

RECEIVERSHIP OF THE WELLINGTON COMPANIES

**c/o Kroger, Gardis & Regas, L.L.P.
Bank One Building/Circle Side
111 Monument Circle, Suite 900
Indianapolis, Indiana 46204-5125
317-692-9000 - phone
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April 4, 2002

TO: ALL CREDITORS OF CASTLEROCK CONSULTING, LLC, GUARDIAN FIRST LIMITED, INC. (A NEVADA CORPORATION), GUARDIAN FIRST LIMITED, INC. (A GRANADA CORPORATION), WELLINGTON BANK AND TRUST, LTD., WELLINGTON CAPITAL HOLDINGS, LTD., INC., WELLINGTON CAPITAL HOLIDNGS, LTD., WELLINGTON INTERNATIONAL INVESTMENTS, INC., WELLINGTON FIRST INTERNATIONAL INVESTMENTS, INC., AND ALL SUBSEQUENTLY NUMBERED WELLINGTON INTERNATIONAL INVESTMENTS, INC. ENTITIES

Dear Creditor:

I previously wrote you with respect to my appointment as Examiner and Receiver for the group of companies operated by John Brinker and Gary Bentz.

Our investigation thus far has failed to recover any sums of money that would be significant when compared with the approximately \$21 million dollars of claims that we have identified. In fact, as I write this letter, there is some doubt that there will be sufficient funds to pay all of the expenses of the investigation. I estimate the current unpaid fees and expenses of the Receiver, Examiner, his accountants and counsel at arrpoximately \$168 thousand dollars.

I am enclosing with this letter a copy of the report which was filed by me as the court appointed Examiner late last year. It details much of the work that has been done, the numerous documents, individuals and companies that have been contacted and contains summaries of some of the findings as of that date. I have not included all of the exhibits to the report as they were quite voluminous, but they may be viewed at www.wellingtonbankinfo.com on the internet if you desire further information.

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I have had many calls from creditors with questions about how claims against the Wellington Companies might be treated for purposes of federal income tax filing. It is not the function of the Receiver or his accountants to provide tax advice to creditors. In particular, the treatment of claims resulting from specific dealings may differ from creditor to creditor. On the other hand, there are some common principles that have been applied by the IRS to taxpayers who were found to have invested in Ponzi Schemes. I am pleased to make this information available to you for your use in conjunction with your tax consultant, it is not to be deemed tax advice, but merely a starting point for considering how your loss might be treated should your dealings with the Wellington Companies be determined to meet the criteria for treatment as discussed in the accompanying letter prepared by the Receiver's accountants. I hope that many of you will find it useful.

I assure you that we have and will continue to make every cost efficient effort to recover funds for your benefit in this case, but, candidly, there do not appear many places left to look. Unless the claim which the Receivership has against the now closed First International Bank of Grenada (which is, itself, in receivership in Grenada) turns out to have significantly more value than is presently apparent, I believe that you will recover little or nothing through the Receivership.

Sincerely,
COPY

James A. Knauer

JAK:wnw

enclosures



Birk Gross Bell & Coulter, P.C.

CERTIFIED PUBLIC ACCOUNTANTS / BUSINESS & FINANCIAL CONSULTANTS

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February 19, 2002

Re: Investors in the Castlerock/Wellington Companies with claims against Castlerock/Wellington

Dear Investor:

The purpose of this letter is to address frequently asked tax questions regarding your investment losses in Castlerock/Wellington. This letter provides general information and possible examples regarding the tax treatment of losses expected to be incurred by investors. Please be aware, this letter addresses the general tax treatment applicable to a "Ponzi scheme." Therefore, in no way should this letter be relied upon by individual investors as their sole source of information and investors should seek individual tax advice from their own tax professional and/or the Taxpayers Advocate Service office discussed below. In addition, this letter in no way represents a "tax opinion letter" on this matter and the RECEIVERSHIP CANNOT PROVIDE YOU WITH TAX ADVICE.

Available guidance on the subject indicates that investor losses from "Ponzi schemes" are properly characterized as theft losses subject to **IRC § 165. PREMJI v. COMM., 81 AFTR 2d 98-861 (139 F.3d 912) affirming Zahirudeen Premji, et ux. v. Commissioner, TC Memo 1996-304; JENSEN, DAVID S v. COM. 76 AFTR 2d 95-8066 affirming David Jensen, TC Memo 1993-393; Fenimore Storch, TC Memo 1985-17.** Theft losses are reported on Form 4684 and Schedule A of Form 1040 and can result in negative taxable income available for net operating loss (NOL) carryback and/or carryforward. It is important to note, per IRC § 165(e), the theft loss shall be treated as sustained during the taxable year in which the taxpayer discovers the loss and not in the year the theft occurs.

Our office has determined that the option of amending returns previously filed by investors which reported such interest, dividend, and capital gain income is generally not available. This includes returns filed within the past three (open) taxable year returns. Treasury Regulation § 451-2(a) requires the reporting of income when cash basis taxpayers have "actual or constructive receipt." The Service's Field Service Advice 1999-942, which addresses "Ponzi Schemes" in general, does elaborate by stating "taxpayers cannot file an amended return to adjust such income as a result of the subsequent theft of the funds when they previously had constructive receipt of those funds."

There are several departures from the above treatment worthy of a caveat. First, tax law requires "non-business bad debt," as defined under IRC § 166, be treated as short-term capital loss subject to a \$3,000 deduction limit on excess short term capital losses. Each investor should

consult with their tax professional about whether their losses are indeed "theft" or possibly "non-business bad debt" losses.

Secondly, the IRC § 165 regulations clearly state that "if in the year of discovery there exists a claim for reimbursement that has a reasonable prospect of recovery, the loss is not treated as sustained until the taxable year in which it can be ascertained with reasonable certainty whether or not such reimbursement of the loss will be received" **PREMJI v. COMM.**, 81 AFTR 2d 98-861 (139 F.3d 912). Our analysis of case law indicates investors with claims against Castlerock/Wellington could be affected by these regulations. There is judicial precedent for the proposition that investors may recognize losses in the year of discovery on amounts over and above the expected recovery. **BUBB, GUY JR. V. U.S.** (1993 DC PA) 72 AFTR 2d93-5857.

Thirdly, we have examined the tax treatment for those investors who may have reported interest, dividend and/or capital gain income in their individual tax returns resulting from receipt of a 1099-INT or 1099-DIV from Castlerock, Wellington or related companies. Some investors failed to receive actual cash distributions and we believe their eventual loss deduction is increased for the income reported without cash remuneration. Other investors did receive cash dividends and may have reinvested those proceeds in Castlerock, Wellington and related companies. We believe investors in the latter case have an increased basis in losses to the extent of the income recognized, with a decrease to the loss basis to the extent cash was received, and finally any cash reinvested resulting in an increase in loss basis.

Examples follow:

Investor with claims against Castlerock/Wellington:

	<u>Investor A</u>		<u>Investor B</u>		<u>Investor C</u>
Actual invested funds	\$ 100,000		\$ 100,000		\$ 100,000
Dividends received	(5,000)	(1)	(5,000)	(1)	(5,000) (1)
Gains and profits received	(10,000)	(1)	N/A		N/A
Gains and profits "reinvested"	N/A		10,000	(2)	10,000 (3)
Partial principal amounts returned	<u>(50,000)</u>		<u>(50,000)</u>		<u>(50,000)</u>
Accumulated account balances (claim against Castlerock or Wellington)	35,000		45,000		45,000
Income previously taxed	<u>15,000</u>		<u>15,000</u>		<u>5,000</u>
Tax loss for theft loss deduction	<u>\$ 50,000</u>		<u>\$ 60,000</u>		<u>\$ 50,000</u>

(1) Investor received and paid tax on funds

(2) Investor reported and paid tax on \$10,000 of "phantom" income

(3) Investor did not pay tax on \$10,000 of "phantom" income

Finally, of primary importance is whether Castlerock, Wellington and related companies have an obligation to prepare amended 1099's for all years in question. Our analysis indicates that Castlerock, Wellington and related companies are not required to provide amended 1099's to investors. This determination is congruent with the theft loss provisions generally applicable to most investors, which essentially render any requirement of amending tax returns with amended 1099's pointless. For those investors inquiring about matters such as these, we recommend contacting the Taxpayer Advocate Service office. This office has been specifically assigned to this matter due to its size and complexity. We do not recommend investors contact their local IRS office or the national help line, as these contacts may not be familiar with the Castlerock/Wellington case. Once again, we strongly suggest that all investors also consult a tax professional to resolve their tax issues.

In conclusion, you can easily see the complexity that each individual investor is potentially confronted with. It is our hope that this letter provides you with a better comprehensive understanding of all the tax issues that exist, and an appreciation for the need for each investor to consult with their individual tax professional. Please contact our office (only for questions regarding your account balance and claim account) if we can be of further assistance in this matter. REMEMBER, NEITHER THE RECEIVER NOR HIS ACCOUNTANTS CAN GIVE TAX ADVICE.

BIRK GROSS BELL & COULTER, P.C.
Court appointed Accountants for the
Castlerock/Wellington Companies Receivership

Birk Gross Bell & Coulter, P.C.
COPY

1. The undersigned was appointed as the Examiner in this cause on February 27, 2001 pursuant to the *Order of Permanent Injunction and Other Equitable Relief* (the "Order") entered by this Court on that date.
2. On March 21, 2001, the Court approved an *Agreed Order Appointing Receiver for Eleven-Eighty Five, LP.* ("1185") which was consented to by 1185. The Agreed Order established a receivership over two assets of 1185, namely a residence located at 746 Stonehill Run, Cincinnati, Ohio [occupied by Defendant John E. Brinker, Jr. (hereafter sometimes referred to as "Brinker") and his immediate family], and 1185's offices at the Eastgate Professional Office Park located at 4360 Ferguson Drive, Cincinnati, Ohio.
3. On March 28, 2001, the Court approved the parties' *Agreed Order appointing Receiver for All Assets and Interests of Relief Defendant Eleven-Eighty Five, LP.* (The "Second Agreed Order") The Second Agreed Order required 1185 to provide the Receiver with an initial listing of its assets and interests by April 9, 2001, and a complete listing no later than April 18, 2001.
4. Finally, the Court approved an *Agreed Order Appointing Receiver Over All Entity Defendants and Relief Defendant Alpha Advantage, II., Inc.* on April 30, 2001 (in light of the fact that the same person is simultaneously serving as the Receiver and Examiner, references hereafter to actions taken by the 'Examiner' shall also include, where appropriate, actions taken by the 'Receiver' since, in many instances, they are indistinguishable and serve a dual purpose, especially in the area of information and record gathering).
5. The Order appointing the Examiner directed that he should file with the Court an initial status report on April 2, 2001.
6. The Examiner filed his initial status report on April 2, 2001.

7. Due to the lack of records and the complexity of the financial affairs of the Defendants and the Relief Defendants, the Examiner filed a Second Status Report on April 26, 2001.

EXAMINER'S DUTIES

8. The Order appointing the Examiner directed him to provide the Court with an accounting of:
 - a. *All funds received directly or indirectly by Defendants or Relief Defendants from investors who invested money in connection with any securities offered, purchased or sold on or before the date of this Order;*
 - b. *The uses to which those funds were put;*
 - c. *The amounts of any remaining funds and their location; and*
 - d. *The amounts returned to investors.*

DEFENDANTS' RECORD PRODUCTION

9. The Examiner's initial review in this cause was in large part delayed until the weekend of March 10, 2001. Although the Examiner had previously received some of the Defendants' banking records from the United States Securities and Exchange Commission ("SEC"), pursuant to the Order, the Defendants were not obligated to produce any business records or other documents relating to the Examiner's investigation until Friday, March 9, 2001.
10. Just prior to the close of business on March 9, 2001 the Defendants

delivered their first documents to the offices of the Examiner. This production consisted of two banker's boxes. One box contained incomplete investor files, arranged alphabetically from "A" to "G." The second box contained incomplete investor files ranging from "H" through "K." No other investor files were produced to the Examiner until March 26, 2001. The balance of documents in the second box included corporate records and limited information concerning the Defendants' bank accounts and transactions.

11. On March 26, 2001 the Defendants produced what they described as their "second submission of documents." To date, notwithstanding the fact they have received approximately \$20,350,000.00 (see discussion in paragraph 26 below) from over six hundred investors and have utilized at least thirty-two bank accounts, the Defendants have produced a total of five partially filled bankers boxes of records, have failed to produce a single check register and few similar records. In response to the Examiner's inquiries concerning the absence of check registers, the Defendants have indirectly advised the Examiner's counsel that the check registers were destroyed "[i]n two (2) floods in the fall of 1999." The Defendants have explained the absence of check registers following the "flood" by representing that checks were thereafter produced and recorded electronically, and that some hard copies of records were produced on March 9, 2001¹. Other records (specifically those relating to a major account maintained by Wellington at Wells Fargo Bank in Nevada) are allegedly in storage in South Carolina and, although requested by the Examiner, they have never been produced.

12. The Order did not require the production of any documents relating to the

¹ This information contradicts deposition testimony of a former employee hired in 2000 who wrote checks. He claimed that stubs were kept for all checks. Also, the electronic records were never produced.

Relief Defendants, nor did it require that any individual Defendant (as distinguished from the Defendants who are some type of legal entity, hereafter the "Wellington Companies") produce documents relating to the Examiner's investigation. Moreover, the Order precluded the Examiner from initiating any discovery to third parties (except for financial institutions and investors) until sixty days following his appointment.

13. The Examiner many times requested that the Defendants turn over computers that he had identified as the property of the Wellington Companies. At first counsel for the Defendants agreed to do so, but then refused, claiming that the Defendants had provided hard copies of all the information on the computers to the Examiner. Only after being threatened with a contempt of court order did the Defendants deliver three computers to the Examiner. One of the computers was non-operational and one contained so few records that it appears to the Examiner the records were erased prior to its turnover. A third computer contained numerous business records that had never been previously produced by any Defendant, thus contravening the prior representation of the Defendants that they had produced hard copies of all of their documents. Based upon records obtained through subpoenas, interviews and depositions of former employees, the Examiner is convinced that a number of computers purchased for use in the business of the Defendants have never been turned over to him by any of the Defendants.
14. The Examiner has also received information that prior to surrendering their documents, the Defendants engaged at least one employee in a document shredding operation.
15. The Defendants advised the Examiner through their counsel that they were in the process of having their records from Grenada shipped to the US and

