	\$ 28,845.30
PS K09			\$ (6,172.48)	\$ -	\$ (6,172.48)	147.481%	\$ -		\$ -	\$ -	\$ -
PS L24			\$ (6,659.81)	\$ -	\$ (6,659.81)	113.320%	\$ -		\$ -	\$ -	\$ -
PS L037		\$ 41,127.45		\$ 4,221.32	\$ 41,127.45	40.395%	\$ -		\$ 76,598.78	\$ 76,598.78	\$ 4,187.66
PS L-49-R		\$ 574,697.83		\$ 58,986.99	\$ 574,697.83	12.219%	\$ 53,142.31		\$ 757,176.09	\$ 757,176.09	\$ 41,394.82
PS W059			\$ (2,058.41)	\$ -	\$ (2,058.41)	129.406%	\$ -		\$ -	\$ -	\$ -
PS M12			\$ (5,846.41)	\$ -	\$ (5,846.41)	119.414%	\$ -		\$ -	\$ -	\$ -
PS M13			\$ (52,427.58)	\$ -	\$ (52,427.58)	169.257%	\$ -		\$ -	\$ -	\$ -
PS M14			\$ (116,943.03)	\$ -	\$ (116,943.03)	193.033%	\$ -		\$ -	\$ -	\$ -
PS M16			\$ (68,514.07)	\$ -	\$ (68,514.07)	146.293%	\$ -		\$ -	\$ -	\$ -
PS M15		\$ 125,000.00		\$ 12,830.00	\$ 125,000.00	0.000%	\$ 26,212.63		\$ 450,635.81	\$ 450,635.81	\$ 24,636.26
PS M67		\$ 483,101.28		\$ 49,585.52	\$ 483,101.28	0.000%	\$ 101,306.83		\$ 521,381.33	\$ 521,381.33	\$ 28,503.92
PS M52		\$ 1,183,000.00		\$ 121,423.12	\$ 1,183,000.00	4.055%	\$ 200,104.45		\$ 1,436,413.49	\$ 1,436,413.49	\$ 78,528.73
PS N30		76224.09		\$ 7,823.64	\$ 76,224.09	63.354%	\$ -		\$ 154,997.09	\$ 154,997.09	\$ 8,473.69
PS N17-N			\$ (79,357.00)	\$ -	\$ (79,357.00)	189.165%	\$ -		\$ 66,200.05	\$ 66,200.05	\$ 3,619.16
PS O18			\$ (16,143.93)	\$ -	\$ (16,143.93)	139.589%	\$ -		\$ -	\$ -	\$ -
PS K033			\$ (1,948,756.02)	\$ -	\$ (1,948,756.02)	124.359%	\$ -		\$ -	\$ -	\$ -
PS P038		\$ 459,517.09		\$ 47,164.83	\$ 459,517.09	27.236%	\$ -		\$ 794,837.43	\$ 794,837.43	\$ 43,453.76
PS 053		\$ 132,000.00		\$ 13,548.48	\$ 132,000.00	12.000%	\$ 12,495.12		\$ 204,235.89	\$ 204,235.89	\$ 11,165.58
PS 066		\$ 446,000.00		\$ 45,777.44	\$ 446,000.00	10.800%	\$ 47,570.36		\$ 516,775.00	\$ 516,775.00	\$ 28,252.09
PS P27		\$ 210,000.00		\$ 21,554.40	\$ 210,000.00	10.638%	\$ 22,738.80		\$ 220,868.86	\$ 272,316.91	\$ 14,887.57
PS P26			\$ (20,629.68)	\$ -	\$ (20,629.68)	142.979%	\$ -		\$ -	\$ -	\$ -
PS R19-R		\$ 182,181.82		\$ 18,699.14	\$ 182,181.82	67.351%	\$ -		\$ 414,553.94	\$ 414,553.94	\$ 22,663.66
PS S028		\$ 65,993.00		\$ 6,773.52	\$ 65,993.00	70.670%	\$ -		\$ 181,993.77	\$ 181,993.77	\$ 9,949.60
PS S27		\$ 31,560.97		\$ 3,239.42	\$ 31,560.97	24.061%	\$ -		\$ 134,639.03	\$ 134,639.03	\$ 7,360.72
PS 068		\$ 30,000.00		\$ 3,079.20	\$ 30,000.00	0.000%	\$ 6,291.03		\$ 32,170.13	\$ 32,170.13	\$ 1,758.74
PS S22			\$ (2,600.18)	\$ -	\$ (1,460.31)	228.112%	\$ -		\$ -	\$ -	\$ -
PS U50			\$ (92,946.21)	\$ -	\$ (92,946.21)	137.178%	\$ -		\$ -	\$ -	\$ -
PS W032-B		\$ 397,151.00		\$ 40,763.58	\$ 397,151.00	32.914%	\$ -		\$ 651,184.69	\$ 651,184.69	\$ 35,600.27
PS W43			\$ (4,000.00)	\$ -	\$ (4,000.00)	116.000%	\$ -		\$ 3,819.22	\$ 3,819.22	\$ 208.80
PS W060		\$ 32,500.00		\$ 3,335.80	\$ 32,500.00	30.704%	\$ -		\$ 40,705.44	\$ 40,705.44	\$ 2,225.37
PS W44		\$ 5,000.00		\$ 513.20	\$ 5,000.00	80.000%	\$ -		\$ 18,404.53	\$ 18,404.53	\$ 1,006.18
PS W45		\$ 21,000.00		\$ 2,155.44	\$ 21,000.00	16.000%	\$ 1,147.86		\$ 35,094.78	\$ 35,094.78	\$ 1,918.63
PS W48		\$ 3,951.31		\$ 405.56	\$ 3,951.31	93.683%	\$ -		\$ 23,892.40	\$ 23,892.40	\$ 1,306.20
PS W23			\$ (12,661.52)	\$ -	\$ (12,661.52)	115.883%	\$ -		\$ -	\$ -	\$ -
PS W056		\$ 5,000.00		\$ 513.20	\$ 5,000.00	0.000%	\$ 1,048.51		\$ 7,445.54	\$ 7,445.54	\$ 407.05
PS S065		\$ 22,800.00		\$ 2,340.19	\$ 22,800.00	34.857%	\$ -		\$ 26,724.79	\$ 26,724.79	\$ 1,461.04
PS W067			\$ (13,700.00)	\$ -	\$ (13,700.00)	106.116%	\$ -		\$ 402.53	\$ 402.53	\$ 22.01
PS Z058-AB		\$ 578,000.00		\$ 59,325.92	\$ 578,000.00	42.200%	\$ -		\$ 942,559.89	\$ 942,559.89	\$ 51,529.75
	Totals	\$ 9,743,559.94		\$ 1,000,078.99			\$ 999,989.98			\$ 18,290,935.31	\$ 999,965.43

(1) Account closed in 2000

**Exhibit “B”**

**S&P Spreadsheet Without Names**

**S&P Investors - Account Number Only**  
**Distribution Analysis Utilizing Net Investment, Rising Tide, and Statement Balance Methods.**

\*For comparison purposes, all investors are included.  
All claims are not approved.

NET INVESTMENT					RISING TIDE			STATEMENT BALANCE		
Account Number	Combined Accounts	Net Loser/ Claim Amount	Net Winner Amount	*Proposed Interim Distribution (18.757%)	Claim Amount/ Net Investment	Total Distribution As Percentage of Total Investment	*Proposed Interim Distribution	Ending Balance as of 9/30/2008	Statement Balance Claim Amount	* Proposed Interim Distribution (8.794%)
SP A143			\$ (1,838.93)	\$ -	\$ (1,838.93)	120.662%	\$ -	\$ -	\$ -	\$ -
SP A01-AB			\$ (15,000.00)	\$ -	\$ (15,000.00)	130.612%	\$ -	\$ 91,380.53	\$ 91,380.53	\$ 8,036.00
SP A124			\$ (9,000.00)	\$ -	\$ (9,000.00)	104.523%	\$ -	\$ 35,523.14	\$ 35,523.14	\$ 3,123.90
SP A41		\$ 78,466.12		\$ 14,717.89	\$ 78,466.12	68.614%	\$ -	\$ 247,946.15	\$ 247,946.15	\$ 21,804.38
SP B139		\$ 10,000.00		\$ 1,875.70	\$ 10,000.00	0.000%	\$ 5,034.70	\$ 21,270.52	\$ 21,270.52	\$ 1,870.53
SP B113-IRA			\$ (23,593.47)	\$ -	\$ (23,593.47)	143.110%	\$ -	\$ -	\$ -	\$ -
SP B119-J (1)		\$ -	\$ -	\$ -	\$ -	100.000%	\$ -	\$ (688.14)	\$ -	\$ -
SP B37-H (2)			\$ (58,612.99)	\$ -	\$ (58,612.99)	206.569%	\$ -	\$ (52.69)	\$ -	\$ -
SP B74			\$ (40,458.71)	\$ -	\$ (40,458.71)	139.845%	\$ -	\$ -	\$ -	\$ -
SP B98		0	\$ -	\$ -	\$ -	100.000%	\$ -	\$ -	\$ -	\$ -
SP B137		\$ 1,696,000.00		\$ 318,118.72	\$ 1,696,000.00	18.107%	\$ 546,790.40	\$ 2,444,000.66	\$ 2,444,000.66	\$ 214,925.42
SP B143			\$ (86,195.71)	\$ -	\$ (86,195.71)	122.683%	\$ -	\$ -	\$ -	\$ -
SP B67-B			\$ (25,499.61)	\$ -	\$ (25,499.61)	117.832%	\$ -	\$ 19,063.94	\$ 19,063.94	\$ 1,676.48
SP-B131-H			\$ (15,720.18)	\$ -	\$ (15,720.18)	131.440%	\$ -	\$ -	\$ -	\$ -
SP B53-N		\$ 3,567.49		\$ 669.15	\$ 3,567.49	80.181%	\$ -	\$ 16,048.08	\$ 16,048.08	\$ 1,411.27
SP B142	\$ (38,407.94)							\$ -		
SP B155	\$ 49,249.13							\$ 54,321.00		
	\$ 10,841.19	\$ 10,841.19		\$ 2,033.48	\$ 10,841.19	94.573%	\$ -	\$ 54,321.00	\$ 54,321.00	\$ 4,776.99
SP B38-H			\$ (27,269.78)	\$ -	\$ (27,269.78)	128.715%	\$ -	\$ -	\$ -	\$ -
SP B125-J (1)		\$ -	\$ -	\$ -	\$ -	100.000%	\$ -	\$ (660.23)	\$ -	\$ -
SP C31			\$ (26,870.16)	\$ -	\$ (26,870.16)	119.193%	\$ -	\$ 57,585.74	\$ 57,585.74	\$ 5,064.09
SP C103-IRA		\$ -	\$ -	\$ -	\$ -	100.000%	\$ -	\$ -	\$ -	\$ -
SP C115-C (3)	\$ (18,131.23)							\$ (171.86)		
SP C15 (IRA) -C	\$ 1,915.00							\$ 7,788.90		
	\$ (16,216.23)		\$ (16,216.23)	\$ -	\$ (16,216.23)	123.531%	\$ -	\$ 7,617.04	\$ 7,617.04	\$ 669.84
SP C29N			\$ (25,977.53)	\$ -	\$ (25,977.53)	164.944%	\$ -	\$ -	\$ -	\$ -
SP C02			\$ (2,715.97)	\$ -	\$ (2,715.97)	113.580%	\$ -	\$ -	\$ -	\$ -
SP W82-W		\$ 15,100.00		\$ 2,832.31	\$ 15,100.00	62.808%	\$ -	\$ 26,402.09	\$ 26,402.09	\$ 2,321.80
SP C03			\$ (176,761.03)	\$ -	\$ (176,761.03)	178.560%	\$ -	\$ 311,078.66	\$ 311,078.66	\$ 27,356.26
SP C136			\$ (1,705.08)	\$ -	\$ (1,705.08)	135.896%	\$ -	\$ -	\$ -	\$ -
SP C132			\$ (382.99)	\$ -	\$ (382.99)	142.554%	\$ -	\$ -	\$ -	\$ -
SP C105			\$ (5,257.47)	\$ -	\$ (5,257.47)	115.932%	\$ -	\$ -	\$ -	\$ -
SP C25			\$ (12,323.78)	\$ -	\$ (12,323.78)	223.238%	\$ -	\$ -	\$ -	\$ -
SP C-69-B		\$ 10,000.00		\$ 1,875.70	\$ 10,000.00	0.000%	\$ 5,034.70	\$ 35,772.68	\$ 35,772.68	\$ 3,145.85
SP C146			\$ (29,761.70)	\$ -	\$ (29,761.70)	111.671%	\$ -	\$ -	\$ -	\$ -
SP D04			\$ (18,119.29)	\$ -	\$ (18,119.29)	125.885%	\$ -	\$ -	\$ -	\$ -

**S&P Investors - Account Number Only**  
**Distribution Analysis Utilizing Net Investment, Rising Tide, and Statement Balance Methods.**

\*For comparison purposes, all investors are included.  
All claims are not approved.

NET INVESTMENT					RISING TIDE			STATEMENT BALANCE		
Account Number	Combined Accounts	Net Loser/ Claim Amount	Net Winner Amount	*Proposed Interim Distribution (18.757%)	Claim Amount/ Net Investment	Total Distribution As Percentage of Total Investment	*Proposed Interim Distribution	Ending Balance as of 9/30/2008	Statement Balance Claim Amount	* Proposed Interim Distribution (8.794%)
SP D145-1	\$ (14,736.38)							\$ 17,451.52		
SP D145-2	\$ (279,121.29)							\$ 883.06		
	\$ (293,857.67)		\$ (293,857.67)	\$ -	\$ (293,857.67)	135.527%	\$ -	\$ 18,334.58	\$ 18,334.58	\$ 1,612.34
SP D70-N			\$ (44,375.61)	\$ -	\$ (44,375.61)	173.959%	\$ -	\$ 1,125.26	\$ 1,125.26	\$ 98.96
SP D71-DRG (3)			\$ (31,322.30)	\$ -	\$ (31,322.30)	168.870%	\$ -	\$ (574.07)	\$ -	\$ -
SP D68-B			\$ (4,210.00)	\$ -	\$ (4,210.00)	142.100%	\$ -	\$ 18,828.70	\$ 18,828.70	\$ 1,655.80
SP E155	\$ (31,228.24)							\$ -		
SP E154	\$ 593,368.00							\$ 668,840.50		
	\$ 562,139.76	\$ 562,139.76		\$ 105,440.55	\$ 562,139.76	46.123%	\$ 23,744.78	\$ 668,840.50	\$ 668,840.50	\$ 58,817.83
SP E111-H			\$ (287,454.40)	\$ -	\$ (287,454.40)	156.364%	\$ -	\$ -	\$ -	\$ -
SP F140		\$ 22,742.30		\$ 4,265.77	\$ 22,742.30	56.265%	\$ -	\$ 54,897.06	\$ 54,897.06	\$ 4,827.65
SP F57		\$ -	\$ -	\$ -	\$ -	100.000%	\$ -	\$ -	\$ -	\$ -
SP F58			\$ (48,786.66)	\$ -	\$ (48,786.66)	169.564%	\$ -	\$ 93,617.89	\$ 93,617.89	\$ 8,232.76
SP F147		\$ 5,343,298.44		\$ 1,002,242.49	\$ 5,343,298.44	35.957%	\$ 768,900.65	\$ 12,610,868.54	\$ 12,610,868.54	\$ 1,108,999.78
SP F60-F		\$ -	\$ -	\$ -	\$ -	100.000%	\$ -	\$ -	\$ -	\$ -
SP F61-F		\$ -	\$ -	\$ -	\$ -	100.000%	\$ -	\$ -	\$ -	\$ -
SP F65-F		\$ -	\$ -	\$ -	\$ -	100.000%	\$ -	\$ -	\$ -	\$ -
SP 130-F		\$ 47,053.57		\$ 8,825.84	\$ 47,053.57	0.000%	\$ 23,690.06	\$ 147,531.26	\$ 147,531.26	\$ 12,973.90
SP F146-F		\$ 160,522.43		\$ 30,109.19	\$ 160,522.43	19.739%	\$ 49,132.71	\$ 286,242.62	\$ 286,242.62	\$ 25,172.18
SP F05		\$ 58,127.47		\$ 10,902.97	\$ 58,127.47	87.675%	\$ -	\$ 993,221.76	\$ 993,221.76	\$ 87,343.92
SP G06			\$ (159,349.71)	\$ -	\$ (159,349.71)	181.718%	\$ -	\$ 161,175.73	\$ 161,175.73	\$ 14,173.79
SP G45			\$ (768.48)	\$ -	\$ (768.48)	103.074%	\$ -	\$ -	\$ -	\$ -
SP G44			\$ (768.48)	\$ -	\$ (768.48)	103.074%	\$ -	\$ -	\$ -	\$ -
SP G91-H		\$ 129,137.86		\$ 24,222.39	\$ 129,137.86	20.107%	\$ 39,051.29	\$ 269,870.99	\$ 269,870.99	\$ 23,732.45
SP G86-H-IRA		\$ -	\$ -	\$ -	\$ -	100.000%	\$ -	\$ -	\$ -	\$ -
SP G85-H-IRA		\$ -	\$ -	\$ -	\$ -	100.000%	\$ -	\$ -	\$ -	\$ -
SP G81-B			\$ (71,294.81)	\$ -	\$ (71,294.81)	246.380%	\$ -	\$ 5,823.52	\$ 5,823.52	\$ 512.12
SP G133N			\$ (62,180.21)	\$ -	\$ (62,180.21)	232.298%	\$ -	\$ 514.63	\$ 514.63	\$ 45.26
SP G145-J		\$ 3,897,207.97		\$ 730,999.30	\$ 3,897,207.97	24.990%	\$ 988,215.02	\$ 6,409,798.33	\$ 6,409,798.33	\$ 563,677.67
SP G148		\$ 33,352.30		\$ 6,255.89	\$ 33,352.30	75.966%	\$ -	\$ 135,215.44	\$ 135,215.44	\$ 11,890.85
SP H07H		\$ -	\$ -	\$ -	\$ -	100.000%	\$ -	\$ -	\$ -	\$ -
SP H50			\$ (15,569.04)	\$ -	\$ (15,569.04)	294.613%	\$ -	\$ 183.91	\$ 183.91	\$ 16.17
SP H126		\$ 25,000.00		\$ 4,689.25	\$ 25,000.00	0.000%	\$ 12,586.75	\$ 62,933.18	\$ 62,933.18	\$ 5,534.34
SP H144		\$ 6,000.00		\$ 1,125.42	\$ 6,000.00	0.000%	\$ 3,020.82	\$ 12,376.91	\$ 12,376.91	\$ 1,088.43
SP H08	\$ (2,447.89)							\$ -		
SP H09	\$ 11,834.82							\$ 127,451.30		
	\$ 9,386.93	\$ 9,386.93		\$ 1,760.71	\$ 9,386.93	91.394%	\$ -	\$ 127,451.30	\$ 127,451.30	\$ 11,208.07
SP H108		\$ 9,600.00		\$ 1,800.67	\$ 9,600.00	5.882%	\$ 4,268.64	\$ 10,292.80	\$ 10,292.80	\$ 905.15

**S&P Investors - Account Number Only**  
**Distribution Analysis Utilizing Net Investment, Rising Tide, and Statement Balance Methods.**

\*For comparison purposes, all investors are included.  
All claims are not approved.

NET INVESTMENT					RISING TIDE			STATEMENT BALANCE		
Account Number	Combined Accounts	Net Loser/ Claim Amount	Net Winner Amount	*Proposed Interim Distribution (18.757%)	Claim Amount/ Net Investment	Total Distribution As Percentage of Total Investment	*Proposed Interim Distribution	Ending Balance as of 9/30/2008	Statement Balance Claim Amount	* Proposed Interim Distribution (8.794%)
SP H52			\$ (29,345.16)	\$ -	\$ (29,345.16)	148.684%	\$ -	\$ 1,415.64	\$ 1,415.64	\$ 124.49
SP H110-IRA		\$ -	\$ -	\$ -	\$ -	100.000%	\$ -	\$ -	\$ -	\$ -
SP H109-IRA		\$ -	\$ -	\$ -	\$ -	100.000%	\$ -	\$ -	\$ -	\$ -
SP H101-H		\$ 148,418.06		\$ 27,838.78	\$ 148,418.06	27.038%	\$ 34,594.77	\$ 183,021.15	\$ 183,021.15	\$ 16,094.88
SP H117-H		\$ 10,128.07		\$ 1,899.72	\$ 10,128.07	59.694%	\$ -	\$ 26,651.99	\$ 26,651.99	\$ 2,343.78
SP H97-H			\$ (17,736.95)	\$ -	\$ (17,736.95)	145.175%	\$ -	\$ 9,196.80	\$ 9,196.80	\$ 808.77
SP H34H			\$ (45,405.47)	\$ -	\$ (45,405.47)	110.821%	\$ -	\$ 173,237.23	\$ 173,237.23	\$ 15,234.48
SP H35H		\$ -	\$ -	\$ -	\$ -	100.000%	\$ -	\$ -	\$ -	\$ -
SP H36H		\$ -	\$ -	\$ -	\$ -	100.000%	\$ -	\$ -	\$ -	\$ -
SP H153		\$ 90,000.00		\$ 16,881.30	\$ 90,000.00	30.769%	\$ 17,620.20	\$ 152,900.70	\$ 152,900.70	\$ 13,446.09
SP H66-WH		\$ 45,100.00		\$ 8,459.41	\$ 45,100.00	0.000%	\$ 22,706.50	\$ 111,719.85	\$ 111,719.85	\$ 9,824.64
SP H144-AB			\$ (859,880.41)	\$ -	\$ (859,880.41)	121.497%	\$ -	\$ -	\$ -	\$ -
SP H127(IRA)B		\$ -	\$ -	\$ -	\$ -	100.000%	\$ -	\$ -	\$ -	\$ -
SP H129(IRA)		\$ -	\$ -	\$ -	\$ -	100.000%	\$ -	\$ -	\$ -	\$ -
SP I43			\$ (132,428.58)	\$ -	\$ (132,428.58)	362.914%	\$ -	\$ -	\$ -	\$ -
SP I42-1		\$ -	\$ -	\$ -	\$ -	100.000%	\$ -	\$ -	\$ -	\$ -
SP I42-2		\$ -	\$ -	\$ -	\$ -	100.000%	\$ -	\$ -	\$ -	\$ -
AP I118			\$ (12,864.83)	\$ -	\$ (12,864.83)	134.034%	\$ -	\$ -	\$ -	\$ -
SP 131		\$ 100,000.00		\$ 18,757.00	\$ 100,000.00	0.000%	\$ 50,347.00	\$ 346,716.36	\$ 346,716.36	\$ 30,490.24
SP I148		\$ 95,000.00		\$ 17,819.15	\$ 95,000.00	0.000%	\$ 47,829.65	\$ 145,654.83	\$ 145,654.83	\$ 12,808.89
SP J121-J		\$ -	\$ -	\$ -	\$ -	100.000%	\$ -	\$ -	\$ -	\$ -
SP J30N			\$ (18,115.47)	\$ -	\$ (18,115.47)	130.192%	\$ -	\$ 39,094.32	\$ 39,094.32	\$ 3,437.95
SP J142-N		\$ 6,774.95		\$ 1,270.78	\$ 6,774.95	0.000%	\$ 3,410.98	\$ 14,145.48	\$ 14,145.48	\$ 1,243.95
SP J86-H			\$ (20,569.28)	\$ -	\$ (20,569.28)	113.713%	\$ -	\$ -	\$ -	\$ -
SP J75-1			\$ (5,215.08)	\$ -	\$ (5,215.08)	120.860%	\$ -	\$ -	\$ -	\$ -
SP J90-2			\$ (7,644.13)	\$ -	\$ (7,644.13)	130.577%	\$ -	\$ -	\$ -	\$ -
SP J147-A&B			\$ (80,000.00)	\$ -	\$ (80,000.00)	144.444%	\$ -	\$ 39,333.80	\$ 39,333.80	\$ 3,459.01
SP J129-J (4)			\$ (26,508.25)	\$ -	\$ (26,508.25)	100.251%	\$ -	\$ (3,852.66)	\$ -	\$ -
SP K89			\$ (5,959.17)	\$ -	\$ (5,959.17)	120.549%	\$ -	\$ -	\$ -	\$ -
SP K107-IRA		\$ -	\$ -	\$ -	\$ -	100.000%	\$ -	\$ -	\$ -	\$ -
SP L150			\$ (87,788.57)	\$ -	\$ (87,788.57)	112.278%	\$ -	\$ -	\$ -	\$ -
SP L141-B			\$ (26,152.98)	\$ -	\$ 26,152.98	126.153%	\$ -	\$ -	\$ -	\$ -
SP L18			\$ (13,500.00)	\$ -	\$ (13,500.00)	115.084%	\$ -	\$ 64,859.50	\$ 64,859.50	\$ 5,703.74
SP L10			\$ (45,213.83)	\$ -	\$ (45,213.83)	130.143%	\$ -	\$ 69,286.37	\$ 69,286.37	\$ 6,093.04
SP L11		\$ 12,070.73		\$ 2,264.11	\$ 12,070.73	75.859%	\$ -	\$ 174,198.27	\$ 174,198.27	\$ 15,319.00
SP W39		\$ 1,237.79		\$ 232.17	\$ 1,237.79	99.196%	\$ -	\$ 196,989.96	\$ 196,989.96	\$ 17,323.30
SP L151		\$ 102,250.00		\$ 19,179.03	\$ 102,250.00	44.505%	\$ 5,973.45	\$ 238,293.46	\$ 238,293.46	\$ 20,955.53
SP L104			\$ (7,240.80)	\$ -	\$ (7,240.80)	136.204%	\$ -	\$ -	\$ -	\$ -

**S&P Investors - Account Number Only**  
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All claims are not approved.

NET INVESTMENT					RISING TIDE			STATEMENT BALANCE		
Account Number	Combined Accounts	Net Loser/ Claim Amount	Net Winner Amount	*Proposed Interim Distribution (18.757%)	Claim Amount/ Net Investment	Total Distribution As Percentage of Total Investment	*Proposed Interim Distribution	Ending Balance as of 9/30/2008	Statement Balance Claim Amount	* Proposed Interim Distribution (8.794%)
SP M134	\$ (16,223.36)							\$ -		
SP M123	\$ 50,000.00							\$ 64,879.53		
	\$ 33,776.64	\$ 33,776.64		\$ 6,335.48	\$ 33,776.64	83.018%	\$ -	\$ 64,879.53	\$ 64,879.53	\$ 5,705.51
SP O128-B		\$ 125,000.00		\$ 23,446.25	\$ 125,000.00	0.000%	\$ 62,933.75	\$ 179,773.09	\$ 179,773.09	\$ 15,809.25
SP M12			\$ (72,144.10)	\$ -	\$ (72,144.10)	132.819%	\$ -	\$ -	\$ -	\$ -
SP M138			\$ (9,545.90)	\$ -	\$ (9,545.90)	130.453%	\$ -	\$ -	\$ -	\$ -
SP M73			\$ (487.18)	\$ -	\$ (487.18)	102.564%	\$ -	\$ -	\$ -	\$ -
SP M78-F			\$ (2,673.99)	\$ -	\$ (2,673.99)	107.640%	\$ -	\$ -	\$ -	\$ -
SP Mc093-F		\$ 4,968.35		\$ 931.91	\$ 4,968.35	0.000%	\$ 2,501.42	\$ 13,158.11	\$ 13,158.11	\$ 1,157.12
SP Mc123-F			\$ (13,137.87)	\$ -	\$ (13,137.87)	245.170%	\$ -	\$ 445.57	\$ 445.57	\$ 39.18
SP Mc092-F			\$ (7,991.44)	\$ -	\$ (7,991.44)	265.545%	\$ -	\$ 235.39	\$ 235.39	\$ 20.70
SP Mc013-1			\$ (55,193.70)	\$ -	\$ (55,193.70)	133.622%	\$ -	\$ 76,983.97	\$ 76,983.97	\$ 6,769.97
SP M64-2		\$ -	\$ -	\$ -	\$ -	100.000%	\$ -	\$ -	\$ -	\$ -
SP M87-F			\$ (16,362.72)	\$ -	\$ (16,362.72)	116.363%	\$ -	\$ -	\$ -	\$ -
SP M83-M			\$ (6,188.33)	\$ -	\$ (6,188.33)	223.767%	\$ -	\$ -	\$ -	\$ -
SP M96-M		\$ 25,000.00		\$ 4,689.25	\$ 25,000.00	0.000%	\$ 12,586.75	\$ 76,344.83	\$ 76,344.83	\$ 6,713.76
SP M130-J (1)		\$ -	\$ -	\$ -	\$ -	100.000%	\$ -	\$ (726.82)	\$ -	\$ -
SP M22		\$ 155,687.63		\$ 29,202.33	\$ 155,687.63	46.989%	\$ 5,227.99	\$ 488,517.02	\$ 488,517.02	\$ 42,960.19
SP N99-N		\$ 10,000.00		\$ 1,875.70	\$ 10,000.00	0.000%	\$ 5,034.70	\$ 29,944.83	\$ 29,944.83	\$ 2,633.35
SP O88			\$ (14,659.63)	\$ -	\$ (14,659.63)	161.082%	\$ -	\$ -	\$ -	\$ -
SP O90		\$ 45,000.00		\$ 8,440.65	\$ 45,000.00	0.000%	\$ 22,656.15	\$ 131,059.72	\$ 131,059.72	\$ 11,525.39
SP P129-B		\$ 50,000.00		\$ 9,378.50	\$ 50,000.00	0.000%	\$ 25,173.50	\$ 104,736.64	\$ 104,736.64	\$ 9,210.54
SP P88			\$ (5,500.00)	\$ -	\$ (5,500.00)	103.929%	\$ -	\$ 31,401.31	\$ 31,401.31	\$ 2,761.43
SP P131		\$ 114,000.00		\$ 21,382.98	\$ 114,000.00	0.000%	\$ 57,395.58	\$ 114,131.45	\$ 114,131.45	\$ 10,036.72
SP P131		\$ 78,807.98		\$ 14,782.01	\$ 78,807.98	51.946%	\$ -	\$ 153,000.01	\$ 153,000.01	\$ 13,454.82
SP P14			\$ (17,094.66)	\$ -	\$ (17,094.66)	185.473%	\$ -	\$ 16,590.75	\$ 16,590.75	\$ 1,458.99
SP P15			\$ (9,944.84)	\$ -	\$ (9,944.84)	238.318%	\$ -	\$ -	\$ -	\$ -
SP P16		\$ 70,221.61		\$ 13,171.47	\$ 70,221.61	60.726%	\$ -	\$ 236,936.34	\$ 236,936.34	\$ 20,836.18
SP P133		\$ 10,000.00		\$ 1,875.70	\$ 10,000.00	77.778%	\$ -	\$ 31,889.01	\$ 31,889.01	\$ 2,804.32
SP P77			\$ (36,292.40)	\$ -	\$ (36,292.40)	242.323%	\$ -	\$ (27.53)	\$ -	\$ -
SP P94(IRA)		\$ -	\$ -	\$ -	\$ -	100.000%	\$ -	\$ -	\$ -	\$ -
SP P76			\$ (7,151.94)	\$ -	\$ (7,151.94)	117.880%	\$ -	\$ -	\$ -	\$ -
SP P116-J			\$ (112,538.76)	\$ -	\$ (112,538.76)	150.017%	\$ -	\$ -	\$ -	\$ -
SP P112-J (1)		\$ -	\$ -	\$ -	\$ -	100.000%	\$ -	\$ (689.93)	\$ -	\$ -
SP R40		\$ 47,946.36		\$ 8,993.30	\$ 47,946.36	40.067%	\$ 4,928.89	\$ 146,011.23	\$ 146,011.23	\$ 12,840.23
SP R141			\$ (9,015.93)	\$ -	\$ (9,015.93)	110.018%	\$ -	\$ -	\$ -	\$ -
SP R23R			\$ (114,956.18)	\$ -	\$ (114,956.18)	182.702%	\$ -	\$ -	\$ -	\$ -
SP R128R			\$ (51,142.13)	\$ -	\$ (51,142.13)	136.530%	\$ -	\$ -	\$ -	\$ -

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		NET INVESTMENT			RISING TIDE			STATEMENT BALANCE		
Account Number	Combined Accounts	Net Loser/ Claim Amount	Net Winner Amount	*Proposed Interim Distribution (18.757%)	Claim Amount/ Net Investment	Total Distribution As Percentage of Total Investment	*Proposed Interim Distribution	Ending Balance as of 9/30/2008	Statement Balance Claim Amount	* Proposed Interim Distribution (8.794%)
SP R149-R		\$ 54,000.00		\$ 10,128.78	\$ 54,000.00	0.000%	\$ 27,187.38	\$ 91,192.35	\$ 91,192.35	\$ 8,019.46
SP R100-R			\$ (48,500.00)	\$ -	\$ (48,500.00)	182.203%	\$ -	\$ 930.90	\$ 930.90	\$ 81.86
SP R27N			\$ (12,418.09)	\$ -	\$ (12,418.09)	224.181%	\$ -	\$ -	\$ -	\$ -
SP R59-W			\$ (2,000.00)	\$ -	\$ (2,000.00)	108.000%	\$ -	\$ 60,243.79	\$ 60,243.79	\$ 5,297.84
SP R72-B			\$ (37,678.82)	\$ -	\$ (37,678.82)	135.885%	\$ -	\$ 84,182.22	\$ 84,182.22	\$ 7,402.98
SP R48H			\$ (5,628.73)	\$ -	\$ (5,628.73)	111.976%	\$ -	\$ -	\$ -	\$ -
SP S28N			\$ (37,670.45)	\$ -	\$ (37,670.45)	153.815%	\$ -	\$ -	\$ -	\$ -
SP S55-N			\$ (3,205.43)	\$ -	\$ (3,205.43)	132.054%	\$ -	\$ -	\$ -	\$ -
SP S46			\$ (13,054.14)	\$ -	\$ (13,054.14)	113.887%	\$ -	\$ 9,925.31	\$ 9,925.31	\$ 872.83
SP S56			\$ (3,500.00)	\$ -	\$ (3,500.00)	170.000%	\$ -	\$ 8,527.63	\$ 8,527.63	\$ 749.92
SP S47	\$ 553.66			\$ 103.85	\$ 553.66	98.985%	\$ -	\$ 22,270.04	\$ 22,270.04	\$ 1,958.43
SP 017			\$ (1,757.24)	\$ -	\$ (1,757.24)	108.786%	\$ -	\$ -	\$ -	\$ -
SP S130			\$ (5,803.89)	\$ -	\$ (5,803.89)	135.381%	\$ -	\$ -	\$ -	\$ -
SP S63-F			\$ (155,572.02)	\$ -	\$ (155,572.02)	184.093%	\$ -	\$ -	\$ -	\$ -
SP S122			\$ (3,916.69)	\$ -	\$ (3,916.69)	110.307%	\$ -	\$ -	\$ -	\$ -
SP S85	\$ 130,000.00			\$ 24,384.10	\$ 130,000.00	0.000%	\$ 65,451.10	\$ 402,177.62	\$ 402,177.62	\$ 35,367.50
SP S139	\$ 5,397,729.32			\$ 1,012,452.09	\$ 5,397,729.32	35.145%	\$ 820,562.81	\$ 10,593,543.55	\$ 10,593,543.55	\$ 931,596.22
SP S033	\$ 33,729.66			\$ 6,326.67	\$ 33,729.66	28.104%	\$ 7,502.49	\$ 306,967.72	\$ 306,967.72	\$ 26,994.74
SP S20	\$ 76,874.24			\$ 14,419.30	\$ 76,874.24	82.240%	\$ -	\$ 395,935.91	\$ 395,935.91	\$ 34,818.60
SP S26-1	\$ -	\$ -	\$ -	\$ -	\$ -	100.000%	\$ -	\$ -	\$ -	\$ -
SP S26-2			\$ (47,373.20)	\$ -	\$ (47,373.20)	172.795%	\$ -	\$ 31,032.02	\$ 31,032.02	\$ 2,728.96
SP S140			\$ (705.18)	\$ -	\$ (705.18)	170.518%	\$ -	\$ -	\$ -	\$ -
SP S138			\$ (853.09)	\$ -	\$ (853.09)	117.062%	\$ -	\$ -	\$ -	\$ -
SP T21			\$ (8,382.49)	\$ -	\$ (8,382.49)	113.947%	\$ -	\$ -	\$ -	\$ -
SP T108	\$ -	\$ -	\$ -	\$ -	\$ -	100.000%	\$ -	\$ -	\$ -	\$ -
SP T147-F	\$ 59,943.84			\$ 11,243.67	\$ 59,943.84	60.037%	\$ -	\$ 123,756.74	\$ 123,756.74	\$ 10,883.17
SP W106-IRA			\$ (17,105.35)	\$ -	\$ (17,105.35)	137.589%	\$ -	\$ -	\$ -	\$ -
SP W120	\$ 54,706.00			\$ 10,261.20	\$ 54,706.00	52.430%	\$ -	\$ 85,665.65	\$ 85,665.65	\$ 7,533.44
SP W62	\$ 1,039,500.00			\$ 194,979.02	\$ 1,039,500.00	53.790%	\$ -	\$ 1,534,882.59	\$ 1,534,882.59	\$ 134,977.57
SP W95			\$ (84,974.47)	\$ -	\$ (84,974.47)	108.247%	\$ -	\$ 28,340.01	\$ 28,340.01	\$ 2,492.22
SP W151			\$ (20,732.67)	\$ -	\$ (20,732.67)	187.341%	\$ -	\$ -	\$ -	\$ -
SP W152			\$ (20,558.62)	\$ -	\$ (20,558.62)	142.669%	\$ -	\$ 1,371.11	\$ 1,371.11	\$ 120.58
SP W150	\$ 171,071.16			\$ 32,087.82	\$ 171,071.16	28.593%	\$ 37,214.82	\$ 254,999.25	\$ 254,999.25	\$ 22,424.63
SP W149	\$ 82,814.42			\$ 15,533.50	\$ 82,814.42	83.381%	\$ -	\$ 559,436.79	\$ 559,436.79	\$ 49,196.87
SP W32			\$ (12,772.76)	\$ -	\$ (12,772.76)	202.951%	\$ -	\$ -	\$ -	\$ -
SP W19	\$ -	\$ -	\$ -	\$ -	\$ -	100.000%	\$ -	\$ -	\$ -	\$ -
SP W102-H	\$ -	\$ -	\$ -	\$ -	\$ -	100.000%	\$ -	\$ -	\$ -	\$ -
SP W51			\$ (85,032.70)	\$ -	\$ (85,032.70)	155.943%	\$ -	\$ 2,565.90	\$ 2,565.90	\$ 225.65

**S&P Investors - Account Number Only**  
**Distribution Analysis Utilizing Net Investment, Rising Tide, and Statement Balance Methods.**

\*For comparison purposes, all investors are included.  
All claims are not approved.

NET INVESTMENT					RISING TIDE			STATEMENT BALANCE		
Account Number	Combined Accounts	Net Loser/ Claim Amount	Net Winner Amount	*Proposed Interim Distribution (18.757%)	Claim Amount/ Net Investment	Total Distribution As Percentage of Total Investment	*Proposed Interim Distribution	Ending Balance as of 9/30/2008	Statement Balance Claim Amount	* Proposed Interim Distribution (8.794%)
SP W114-J (3)			\$ (47,061.40)	\$ -	\$ (47,061.40)	127.683%	\$ -	\$ (1,641.73)	\$ -	\$ -
SP W89-F			\$ (30,917.88)	\$ -	\$ (30,917.88)	161.836%	\$ -	\$ -	\$ -	\$ -
SP W49-W		\$ -	\$ -	\$ -	\$ -	100.000%	\$ -	\$ 47,409.68	\$ 47,409.68	\$ 4,169.21
SP W80-W			\$ (16,398.28)	\$ -	\$ (16,398.28)	137.269%	\$ -	\$ 1,435.39	\$ 1,435.39	\$ 126.23
SP W149		\$ 45,000.00		\$ 8,440.65	\$ 45,000.00	0.000%	\$ 22,656.15	\$ 67,017.59	\$ 67,017.59	\$ 5,893.53
SP W79		\$ 37,000.00		\$ 6,940.09	\$ 37,000.00	0.000%	\$ 18,628.39	\$ 69,847.52	\$ 69,847.52	\$ 6,142.39
SP W120(IRA)		\$ -	\$ -	\$ -	\$ -	100.000%	\$ -	\$ -	\$ -	\$ -
SP Y135-Y		\$ 100,000.00		\$ 18,757.00	\$ 100,000.00	0.000%	\$ 50,347.00	\$ 223,892.44	\$ 223,892.44	\$ 19,689.10
SP Z87			\$ (6,851.64)	\$ -	\$ (6,851.64)	168.516%	\$ -	\$ -	\$ -	\$ -
		\$ 20,791,854.30		\$ 3,899,928.11	\$ 16,470,926.39		\$ 3,899,941.94		\$ 44,347,459.37	\$ 3,899,915.58

- (1) Transferred to Guardian Angel Trust, LLC  
(2) Account closed in 2001  
(3) Account closed in 2000  
(4) Partnership terminated in 2002



**Exhibit “C”**

**Summary of Responses**

Interested Party	Takes no Position/ Requests Court to Make Determination	Net Investment	Rising Tide	Partnership Agreement	Last Statement Balance	Florida Statute	Total
Alex E. Molchan Trust DTD 05/19/94	x						
Barone, Dalores					x		
Bonhage, Laurel and William	x						
Boschetti, Annette					x		
Boschetti, Carl					x		
Bryan, Denise					x		
Burt Moss & Associates, Inc.			x				
Burton Harold Moss IRA			x				
Clark, Johanna	x						
Combs, John						x	
Combs, Lois						x	
Congregation of the Holy Ghost, Western Province					x		
Crowe, Bridgette	x						
Crowe, James	x						
Fellman, Morton	x						
Festus and Helen Stacey Foundation			x				
Fox Family Trust	x						
Frank, Paul J (PR is Vince T Kelly)	x						
Friedman, Myra			x				
Guardian Angel, LLC				x			
Gutter, Calla				x			
Holloway, Alicia N Revocable Trust	x						
Holloway, Kristina	x						
Holloway, Scott W Revocable Trust	x						
Horwitz, Wayne as Trustee for Howard H. and Joyce Living Trust						x	
Jacob, Steven				x			
Janet B. Molchan Trust DTD 05/19/94	x						
Lavender, Madeline	x						
Lavender, Martin	x						
Margaret B. Gwinn Trust			x				
McIlvaine, Louise						x	
Molchan, Susan and Thomas Whiteman	x						
Moss, Burt and Susan				x			
Nickens, Mary Ellen (Francis J. Mahoney, JR as PR)	x						
Richardson, Mildred	x						
Robert A. Uchin Revocable Trust	x						
Robert G. Walsh Family Trust #1	x						
Robert G. Walsh Family Trust #2	x						
Robert G. Walsh Family Trust #3			x				
Robert G. Walsh Family Trust #4			x				
Rosen, Lynn	x						
Rosen, Sam and Edith	x						
Rowlette, Lucille (Laurel Bonhage, daughter)	x						
SPJ Investment, Ltd.				x			
Walsh Family Trust #1	x						
Walsh Family Trust #2			x				
Walsh Family Trust #3			x				
Walsh, James R.			x				
Walsh, Kathleen			x				
West, Bette	x						
West, Richard	x						
White, Sandra M. (Dydo)			x				
Wills, Eileen	x						
Wills, Evelyn	x						
Wills, Rebekah	x						
Wills, Richard	x						
Wallick, Cindy			x				
<b>Totals</b>	<b>31</b>	<b>11</b>	<b>7</b>	<b>5</b>	<b>4</b>	<b>0</b>	<b>58</b>