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17 UNITED STATES BANKRUPTCY COURT
18 DISTRICT OF ARIZONA

19 In re:
20 AMERICAN NATIONAL MORTGAGE
21 PARTNERS, LLC,
22 Debtor.

In Proceedings Under
Chapter 11

Case Nos: 03-03803 PHX RJH
03-03799 PHX RJH

RESPONSE TO ORDER TO SHOW CAUSE

23 In re:
24 ANMP 74TH ST., LLC,
25 Debtor.

26 American National Mortgage Partners, LLC (“ANMP”) and James C. Sell, the Court
27 appointed Receiver for the Debtors (the “Receiver”) (collectively, the “Respondents”), submit the
28 following memorandum to inform this Court and all Parties in Interest of the present status of the
Debtors’ Reorganization.

I. OVERVIEW

Investors Oliver C. Ritter and Robert T. Horan write to say that they, and most of the other
investors who fell victim to the ANMP Ponzi scheme (“Investors”), have been “left in the dark
concerning the progress (or lack thereof) [that] is being made to recapture our money.” (Mr.

1 Ritter's January 25, 2110, letter to the Court, "Ritter Letter," p.1, third para.). Mr. Ritter
2 concedes that he has tracked the progress that is being made via the Internet and from his
3 conversations with and reports provided to him by the Liquidating Trustee/Receiver, Jim Sell.
4 (Id.). Mr. Horan apparently hasn't made any such inquiries, but complains that he has heard
5 "NOTHING" from anyone about the case. (Mr. Horan's February 1, 2010, letter to the Court,
6 "Horan Letter," p.1, second para.). Both blame Mr. Sell and his counsel, Larry Wilk of Jaburg &
7 Wilk, P.C., for failing to inform them about such progress and suggest nefarious motives for them
8 to do so.

9 The concerns raised by Ritter, Horan and the investors as a whole must be considered in
10 light of their initial investment and the corresponding litigation required in order to obtain funds
11 for eventual distributions. Mr. Sell and his counsel are not to blame for what has indeed become
12 a lengthy and frustrating process to recoup their money from those who are to blame – i.e., those
13 who perpetrated and assisted the ANMP Ponzi scheme. The ongoing litigation that has been
14 pursued in this Court and elsewhere has been hard fought, time consuming and expensive for all
15 concerned, and at a great financial risk to the Receiver and Counsel.

16 Moreover, the concerns raised by Ritter and Horan must also be considered in light of
17 their effect on pending litigations; specifically, the effect they may have on ANMP's ability to
18 settle the outstanding pending litigations.

19 Finally, absent the Receiver and Counsel taking on the financial risk of going forward
20 with the pending litigations, the concept of funding ANMP's Plan of Reorganization from third
21 party defendants would be impossible.

22 **II. RELEVANT FACTUAL AND PROCEDURAL HISTORY.**

23 It is important to remember that these Bankruptcy Cases do not involve ordinary
24 commercial debtors. Rather, the genesis of these cases lies in an enforcement action brought by
25 the Arizona Corporations Commission to shut down the Debtors for, *inter alia*, securities fraud
26 and operating a Ponzi scheme.¹ The corporate structure of the Pre-Petition operations of the
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28 ¹ The principals of ANMP have since been indicted for their role in perpetrating the fraudulent scheme against the ANMP investors.

1 Debtors, or lack thereof, and the rampant Pre-Petition dubious investment practices contributed to
2 the complexity of these Estates, the Bankruptcy Cases and the Reorganization.

3 On April 2, 2003, the Arizona Corporation Commission (“ACC”) commenced an action in
4 the Superior Court of Maricopa County, State of Arizona, to have James C. Sell (“Sell”)
5 appointed as Receiver over numerous ANMP entities. An Order was entered appointing Sell as
6 Receiver investing control of the entities in Sell.

7 ANMP was comprised of over 103 entities, created for the purpose of funding investor
8 subsidized loans to high risk third party borrowers; including the Castle Boutique, Penthouse
9 Magazine and its founder, Robert Guccione.

10 Prior to the appointment of Sell, the interests of the investors and entities involved in
11 funding Castle loans were transferred to ANMP 74th Street, and the then existing management
12 commenced bankruptcy proceedings on behalf of ANMP 74th Street and ANMP in a futile effort
13 by ANMP’s Rogue Management to stave off the ACC and to attempt to protect those interests
14 from foreclosure by senior lien holders.

15 At the time of his appointment, virtually all of the ANMP investor funded loans were in
16 default and subject to be foreclosed upon by senior liens. By subsequent action undertaken by the
17 Receiver, the Receivership assets were consolidated with the ANMP bankruptcy entities.²

18 Mr. Sell’s appointment resulted in the replacement by Sell of the existing Rogue
19 Management of the ANMP entities.

20 Sell, together with substantial input from the Unsecured Creditors’ Committee, formulated
21 a Disclosure Statement and Plan of Reorganization which was confirmed by this Court by Order
22 dated December 7, 2005.

23 As ANMP was, in essence, a fraud from inception, any recovery of assets for the
24 Creditors would entail extensive investigation and litigation. The Plan clearly disclosed such
25 facts and indicated that the monies generated to fund the Plan of Reorganization would:

26 be derived from funds received as a result of the Receiver’s
27 liquidation of ANMP’s assets, from the Castle Settlement, the

28 ² The Receiver remained in possession and became the Responsible Party for the Debtors in
these Bankruptcy Cases.

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Financial Institutions Litigation, the General Litigation, the Chapter 5 Litigation, and from any other claims or actions brought by the Receiver, the Debtors or the Creditors Committee . . . (Plan at pg. 15).

The collection process necessary to realize these funds was further described in the Amended Disclosure Statement approved by the Court, and provided:

- That Sell, and a representative of the Creditors' Committee (Lyman Davis) were to become members of the Castle Boutique Board of Directors, until ANMP was paid in full in accordance with the Castle Plan of Reorganization;
- For the continuation of certain third party litigations which had been instigated prior to the Confirmation Order. These litigations were fully disclosed to investors in the Disclosure Statement, were authorized by the Official Creditors' Committee, and were considered by the Court as part of the Confirmation Order; and
- Furtherance of claims against borrowers on their obligations to investors.

Consequently, none of the Post-Petition actions engaged in by Sell or his professionals were initiated unilaterally. Rather, they were initiated or maintained only after consultation with, and approval of, the Official Creditors' Committee and/or the entire creditor body through the Confirmation Process.

Post-Confirmation, the Receiver has likewise continued to operate with the approval of the creditor body through consultation with the Committee. In addition, the Receiver has also sought approval of this Court or another Court of competent jurisdiction prior to consummating the compromise or settlement of any claim.

Consequently, there has been full disclosure of the requisite Post-Petition role of the Receiver and his Professionals. Therefore, it is not truly a lack of information which generated the Investor Correspondence. Rather, it is the existence of the above referenced actions, the expenses which have been incurred, and the results and effect on distributions to investors, which are the true genesis of the Investor Correspondence.

1 **III. DISSEMINATION OF INFORMATION TO INVESTORS.**

2 Due to the large number of investors and their various locations, the dissemination of
3 information was an integral issue from the inception of this case. In order to assure that investors
4 were adequately informed, an active Unsecured Creditors' Committee was created for amongst
5 other purposes, providing information to the investor body. Additionally, the Unsecured
6 Creditor's Committee was involved in all major decisions regarding pending litigation, as
7 evidenced by their involvement in strategy discussions as to third parties who should be named in
8 litigation, in discussions as to various alternatives in dealing with pending litigation, appearing at
9 hearings regarding litigations, and in various mediations that took place regarding settlements.

10 In order to provide information to investors, both the Receiver and the Committee
11 maintained a website during the pending bankruptcy proceedings.

12 The Plan, upon Confirmation, did not disband the Committee, thereby allowing the
13 Committee to continue Post-Confirmation in the role that it previously held. Lyman Davis in his
14 capacity as head of the Committee held almost weekly meetings with Counsel and/or Mr. Sell.
15 Mr. Davis became the conduit for providing the other committee members and investors, with
16 detailed information. The sole restrictions placed upon any flow of information were the need to
17 comply with certain confidentiality limitations. Other than information subject to such
18 restrictions, information was routinely to be made available to investors.

19 As Mr. Davis can attest, the Committee was constantly contacted by investors, and
20 information provided, which information was disseminated to Mr. Davis either through his
21 personal knowledge or the meetings with Counsel and/or the Receiver. In addition to the
22 Committee, several "Town Meetings" were held to update investors on the status of the pre and
23 post-confirmation actions of the Receiver and the Committee.

24 Subsequently, the initial Castle Plan of Reorganization began to unravel, thereby
25 spawning a plethora of ancillary litigation and discovery. In addition, the pending litigations
26 brought by ANMP to fund the Plan began to move forward aggressively. The resultant discovery
27 by third-party adversaries of the information provided to investors, and its potential collateral
28 effect on those litigations, mandated that the methods of disseminating information be

1 reevaluated. Simply put, intelligence had to be limited to friendly parties to ensure success in the
2 litigations.

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4 To that end, the Receiver discovered, *among other things*, the following:

- 5 ➤ The websites that were maintained by the parties became subject to document
6 requests by various named defendants and excerpts were appearing in pleadings
7 completely out of context, for the purpose of tainting ANMP, and were used to
8 attempt to discredit the claims of the investors in the pending litigation.

9 Accordingly, the flow of information to such sites was suspended; and

- 10 ➤ The transcripts of Town Meetings similarly became the center point of pleadings,
11 and were also used completely out of context for the purpose of tainting ANMP,
12 and such meetings were also suspended.

13 Given the pace of discovery, it was determined by the Committee and the Receiver, that
14 there would need to be a limitation of any information that was to be provided to the investors in
15 writing. However, it always was, and still is, contemplated that all investor inquiries would
16 receive a response from either the Committee, the Receiver, or Counsel, subject to the
17 understanding that certain matters were to be maintained as confidential.

18 **IV. POST-PETITION ACTIONS UNDERTAKEN BY**
19 **THE RECEIVER IN ACCORDANCE WITH THE PLAN.**

20 Pursuant to the Plan and Disclosure Statement, the ANMP Estates' assets are comprised
21 of a Settlement in the Castle Bankruptcy and revenues derived from various litigations and
22 settlements. Absent payments from Castle, or the recoveries to be received in the future, the
23 Debtors' Estates could not fund the required litigation. Accordingly, the entities and investors
24 have been relying upon the financial capacities of the Receiver and Counsel to further their
25 claims.

26 This Court is well aware of the enormous outlay of manpower and expense that has been
27 incurred in dealing with both the Castle issues, and the pending third-party litigations. The
28 pending claims and actions which have been pursued include:

- 1 A. Claims relating to the Castle Settlement, including:
- 2 ➤ The second reorganization of Castle, which will be detailed below;
- 3 ➤ Pending litigations initiated by Taylor Coleman against ANMP, James C. Sell and
- 4 Lyman Davis; and
- 5 ➤ Pending litigation by Taylor Coleman against Jaburg & Wilk, P.C. and Michael
- 6 Carmel, Ltd. (In addition to carrying the economic burden of this case, it is now
- 7 apparent that the law firms have taken on the additional risk of being subject to
- 8 Taylor Coleman’s “scorched earth” litigation tactics).
- 9 B. Collection efforts undertaken on behalf of ANMP, and resulting additional
- 10 litigation include:
- 11 ➤ Actions to collect the judgment obtained by the Receiver against Guccione and the
- 12 ensuing litigation initiated by Robert Guccione, as part of his individual
- 13 bankruptcy proceeding. This litigation was initiated in order to attempt to
- 14 terminate the efforts of ANMP to collect on the judgment;
- 15 ➤ Collection efforts against borrowers which have resulted in judgments, and are
- 16 now subject to collection; and
- 17 C. ANMP’s efforts with respect to the Financial Institutions’ Litigation, including:
- 18 ➤ Third-party litigation against professionals, banks and individuals, which are also
- 19 detailed below.

20 The prosecution and defense of the Estate’s interests in these litigations does not come

21 without a cost. They require funding. The investors, to date, have not offered to provide

22 additional funding in order to offset the costs of the litigation, or to seek financing to underwrite

23 the litigation. To date, the risk of any recovery for the investors, and the economic burden of

24 pursuing the recovery, has been borne solely by Counsel and the Receiver. Aside from the

25 outstanding fees that are owed, the Receiver and Counsel cosigned on a \$500,000.00 loan to

26 facilitate payment of the enormous financial burden incurred on behalf of the investors. Counsel

27 and the Receiver are entitled to be paid for the services that have been rendered.

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1 **A. Castle Boutique Reorganization and Related Litigation.**

2 The Plan and Disclosure Statement described the settlement in the Castle Boutique
3 Bankruptcy as a major source of funding for the ANMP Plan of Reorganization. Specifically, the
4 Plan anticipated that Castle would generate \$16,000,000.00 for the Plan Fund (Plan at pg. 2).
5 The Castle Settlement was negotiated, proposed and approved as part of the Plan and
6 Confirmation process in the Castle’s first Bankruptcy.
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8 The settlement required Castle to propose a plan of reorganization providing for (i) the
9 allowance of a \$14 million claim in favor of the ANMP Receiver for all ANMP-arranged loans,
10 (ii) the payment of the allowed amount of this claim, and all General Claims, in quarterly
11 installments equal to or greater of \$500,000 per quarter, on a cumulative basis, or sixty percent
12 (60%) of Debtors’ Available Funds, (iii) the allocation of forty-five percent (45%) of such
13 installment to the payment of the Receiver’s allowed claims until all General Claims with the
14 Castle Bankruptcy have been paid in full and 100% percent thereafter, and (iv) the securing of
15 payments to the Receiver by a liquidation lien on Debtors’ Real Properties, except the warehouse
16 property at 7102 W. Roosevelt, and Coleman’s Real Properties. The Settlement also provided for
17 an additional payment of \$2,000,000.00 by Castle for monies owed to ANMP by Taylor
18 Coleman.
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20 The settlement further required Castle to propose a plan of reorganization providing that,
21 until the Receiver’s claim is paid in full, Castle will be managed by a five-person Management
22 Board, two members of which will be selected by the Receiver and two members of which will be
23 selected by the holders of Castle General Claims until such claims are paid in full and, thereafter,
24 by the Receiver.
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26 The Castle Settlement proceeded as provided with payments being received by ANMP
27 until Castle defaulted under the Settlement on _____(the “Castle Default”). The major
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1 factors which caused the Castle Default were the multiple material misstatements made by Taylor
2 Coleman in the Castle Bankruptcy which led to the financial instability which caused the need for
3 Castle to file its second bankruptcy on _____.

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5 The Second Castle Bankruptcy had two immediate negative results for the ANMP Plan of
6 Reorganization. First, it cut off the quarterly payments which had been the main source of
7 ANMP's cash flow. Second, it embroiled ANMP in the expensive and protracted second Castle
8 Bankruptcy.

9 Taylor Coleman, Castle's minority shareholder, complicated every step of the Second
10 Castle Bankruptcy by engaging in scorched-earth tactics which unnecessarily added time and
11 expense to the process.

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13 At the time of the commencement of the Second Castle Bankruptcy, Taylor Coleman
14 commenced an action against various officers and directors of Castle – including Sell and Davis –
15 and also named ANMP as a defendant in that action (the "Coleman Litigation"). The Coleman
16 Litigation alleged multiple counts of fraud and conspiracy against Sell, Davis and ANMP.

17 The defense of the Coleman Litigation entailed over 40 depositions, multiple discovery
18 disputes, and the filing of a counterclaim. The Coleman Litigation is still currently pending
19 before this Court.

20
21 In addition to the burden of defending the Coleman Litigation, ANMP, by virtue of its
22 seats on the Castle Board and it being Castle's largest Creditor, became embroiled in almost two
23 years of contentious negotiations and litigation that arose in the reorganization process of the
24 Second Castle Bankruptcy. This process entailed responding to Examiner's inquiries,
25 depositions, discovery, multiple evidentiary hearings and actively participating in a full
26 evidentiary trial over confirmation.

1 Additionally, on the eve of confirmation, Taylor Coleman commenced another litigation –
2 against ANMP’s attorneys including Jaburg & Wilk and Michael Carmel, Esq. (the
3 “Professionals Litigation”). Although entirely frivolous, this lawsuit resulted in having to expend
4 additional time and fees to defend.
5

6 The Second Castle Reorganization Plan sets forth a more stable foundation for payments
7 to its creditors than did the first. Specifically, the plan encompassed a purchase of the operations
8 of Castle, by Mark Franks its President. The Second Castle Reorganization Plan provides that
9 ANMP has an allowed claim of \$13,866,024.00, and removes Taylor Coleman from further
10 frustrating the reorganization process.

11 As part of the Second Castle Reorganization, all of Castle’s claims were transferred to a
12 Liquidating Trust. Additionally, all of its real properties were transferred to the Trust and leased
13 back to Castle. The Liquidating Trust is charged with utilizing the payment streams and value of
14 the real properties to pay the claims of the Castle Creditors – including ANMP. One cannot, with
15 any certainty, opine when the Liquidating Trust will begin making payments, since timing will
16 depend on the recovery of the commercial real estate market. However, the underlying
17 encumbrances mature in 4 to 5 years, which will require the sale or refinancing of the real
18 properties prior to those dates.
19

20 The Second Castle Reorganization Plan was Confirmed on _____. Unfortunately, the
21 costs and work associated with that Second Castle Bankruptcy didn’t stop there. Taylor Coleman
22 has continued his “litigate at all costs” strategy and has appealed the Confirmation Order.
23 Consequently, ANMP continues to incur litigation costs associated with the Second Castle
24 Bankruptcy relating to (1) the Coleman Litigation, (2) the Professionals Litigation, and (3) the
25 Appeal of the Confirmation Order of Castle’s Second Plan of Reorganization; all of which are
26 necessary to protect ANMP’s interests in its Allowed Claim.
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1 **B. The Financial Services Litigation.**

2 The orders dated May 15, 2003, and August 22, 2003, mandated that the Receiver, among
3 other things, marshal ANMP's assets and investigate and pursue any potential claims that either
4 ANMP or its victims may have against third parties who had participated in the ANMP Ponzi
5 scheme or might otherwise be liable to ANMP or its victims (the "Third-Party Perpetrators").

6 On February 27, 2004, pre-confirmation, Mr. Sell, on behalf of ANMP, filed suit in
7 Maricopa County Superior Court against some of these primary Third-Party Perpetrators, Robert
8 Guccione and his companies and cohorts, who were alleged to have defrauded ANMP in a major
9 loan transaction, and ANMP attorneys Charles Berry and his law firm (the "Berry Defendants"),
10 who were alleged to have committed malpractice in that regard and others. This was the origin of
11 the State Court Litigation.

12 As his investigation progressed, on March 2, 2005, the Receiver sued ANMP's principals
13 and salespersons, together with many of the Third-Party Perpetrators, including financial
14 institutions, in the United States District Court for the District of Arizona based on fraud,
15 conspiracy and federal RICO (Racketeer Influenced and Corrupt Organizations Act) violations
16 (the "Federal Court Action"). This Action was identified in the Plan and Disclosure Statement as
17 the Financial Services Litigation.³

18 Several of the Third-Party Perpetrators filed motions to dismiss the Federal Court Action
19 for lack of subject matter jurisdiction and on other technical and procedural grounds. These
20 motions were extensively briefed and argued and, ultimately, the Court granted them in February
21 2006, dismissing the case with leave to amend the complaint.

22 In lieu of amending his federal court lawsuit, the Receiver's counsel sought to consolidate
23 the Federal Court Action with the already-pending State Court Litigation, and did so by amending
24 the State Court Litigation complaint to include the claims and Third-Party Perpetrators that had
25 been dismissed from the Federal Court Action.

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28 ³ The investors have been repeatedly advised that the litigation would: (1) be aggressively defended by the
Defendants in the hope that procedural motions would allow them to not have to defend the consequences of their
actions; (2) not be resolved within the immediate future; and (3) would be costly.

1 A Second Amended Complaint (“SAC”) was filed in the State Court Litigation on
2 February 27, 2006. As they had done in the in the Federal Court Action, the Third-Party
3 Perpetrators, led by National Bank of Arizona (“NBA”), vigorously contested the claims and filed
4 motions to dismiss the SAC based on various technical and procedural grounds. These motions
5 were extensively briefed and argued and, ultimately, the State Court granted them in part and
6 denied them in part on October 3, 2006.

7 One of the State Court’s rulings on the Defendants’ motions to dismiss the SAC
8 determined that the Receiver had no “standing” to pursue claims on behalf of each of the more
9 than 240 Investors for whose benefit the case was filed and therefore would have to re-file over
10 240 separate lawsuits of behalf of each individual Investor. On November 1, 2006, however, the
11 case was removed from the State Court to this Court. Once in this Court, the standing issue was
12 extensively briefed and argued and, this Court re-examined and reversed the State Court’s
13 “standing” decision and ruled that the Receiver did have authority and right to represent the
14 Investors’ interests on a collective basis under the terms of ANMP’s Bankruptcy Plan. This Court
15 then remanded the matter back to the State Court on May 1, 2007, for further proceedings in
16 accordance with it’s rulings.

17 Another of the State Court’s rulings on the Defendants’ motions to dismiss the SAC
18 required the Receiver to re-plead “with particularity” – i.e., in great detail – all fraud claims made
19 against all Defendants as to each of the more than 240 Investors. This was, of course, a
20 monumental task that consumed hundreds of hours of attorney time and resources and over 10
21 months to accomplish. Accomplished it was, however, and a very detailed, 850-page Third
22 Amended Complaint (“TAC”) was filed in this Court on April 13, 2007.⁴

23 As perhaps could be expected, upon returning to the State Court Litigation, the Third-
24 Party perpetrators filed another battery of motions to dismiss the TAC, again based on various
25 technical and procedural grounds. Incredibly, some of the Defendants argued that the 850-page
26 TAC that the Court’s prior ruling had required should now be dismissed because it failed to state
27 a plain, short and concise statement of claims. After many more months of briefing and

28 ⁴ Counsel was required to survey and interview each investor as to the particular facts concerning his or her investment.

1 argument, the State Court again denied most of these arguments on January 29, 2008. NBA
2 moved for reconsideration and, after still more briefing and argument, the State Court declined to
3 reconsider its rulings on May 9, 2008.

4 All of this means that, through no fault of the Receiver or his counsel, more than four
5 years – from February 2004 to May 2008 – had been consumed by a repeated barrage of technical
6 and procedural defense motions that absorbed enormous time and expense and permitted little
7 progress to be made on the merits of the Receiver’s claims against ANMP’s principals and
8 salespersons and the Third-Party Perpetrators.⁵ After more than four years, after all of the
9 defense motions had been exhausted, the State Court finally ordered that all parties serve
10 disclosure statements and pursue discovery with the goal of moving towards trial. The Receiver
11 and most of the Defendants’ Initial Rule 26.1 Disclosure Statements were served on September
12 19, 2008, and discovery has now commenced and is ongoing.

13 Of course, nothing having to do with this complex litigation has been easy or inexpensive.
14 The Receiver’s Initial Rule 26.1 Disclosure Statement – which requires full and detailed
15 disclosure of all facts, documents, witnesses, claims and issues with regard to all parties and, in
16 this case, the Investors – rivaled the length and complexity of the TAC. The Disclosure, like the
17 TAC, consumed hundreds of hours of attorney time and resources and, with exhibits and
18 attachments weighed in at more than 840 pages. As the Court also knows, such disclosures must
19 be supplemented from time to time as more evidence and information becomes available.

20 Based on the discovery and disclosures that were now underway, in September 2009, the
21 Receiver’s counsel filed a motion to amend the TAC to add an additional claim against the
22 remaining Third-Party Bank Defendants – NBA and Western Security/First Fidelity Bank
23 (“FFB”) – for aiding and abetting the ANMP Ponzi scheme. The Bank Defendants stipulated to
24 the amendment, and the Receiver filed Fourth Amended Complaint (“FAC”) in October, 2009.

25 _____
26 ⁵ The case against the ANMP principals has been stalled for other reasons as well, not the least of
27 which is that most have been indicted by the United States Justice Department are facing criminal
28 State Court Litigation.
State Court Litigation.

1 On December 22, 2010, however, NBA filed yet another motion to dismiss the FAC. The
2 Receiver filed a Response on January 15, 2010, and, on February 8, 2010, NBA withdrew its
3 motion.

4 The FAC is the current, and likely the final, statement of the Receiver's claims made
5 against all of the remaining Defendants – that is, Defendants who are not ANMP principals (who
6 are, by all accounts, in bankruptcy and/or subject to criminal indictment and therefore unwilling
7 to participate) or Third-party Perpetrators who have not settled out of the case or had judgments
8 entered against them – in the State Court Litigation.

9 In summary, while there has been progress in the Financial Services Litigation, given the
10 fact that the main Defendants are large banks, and high profile attorneys; such progress has
11 resulted only after aggressively countering each attempt by the Defendants to dismiss the actions
12 on technical grounds. They are now faced with the prospect of having to justify their
13 involvement in the losses incurred by the investors. While the Investor Correspondence questions
14 this progress and speculates on the outcome, what is clear, however, is that the claims were
15 required to be pursued and that Counsel and the Receiver have done so in accordance with the
16 ANMP Plan.

17 **C. Collection Efforts and Judgments.**

18 The Investor Correspondence suggests that the Receiver, or Counsel, have engaged in
19 unilateral or unproductive litigation strategy. It is important to dispel this myth.

20 Again, while the Investor Correspondence implies that the Receiver and his Professionals
21 have not achieved any tangible results, nothing could be further from the truth. In fact, the
22 Receiver and his professionals have obtained judgments in the amount of \$15,169,060 and are in
23 the process of attempting to collect on them. Collection efforts have been analyzed in light of the
24 Defendants' financial condition and likelihood of recovery.

25 The following is a summary of the pending judgments:

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Judgment Debtor	Amount
Beckwith	244,279.00

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Caspere	402,955.78
Dedmon	183,577.00
Ron Kelly	5,539,343.26
FutureCom	1,461,271.60
Riesterer	3,115,932.50
Wanek	4,221,700.90
TOTAL	15,169,060.04

V. SETTLEMENTS

The Investor Correspondence also suggests that the Receiver, or Counsel, have unilateral authority to settle the outstanding litigation. There is no basis in fact to support this conclusion.

While the Receiver is in a position to suggest a settlement for approval, all settlements which have been reached, and which are not subject to confidentiality agreements, have included the input and approval of the Creditors Committee, and are subject to orders entered by this Court; or as in the Guccione settlement, have been the subject of a determination by a Court of Competent Jurisdiction, and are of record and available to the public.

As to any confidential settlement, this Court has been requested to review the settlement, under seal, and to inquire of the Receiver and Counsel as to the merits of the settlement and make a determination that the settlement is in the best interests of the Estates and the investors. Neither the Receiver, nor Counsel, has the unilateral ability to “sell the investors short.”

Notwithstanding the confidentiality limitations, the following information can be disclosed without breaching any confidentiality agreements:

- Guccione Defendants: The Receiver obtained a \$5.5 million default judgment against the non-attorney Third-Party Perpetrators who were sued initially in the State Court Litigation – Robert Guccione and his related entities (the “Guccione Default Judgment”). A judgment is only as good as one’s ability to collect it, however, and that proved to be the case with the Guccione Default Judgment. The related companies were defunct, and Mr. Guccione claimed he was insolvent. The

1 Receiver has expended significant fees and costs to track down assets and, despite
2 an intervening bankruptcy in New Jersey filed by Guccione to stall such collection
3 efforts has located several storage warehouses, auctioned art work and reached a
4 settlement for the sale of Guccione’s real property in New Jersey.

5 ➤ The FIBT Settlement. Settlement discussions with Defendant First International
6 Bank and Trust (“FIBT”) were concluded in December 2008. Based on a
7 thorough evaluation of the claims made against FIBT, balanced against the cost of
8 pursuing those claims and the risk of little or no recovery, a settlement agreement
9 was signed, approved by this Court and the State Court Litigation dismissed
10 against FIBT on March 4, 2009.

11 ➤ The June 2010 Mediation. After the last (or what was believed to be the last) of
12 the Defendants’ motions to dismiss were resolved, the State Court ordered the
13 principal remaining parties – including NBA, Western-Security/First Federal Bank
14 (“FFB”) and Attorneys Charles Berry and his law firm – to participate in a series
15 of mediations before an independent mediator (the “Mediation”) in a massive
16 effort to settle these claims.⁶ The Mediation occurred on July 14, 15, 16 and 17,
17 2009. The mediation was costly and time consuming, but was partially successful.
18 The Receiver and his counsel were able to reach settlements with three of the
19 remaining Defendants – (1) the Berry Defendants, (2) the Estate of Darrel Coulter,
20 and (3) FFB.

21 ➤ The Berry Defendants. Based on a thorough evaluation of the claims made against
22 the Berry Defendants, balanced against the cost of pursuing those claims and the
23 risk of little or no recovery, a settlement agreement was achieved in the Mediation
24 with the Berry Defendants. The agreement was finalized and signed, approved by
25 this Court and the State Court Litigation dismissed against them on August 25,
26 2009. Although there has been some guesswork by investors (See Mr. Ritter’s
27

28 ⁶ A previous mediation between Mr. Sell and the Berry Defendants had taken place by agreement
in 2008, but was unsuccessful.

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letter to the Court, p. 1, fourth para.), the amount and other terms of the settlement are required by the agreement to be confidential.

➤ Estate of Darrell Coulter. Based on a thorough evaluation of the claims made against the Estate of Darrell Coulter and the remaining Defendants, balanced against the cost of pursuing those claims and the risk of little or no recovery, a settlement agreement was achieved in the Mediation with the Estate of Darrell Coulter (Mr. Coulter worked for NBA at the time he was involved with ANMP) in October 2009. The agreement has been finalized and signed, but has not yet been approved by this Court. The amount and other terms of the settlement are required by the agreement to be confidential.

➤ FFB. Based on a thorough evaluation of the claims made against FFB and the remaining Defendants, balanced against the cost of pursuing those claims and the risk of little or no recovery, a settlement agreement was achieved in the Mediation with Defendants FFB and Marshall Boyce (Mr. Boyce worked for FIBT at the time he was involved with ANMP) in February 2010. The agreement has been finalized and signed, but has not yet been approved by this Court. The amount and other terms of the settlement are required by the agreement to be confidential

VI. THE INVESTOR CORRESPONDENCE'S EFFECT ON THE PENDING LITIGATIONS.

The Horan and Ritter letters, which have been forwarded to the Court, and which resulted in this Court setting the pending Order to Show Cause, are symptomatic of the problems which were sought to be dealt with by maintaining the Creditors' Committee in effect, and by inquiry directly to the Receiver and Counsel. Both Mr. Ritter and Mr. Horan were active participants in the bankruptcy proceedings, and made frequent inquiries of Counsel requesting updates as to the status of the pending actions. Both were dealt with courteously, and provided answers to all their inquiries; although, the Receiver may comment as to certain conversations with Mr. Ritter which may have been contentious due to statements made by Mr. Ritter. When a matter, such as a settlement made under seal was subject to their inquiry, it was explained that these matters were

1 not of public record, and could not be disclosed. Otherwise, they were provided full disclosure.
2 Upon receipt of the Ritter letter, Counsel contacted Mr. Ritter and subsequently Mr. Horan to
3 discuss their concerns. Mr. Ritter acknowledged that Counsel had always responded to calls and
4 provided information. There was no explanation as to why he chose not to contact Counsel on
5 the occasion of the letter and why he chose to address the Court with the misinformation
6 contained therein.

7 Mr. Horan also acknowledged that on all occasions, except calls in late November, all his
8 inquiries had received a prompt response and that each call was terminated with an inquiry from
9 Counsel confirming that: (1) Mr. Horan was satisfied with the information provided; and (2) that
10 he clearly understood the same.

11 These letters, nonetheless, have resulted in adverse affects to the investors. They are
12 detrimental to the pending litigations. The defendants have already voiced their belief that the
13 investor body is in what appears to be a state of disarray. This belief will not only inherently chill
14 any negotiations between the parties, but will also substantially increase the investors' expenses
15 going forward.

16 These investor letters are condescending in tone, disclose information which may be
17 subject to the confidentiality agreements with certain defendants (albeit misinformation), are
18 misleading, and are counterproductive to the results being sought on behalf of the investors.

19 **VII. CONCLUSION.**

20 While it is clearly understood that the investors are entitled to information and disclosure,
21 the current status of the pending actions have created an inherent conflict which exists between
22 such disclosures, and its detrimental effect to the litigations. Through the Creditors' Committee,
23 and further inquiries of Counsel and the Receiver, attempts will continue to be made to keep the
24 investor body apprised as to the status of all matters.

25 It is the intent of the Receiver and Counsel to make full and accurate disclosure and to
26 provide transparency. However this goal must be considered in light of the rights of the settling
27 defendants who seek confidentiality. Disclosure of settlement amounts will, in effect, further
28 chill negotiations with the remaining defendants in the pending litigations. When settlement

1 funds that are received are sufficient to be pooled so that it is not evident on the face of any
2 accountings as to the specific amounts received by any defendants, disclosure will be made to all
3 investors.

4 However, the true underlying concern of the investors, is, and always has been, when
5 distributions will be made. As Counsel and the Receiver have attempted to advise the investors
6 throughout the case, the nonpayment of their investment was the result of the fraudulent activities
7 of those parties who solicited their funds, and the borrowers to whom those funds were lent. As
8 with the case of Guccione, the assets that were perceived to be available to secure the investments
9 of the ANMP entities were over encumbered and could not provide the type of security necessary
10 in order to assure the repayment of the investors. The subsequent demise of Penthouse and Mr.
11 Guccione, is the reason the investors were not paid. The same holds true of the Castle loans,
12 which were also highly leveraged with the investors holding interests that were substantially, if
13 not completely, impaired. The fact that Taylor Coleman was issuing non-sufficient checks to the
14 extent of \$1.8 million to the investors is the cause that led to the demise of Castle and the failure
15 of Castle to make the payments required in the initial lending transactions. This, combined with
16 the fact that virtually all of the investments of the ANMP Entities were in default, and were made
17 to borrowers with less than honorable character is the reason investors have not received funds.

18 Understanding that recovery of Investor funds would require recovery from sources
19 outside of the ANMP principals, and borrowers, the Debtor's Plan authorized actions to be taken
20 on behalf of the investors. The initiation of the actions referenced hereinabove has been
21 undertaken at the financial risk of the Receiver and Counsel, not the investors. The investors'
22 claims were determined at the time of their loans, and their source of repayment was subsequently
23 determined to be severely limited. Having authorized the pending actions to be initiated, and
24 seeking the benefit of those litigations, the investors are also responsible for the burden incurred.

25 In response to the investors' inquiry as to when payment of distributions will be made,
26 there are various issues that still exist and need to be resolved prior to being able to provide a
27 conclusive answer. There is still outstanding litigation that will need to be resolved prior to that
28 determination being made. More importantly, a substantial amount of the recovery for the

1 investors is going to be based on the value of the Castle Stores which are currently held in Trust.
2 Upon liquidation of the stores, it is anticipated that there will be a substantial recovery to the
3 ANMP Estate. However, the Receiver, and Counsel, cannot predict when that will happen in
4 light of the current economy, and the status of the real estate market and in its current volatility.
5 Under the Plan of Reorganization of the Castle bankruptcies, and the revised Notes with the
6 underlying lienholders, the properties must be liquidated or refinanced within four to five years.

7 **VIII. ATTORNEYS FEES**

8 [INSERT]

9
10 DATED this ____ day of August, 2010.

JABURG & WILK, P.C.

11
12 _____
Lawrence E. Wilk
Jonathan P. Ibsen

13
14 COPY of the foregoing mailed
this ____ day of February, 2010.

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23 Master Mailing List Attached

24 /s/Andrina Hughes

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