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Obtaining a Ponzi Finding Through Two Case Studies – M. Burton Marshall and Prime Capital Ventures

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I. SUMMARY

Obtaining a Ponzi finding in a bankruptcy case can be extraordinarily valuable to the trustee or other party charged with the obligation to recover money for creditors and victims of the fraudulent scheme. It results in what is commonly referred to as the "Ponzi scheme presumption", whereby many courts presume that every transfer made by the debtor was in furtherance of the fraudulent scheme, and thus, made with actual fraudulent intent under 11 U.S.C. § 548(a)(1)(A) or its state law equivalent. The purpose of these materials is not to discuss the Ponzi scheme presumption and its implications in litigation, but to examine two unique cases where a Ponzi finding was obtained to assist in the identification of Ponzi schemes (they are not always as obvious as Madoff) and methods for obtaining the finding.

II. M. BURTON MARSHALL[1]

A. Summary

M. Burton Marshall is a unique case of an individual debtor who started with a legitimate enterprise of borrowing money from individuals at 8% in the 1980's to invest in rental real estate. 8% was a competitive and appropriate rate of return in the 1980's when Marshall started. However, over time, Marshall kept paying investors 8% when it became grossly above-market especially after rates moved to historic lows following the fallout of the mortgage-backed securities markets in the late-2000's. Marshall's debt increased from around $35 million in 2012 to over $95 million

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[1] *See In re M. Burton Marshall, et al.*, Case No. 23-60263 (PGR) (Bankr. N.D.N.Y. 2023).

in 2023 when his fraud was discovered. While the Ponzi scheme presumption was not of particular value for litigation recoveries because Marshall did not make any significant transfers, the presumption was used in connection with his criminal prosecution[2] and by creditor victims in claiming losses on their individual tax returns.

B. The Fraud

(i) Explaining the Significant Difference Between Marshall's Assets and Liabilities

On the petition date, Marshall had at best $22 million in assets and over $95 million in liabilities owed to approximately 985 Noteholders. How did this happen?

Prior to the appointment of a Chapter 11 Trustee, Marshall owned and operated a tax return preparation services business through Marshall Tax Service, a storage services business through Marshall Moving and Marshall Storage, a printing services business through M&M Press, real estate rental services through Marshall Maintenance and Marshall Rentals, and an insurance brokerage business through Miles B. Marshall, Inc. Marshall individually owned over one hundred rental Properties containing over 240 residential units through M. Burton Marshall d/b/a Marshall Rentals.

Marshall funded the acquisition of the rental Properties and storage centers by personal borrowings pursuant to unsecured, 30-day demand Notes paying interest at 8% per annum. There were approximately 985 Noteholders with approximately 1,200 Notes outstanding as of the Petition Date with a collective amount owed by Marshall's bankruptcy estate to noteholders of $94,200,768.61. The noteholders were largely individuals that were clients of Marshall's tax preparation business, or friends and family of clients.

Marshall began the practice of borrowing from individuals and acquiring the Properties over 40 years ago. In addition to the Noteholders, Marshall owed another approximately $2.2 million in secured mortgage debt and various other claims.

According to Marshall himself, the total value of his assets was just $21,854,009.89, or about one-fifth of the amount that he admittedly owed as of the petition date. The Trustee's sale

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[2] Letitia James, New York State Attorney General, *Attorney General James Announced Conviction of Madison County Tax Preparer for Running Decades-Long Ponzi Scheme* (April 28, 2026), https://ag.ny.gov/press-release/2026/attorney-general-james-announces-conviction-madison-county-tax-preparer-running

and liquidation efforts demonstrated that the actual saleable value of Marshall's assets was markedly less than the value that Marshall gave in his schedules and was more like between $15 and $18 million.

The costs associated with administering Marshall's assets and bankruptcy estate were significant and eclipsed $6 million, leaving far too little for creditors with distributions thus far of around 5.5%.

After significant consideration, the Trustee concluded that the massive differential between Marshall's assets and his liabilities was caused by two primary and related factors – first, Marshall utilized incompetent business practices, and second, Marshall borrowed from Noteholders at substantially above-market rates for a sustained length of time.

(ii) Marshall ran his Business Incompetently

On the one hand, the Trustee heard mostly positive reviews of Marshall's competence at providing tax guidance and preparing tax returns. Likewise, the Trustee did not hear any seriously negative comments about Marshall's operation of the insurance brokerage business and in fact, that business was sold by the Trustee in a deal that was negotiated prior to his appointment for $1,325,980.90. Those businesses required little to no capital and appeared to have been relatively self-sustaining if not modestly profitable.

On the other hand, Marshall's operation of the real estate acquisition and property management business was utterly incompetent by every objective metric. There are almost too many examples of Marshall's incompetence and lack of business acumen to list. Some examples are as follows:

- Marshall ran these businesses along with all other lines of business (except for the insurance business) in his personal name with little to no separation. In this way, it was impossible to assess the performance of any specific business line or any particular asset in any real way.

- Until 2012, Marshall did not maintain any form of electronic bookkeeping which would have allowed for the implementation of proper controls, financial tracking, and analysis. In 2012, Marshall started using the electronic bookkeeping software Quicken, which is intended for use by individuals and lacks the sophistication to properly account for multiple businesses and properties. Still, this latent implementation of an inadequate electronic bookkeeping system appears to have been done in reaction to a government investigation.

- Marshall did not routinely create or review financial statements, or otherwise assess his assets, liabilities, or financial performance.

- Marshall did not track employees, their performance, or their claims for overtime compensation. Upon transitioning the property management to Property Management Alliance, an independent, third-party property manager, the manager immediately cut over half of the employees that had been utilized by Marshall stating that Marshall was significantly over-staffed.

- Marshall borrowed using the demand Notes where Noteholders had the right to demand the return of their principal upon a 30-day demand. However, the borrowings were invested in a real estate portfolio that would take at least a year to liquidate responsibly. In this way, even if the value of Marshall's assets was on par with the amount of his liabilities (it clearly was not), he could never meet a demand for repayment without finding a source of liquidity other than liquidating Properties in the portfolio (*i.e.*, he would have to borrow from another party in order to meet the liquidity needs of an existing Noteholder).

Marshall's lack of proper financial accounting for his businesses presented the biggest challenge to the Trustee, his professionals, and the Committee and its professionals, in their collective efforts to explain what happened. For example, the Trustee was unable to simply go to a centralized bookkeeping system and generate balance sheets that would show when, at least according to the books and records, Marshall became insolvent. The Trustee suspected, but never knew for certain, that Marshall's failure to track his own financial affairs was intentional in that it allowed Marshall to have some plausible deniability regarding his increasingly disastrous financial condition.[3]

When Marshall was asked if there was some point in time when he knew he would not be able to repay his debts with the properties, he answered simply "I always assume[d] that the appreciation of the real estate would more than help pay for the [debts]. That's obviously false now, but that's what I always thought." *See* 341 Mtg. 10:7-12, June 26, 2023. For Marshall not to have known that his debt had grown to at least five times the most optimistic value of his assets was simply unbelievable. Even if it were to be believed, it is yet another glaring example of

[3] The Trustee tried to ascertain when Marshall knew that the amount of his liabilities markedly surpassed the value of his assets. The most obvious time when Marshall was at least compelled to take a hard look at his assets, liabilities, and business model was when he: (i) was effectively evicted from Alliance Bank N.A. on or around June 30, 2011 and prohibited from banking there; (ii) digitized his financial records in late-2011 to 2012; (iii) was subject to some form of an investigation by the United States Attorney, Federal Bureau of Investigation, the Department of the Treasury, and/or the New York State Dept. of Financial Services in or around 2013; and (iv) was effectively evicted from Oneida Savings Bank on or around February 3, 2015 and prohibited from further banking there. The Trustee has been unable to discover much regarding these matters and has learned of them through documents in Marshall's books and records.

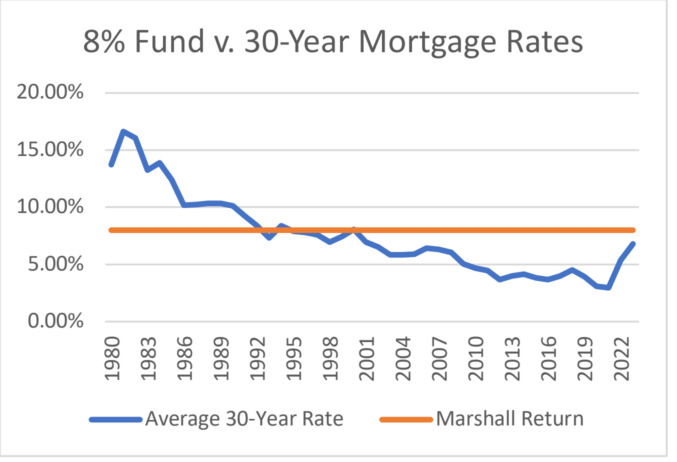
Marshall's incompetence as a manager. Any competent manager should have at least a general idea of his financial condition at any given time.

(iii)Marshall Borrowed at Above-Market Rates for a Sustained Period of Time

The most significant factor leading to Marshall's incurrence of so much debt was his high cost of capital. Marshall paid annual interest at 8% on his borrowings. When he started this practice approximately 40 years ago, average 30-year mortgage rates were in excess of 14%. In this way, borrowing at 8% in 1980 to invest in real estate may have actually seemed like a good deal. In fact, although it was not been confirmed, it appeared that Marshall's creditors were willing to lend to Marshall in the beginning not because of high returns which appeared later when interest rates moved lower, but because they could always get their money back within 30 days of demand. Thus, back then Noteholders were giving up a better return that they could achieve elsewhere in the market in exchange for liquidity.

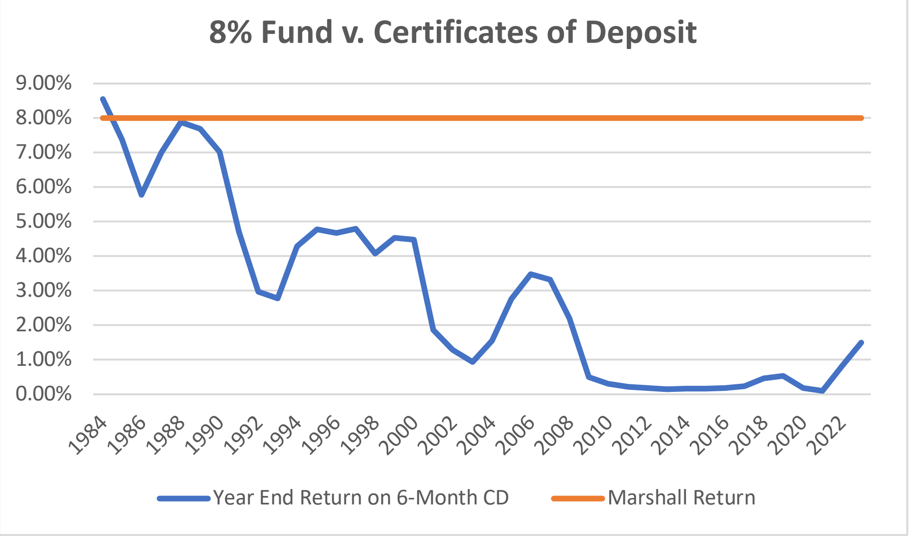
Over time, market rates changed substantially while the rate of return on the notes remained static. By the mid-1990's, the mortgage rates were roughly even with the 8% that Marshall continued to pay noteholders, and by the early-2000's, mortgage rates were substantially less than 8%. At the same time, Marshall continued to borrow on the same exact terms without any adjustment for market conditions. Thus, the noteholders received substantially larger returns than they could achieve anywhere else in the market <u>and</u> the noteholders had the ability to demand the return of their investment in just 30 days.

To demonstrate precisely how borrowing at 8% on the demand notes became increasing irresponsible over time, the Trustee compared the 8% return on the Notes to average 30-year mortgage rates since 1980 as depicted in the following chart:



* *Source Freddie Mac* (https://www.freddiemac.com/pmms).

Above, the Trustee compared Marshall's promised return to creditors to 30-year mortgage rates because that is the most logical comparison when the underlying investment is relatively illiquid and primarily residential real property. However, this is probably not the best comparison as the holder of a 30-year mortgage enjoys the security of a mortgage against the underlying real property, which noteholders here did not, and the mortgage holder has to wait 30 years for full repayment provided the borrower does not default, whereas noteholders here could demand the full repayment of their Notes within 30 days. In this way, comparing Marshall's return to the return on short term unsecured deposits where investors are entitled to their money back in a short period of time better demonstrates the absurdity of Marshall's business practice over time. That comparison is as follows:

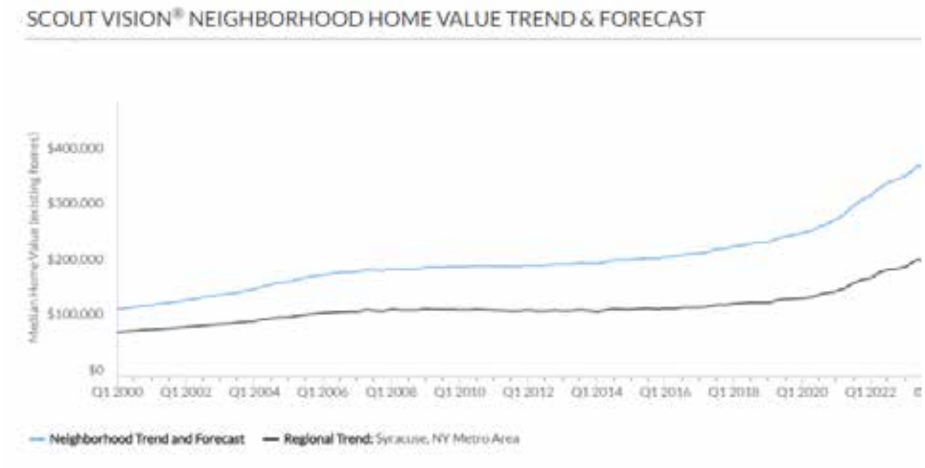


* *Source Bankrate national survey* (https://www.bankrate.com/banking/cds/historical-cd-interest-rates/#80s).

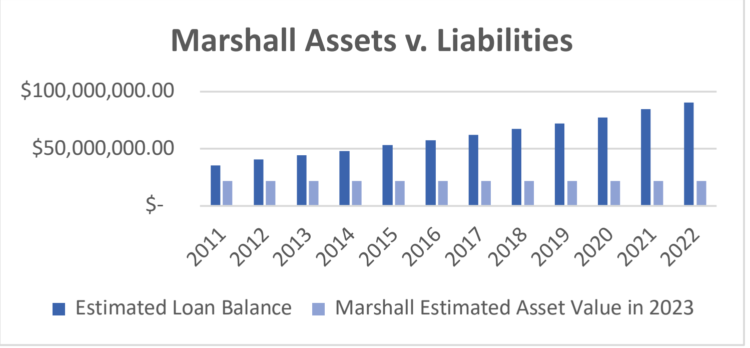
Perhaps the simplest illustration of the fallacy of Marshall's business plan and capital structure can be obtained by reviewing the financial performance of Marshall's real estate portfolio during the bankruptcy case. During the post-petition period of the petition date (April 20, 2023), to March 31, 2024, Marshall's estate had $3,203,778 in receipts and $2,851,709 in disbursements, leaving $440,454 in cash on hand. Clearly, Marshall's bankruptcy estate was not paying interest to Noteholders during the bankruptcy. However, if it were required to, the estate would have incurred <u>$7,143,773.36</u> in interest ($94,200,768.61 in principal at 8% interest for 346 days). Thus, at the end, Marshall's real estate portfolio was incurring interest at over twice the rate that it was taking in cash, and sixteen times the rate it was taking in cash net of expenses. This was completely unsustainable and became increasingly so over time.

Even observing the asset and liability picture going back to the end of 2011 when Marshall implemented the Quicken system, the amount of his note obligations was approximately $35,611,570, which is at least one and a half times as much as the value of his assets at 2024 values. If you assumed that the value of Marshall's assets was static at the valuation he used in his bankruptcy schedules of $21,854,009.89[4], and compared it to the note balance over the last 11

[4] This is an assumption that favored Marshall and was made for ease of illustration as the asset value most certainly did not stay static over time. Marshall acquired some property during this time and also, while relatively stable during the 2010's, average property values in the area did increased during this time especially during and after the Covid pandemic according to Neighborhood Trends, which tracks real estate values in the area:



years, the ever-deepening hole was readily apparent:



Thus, by all available information, Marshall's assets were dwarfed by the amount of his debt at some point in the 2000's, and yet Marshall continued to borrow and transact business for at least another 15 years until he became ill and his impossible financial situation was discovered.

C. The Ponzi Analysis

"Numerous creditors believe they are victims of a wide-ranging, long-standing Ponzi scheme, wherein they were promised an 8% return for investing in a fund [Marshall] claimed to be maintaining" (referred to here as the "Eight Percent Fund"). *See* Joint Stipulation of Facts, Docket No. 195, ¶ 18. "[Marshall] denies any fraud and claims that his obligations to noteholders were loans he intended to repay through the appreciation of the value of his real estate holdings." *Id.* at ¶ 19. It is critical to understand whether Marshall was in fact operating a Ponzi scheme.

(i) What is a Ponzi Scheme?

"Ponzi schemes have no exact definition, since they manifest a kaleidoscopic variety of configurations." Honorable Dorothy T. Eisenberg, Nicholas W. Quesenberry, *Ponzi Schemes in Bankruptcy*, 30 Touro Law Review p. 502. "Thus, 'courts look for a general pattern, rather than specific requirements.'" *Id.*, citing *Manhattan Inv. Fund, Ltd. V. Gredd (In re Manhattan Inv. Fund, Ltd.)*, 397 B.R. 1, 12 (S.D.N.Y. 2007) (stating there is no precise ponzi scheme definition).

Some courts use a four-factor test in determining whether a Ponzi scheme exists and consider whether: "1) deposits were made by investors; 2) the Debtor conducted little or no legitimate business operations as represented to investors; 3) the purported business operation of

* *Source Neighborhood Trends, Neighborhood Scout (https://www.neighborhoodscout.com/)*

the Debtor produced little or no profits or earnings; and 4) the source of payments to investors was from cash infused by new investors." *Sec. Inv'r Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC*, 531 B.R. 439, 471 (Bankr. S.D.N.Y. 2015). Other courts identify "badges of fraud," including the absence of legitimate business connected to the investment program, the unrealistic promises of low risk and high returns, commingling investor money, the use of agents and brokers paid high commissions to perpetuate the scheme, misuse of investor funds, the 'payment' of excessively large fees to the perpetrator and the use of false financial statements." *Gowan v. Amaranth Advisors LLC (In re Dreier LLP)*, No. 08-15051, 2014 WL 47774, at *9 (Bankr. S.D.N.Y. Jan. 3, 2014); *see Sec. Inv'r Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC (In re Madoff)*, 528 F. Supp. 3d 219, 237-41 (S.D.N.Y. 2021), *aff'd sub nom., Picard v. Jaba Assocs. LP, 49 f.4TH 170 2D Cir. 2022).*

In the end, and most significantly, "the label 'Ponzi scheme' has been applied to ***any sort of inherently fraudulent arrangement under which the debtor-transferor must utilize after-acquired investment funds to pay off previous investors in order to forestall disclosure of the fraud***." *Bayou Superfund, LLC v. WAM Long/Short Fund II, L.P. (In re Bayou Group, LLC)*, 362 B.R. 624, 633 (Bankr. S.D.N.Y. 2007) (emphasis added).

(ii) Marshall was Operating a Ponzi Scheme

Certain elements of Marshall's Eight Percent Fund are not typically characteristic of a classic Ponzi scheme. For example, when Marshall started borrowing in the 1980's, it appears to have been done for some legitimate purpose, *i.e.*, to purchase and hold real estate and to rent it out and collect rental revenues. Also, Marshall did not appear to live a lavish lifestyle like many perpetrators of Ponzi schemes. Rather, Marshall lived on a $2,000 a week salary from Marshall Inc., plus social security. He also paid his wife, Megan Marshall, $2,000 a month (or $24,000 a year). The Trustee's inspections of Marshall's workplace and residence did not reveal any indications that Marshall lived beyond relatively modest means.[5] Still, over time, the Eight Percent Fund took on the classic and distinct characteristics of a Ponzi scheme.

[5] Marshall's presentation and testimony that he has provided paints the picture of a relatively modest individual who enjoys simple things. *See e.g.*, Hr'g Tr. 82:22 to 83:4, Sept. 6, 2023 (Marshall: "One of my – I used to get the mail every day. I loved getting the mail. It was a joy of my life. And I am no longer allowed to get the mail.")

First, the Eight Percent Fund promised outsized and unusually lucrative returns, especially as time went on. Short term loans did not pay interest at or above 8% since the 1980's, and by 2010, the return on short term loans was well below 1%. Indeed, the Eight Percent Fund appeared like many Ponzi schemes to be "too good to be true." Saul Levmore, *Rethinking Ponzi-Scheme Remedies In And Out of Bankruptcy*, 92 B.U. L. Rev. 969, 982 (2012).

While one may legitimately question why the creditors leant money to Marshall on terms that seemed unsustainably good, this is not entirely uncommon. While Marshall's returns seem entirely implausible with the benefit of hindsight and when compared to historic returns on comparable investments, they were not ridiculous on their face. In this way, it is not difficult to see how Marshall's creditors were duped. One observer of Ponzi schemes noted:

> [K]nowing better isn't easy. Ponzi operations are typically light-years more sophisticated than the Nigerian money-transfer scams caught by your e-mail spam filter. As fraud expert and SEC trial counsel Pat Huddleston is fond of saying, "If it sounds too good to be true, you're dealing with an amateur." Madoff and his ilk don't promise the moon; the returns they offer, albeit fictitious, are plausible.

Anne Kates Smith, *The Lure of Ponzi Schemes*, Kiplinger's Pers. Fin. (Mar. 2013).[6]

Also, Marshall was a person of some prominence in the community and was in a position of financial intimacy with many of the creditors by virtue of his tax consulting and return preparation business. This presumably provided the access and credibility necessary to sell the Eight Percent Fund to hundreds of people. Marshall also ran the Eight Percent Fund for four decades and with each passing year without a collapse, creditors would justifiably become increasingly confident that the Eight Percent Fund must be stable.

Second, Marshall did not have a legitimate business as far as borrowing was concerned for at least the last decade of operations, where Marshall's debt increased from approximately $35 million to approximately $95 million. The purpose of initial investments in the Eight Percent Fund was to acquire pieces of real estate to rent. However, after year-end 2011, Marshall only acquired approximately 16 parcels of real property with a collective estimated current fair market value of $2,748,138. This is entirely immaterial to the amount of debt that Marshall was taking on at the time.[7] Thus, while it does not appear that the Eight Percent Fund started as a fraud utterly lacking

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[6] Available at https://www.kiplinger.com/article/investing/t031-c023-s002-lure-of-ponzi-schemes.html.
[7] The visual contrast of assets acquired versus liabilities incurred during this time is truly staggering and depicted as follows:

in a legitimate business purpose, it ultimately became that. *See Cuthill v. Greenmark, LLC (In re WorldVision Ent., Inc.)*, 275 B.R. 641, 648 (Bankr. M.D. Fla. 2002) (finding that a "textbook Ponzi scheme" existed where the issuance of promissory notes was the debtor's primary source of funds and in which the debtor primarily used the funds from those notes to pay interest to previous investors and also to pay overhead, salaries, and expenses); *Miller v. Wulf*, 84 F. Supp. 3d 1266, 1272 (D. Utah 2015), *aff'd*, 632 F.App'x. 937 (10th Cir. 2015) (unpublished) (the defendant argued that the business was not a Ponzi scheme because it operated a real business, but the court stated it "misse[d] the point" because "Ponzi schemes sometimes use legitimate operations to attract investors, but the existence of that legitimate business does not preclude a way that the company operated a Ponzi scheme").

Finally, and most significantly, since at least 2011, Marshall was using new investment funds to pay off previous investors in order to forestall disclosure of the fraud, which is the true indicia of a Ponzi scheme. *See In re Bayou Group, LLC*, 362 B.R. at 633. Indeed, it took a major health emergency that took Marshall away from the office for months for the Eight Percent Fund to be discovered as a Ponzi scheme and to ultimately collapse. This was explained by Marshall as follows:

> My Chapter 11 case largely precipitated by my recent hospitalization. Over the past several months, I have been hospitalized for a serious heart condition requiring two (2) surgeries. As a result of being out of my office, I estimate I lost approximately $600,000 in revenue related to my tax return preparation business. As news of my illness circulated, I also experienced an increase in requests by my noteholders for payments of principal and/or interest, requests that the cash flow from the business could not support.

Marshall Declaration, ¶ 6.

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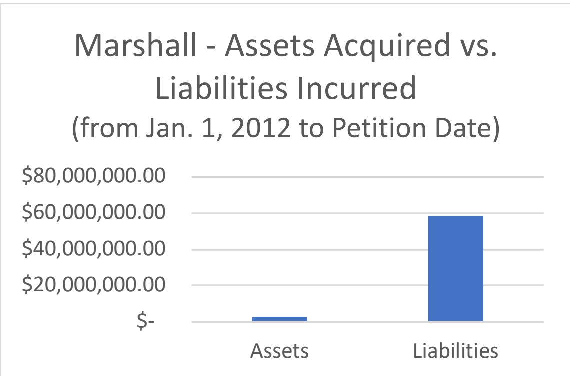

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Marshall's explanation for his financial crisis was self-serving at best. Even if he lost \$600,000 in revenue as a result of his not being able to prepare tax returns, \$600,000 is barely enough to cover even a single month worth of interest to noteholders, much less cover any redemptions demanded by Noteholders (\$94,200,768.61 in principal and accrued interest at 8% divided by 12 = <u>\$628,005 in interest each month on or around the Petition Date</u>).

As set forth above, from year-end 2011 to the Petition Date, Marshall's indebtedness was always significantly more than his asset value and grew from \$35.6 million to a staggering \$94.2 million. At the same time, Marshall only acquired an additional approximately \$2.8 million worth of assets. Also, during that period, Marshall originated 1,587 new Notes and closed 1,181. Marshall was thereby acquiring new investment funds for the exclusive purpose of paying off previous investors all while insolvent and not partaking in any serious asset acquisition activities. Marshall also admitted to the obvious – that he would, at least at times, borrow in order to repay investors:

> Q Okay. So, if that [bank] account got low and I contacted you for some money and you didn't have enough money to cover my request, what would you do then?
>
> A Well, I would have 30 days to pay your repayment and I would, within 30 days, I would collect rents, I'd have some paychecks or I'd see if there was money left in the other checking accounts. **I would call people I know and ask them if they would lend me some money.**
>
> Q All right. So, you'd reach out to somebody else to get some money in?
>
> A I have in the past, yes.

341 Mtg. 64:17 to 65:2, June 26, 2023 (Questions by Erin P. Champion, Assistant United States Trustee).

Based upon the foregoing, the Trustee concluded that at least since in and after 2011, Marshall was operated a Ponzi scheme via the Eight Percent Fund.

(iii)Net Equity Rule <u>NOT</u> Employed for Marshall

Once it was established that Marshall was perpetrating a Ponzi scheme, the court had to determine how noteholder claims should be treated. Quite often in Ponzi scheme cases, courts impose a "net equity" approach such that each Ponzi investor is entitled to what is akin to an inchoate claim for unjust enrichment against the Ponzi debtor to the extent of the creditor's "net loss", or the amount that the creditor's aggregate investment exceeds its ultimate recovery. *See,* *e.g., Restatement (Third) of Restitution and Unjust Enrichment* § 67(1)(c) cmt. f (2011); Mark A. McDermott, *Ponzi Schemes and the Law of Fraudulent Transfers*, 72 Am. Bankr. L.J. 157, 168 (1998). Under this approach, creditors are not entitled to any return on their original investment. This results in the disallowance of any creditor's claim beyond what they actually put into the Ponzi scheme and makes creditors who are "net winners" – those who received more than they invested – susceptible to having certain recoveries clawed back by the bankruptcy trustee.

In order to impose the net equity approach in this case with any intellectual integrity, the Trustee would have had to have taken at least the following steps:

(i) Since the Eight Percent Fund was probably not always a Ponzi scheme, the Trustee would have to determine with some precision when it became one (the "Ponzi Date"). The reason being is that any interest accrued or received by a noteholder before the fund became a Ponzi scheme would not be part of its principal investment and not deducted from its claim.

(ii) Next, the Trustee would have to determine precisely what each noteholder's claim was on the Ponzi Date and what it invested with Marshall after the Ponzi Date, or, if the noteholder only invested after the Ponzi Date, how much it contributed to Marshall's Eight Percent Fund (the "Gross Claim").

(iii) Then, the Trustee would have to determine what each noteholder received after the Ponzi Date and deduct it from the Gross Claim to determine the amount of the claim (the "Net Claim").

(iv) If a creditor was a "net winner" such that it received more than it put in thus having a negative Net Claim, the Trustee would then have to determine whether any of this "net winner's" receipts are susceptible to claw back and if so, the value of any defenses the creditor could assert to any avoidance action.

If a net equity approach could be and was taken, it would arguably favor those noteholders who loaned to Marshall more recently and would disfavor those who loaned to Marshall earlier and/or who received more interest payments and returns of capital. Alternatively, the Trustee could simply honor the claims of the noteholders pursuant to the agreed 8% terms. This approach would arguably favor those noteholders who received significant payments of interest and/or returns of capital prior to Marshall's collapse over those who put their money in near the end.

For many reasons, the Trustee proposed to honor noteholder claims pursuant to the original lending terms and to allow each noteholder to have a claim in the amount of any principal and accrued interest up to the petition date. The Trustee submitted that for at least the following reasons, this produced the best possible result for all noteholders and is justified under the law.

First, the Trustee had significant concerns about whether he could ever obtain a reliable net equity analysis. Marshall's books and records were incomplete at best. There were no computerized records prior to 2012, and the records after 2012 had significant problems and had required a very serious expenditure of estate resources to interpret and verify them. As set forth above, the Trustee believed that based upon the best available evidence, the Ponzi Date occurred at some point in the 2000's. However, the Trustee was a long way from determining any date with precision, which would be necessary to implement a legally supportable net equity approach. Further, determining Gross Claims as of the Ponzi Date and then deducting any repayments that may have occurred thereafter was a far more daunting task than it seems. Determining the noteholder claims just as of the petition date had been a lengthy and expensive process.[8] Going back to the Ponzi Date, which is believed to have been years before Marshall implemented any form of electronic bookkeeping, would be a difficult if not impossible task.

Second, even assuming that a net equity analysis was possible, the Trustee was most concerned about the administrative costs associated with that analysis. Administering the estate had been extraordinarily expensive and had required significant financial advisory resources to understand how Marshall ran his businesses, to wind down Marshall's businesses, to analyze over-forty years of financial history, to deal with complex tax matters, and to determine the proper amount of noteholder claims as of the Petition Date. As of March 31, 2024, the estate had already incurred $3,442,247.67 in fees to financial advisory firms subject to the Court's allowance ($1,642,028.45 to HKA, the Official Committee's financial advisors, $1,152,173.63 to Algon Group, the Debtor's financial advisors and managers, and $648,045.59 to RK Consultants, the

[8] For example, Marshall borrowed from noteholders on identical terms (*i.e.*, 8% return on 30-day demand notes), but noteholders opted for different repayment and interest service. The notes were payable on 30-day demand but had no other maturity, so if a noteholder never sought redemption, Marshall never repaid the obligation. Some noteholders opted for periodic interest payments and Marshall would oblige. Others never sought periodic payments and their interest was capitalized. However, even in these cases, Marshall would never calculate the interest and add it to the obligation unless he was asked to do so. Given these conditions and significant flaws in Marshall's bookkeeping systems, it took the Committee's and Trustee's professionals months just to reconcile and determine noteholder claims as of the petition date.

Trustee's financial advisors). The significant additional analysis necessary to even attempt a net equity approach would be incredibly expensive and there is no way to predict that after incurring the expenditure, the estate would be left with a usable and supportable net equity analysis.

Third, the Trustee was still reviewing the treatment of redeemed creditors but has not identified significant viable targets for avoidance actions. *See* Stevens Affidavit, ¶ 61. One allure to implementing a net equity approach is that it theoretically allows the Trustee to seek the recovery from significant "net winners", or those creditors with negative Net Claims, provided they received payments in excess of their Gross Claims during the requisite lookback period. When a Ponzi scheme is found, the "Ponzi scheme presumption" applies, which is a recognized presumption of actual intent to defraud on the part of the transferor in the context of a Ponzi scheme for purposes of seeking the avoidance of actual fraudulent transfers of property under section 548(a)(1)(A) of the Bankruptcy Code and/or section 276 of the N.Y. Debtor & Creditor Law. *See In re Diamond Finance Co., Inc.*, 2024 WL 4738564, at *13 (Bankr. E.D.N.Y. Feb. 22, 2024), *citing Sec. Inv'r Protec. Corp. v. Bernard L. Madoff Inv. Sec. LLC,* No. 20-cv-3140 (JGK), 2021 WL 1141638, at *11 (S.D.N.Y. Mar. 24, 2021).

Thus, if the net equity approach were implemented, the Trustee could more easily target creditors who were "net winners" for the recovery of the payments they received in excess of their Gross Claims during the last six years. Again, even if it were possible to determine the Net Claims with certainty, the Trustee was still investigating but had not yet identified significant targetable "net winners". In addition, many of those parties would likely be able to raise varying degrees of success of a good faith defense to any such attack. *See Silverman v. Actrade Cap., Inc. (In re Actrade Fin. Techs., Ltd.)*, 337 B.R. 791, 802 (Bankr. S.D.N.Y. 2005) (*citing U.S. v. McCombs*, 30 F.3d 310, 326 (2d Cir. 1994)).

For the facts of the Marhsall case, the Trustee submitted that the following argument articulated by Spencer A. Winters[9] is persuasive:

> This Note argues that the Bankruptcy Code generally does not allow the trustee to claw back interest payments from Ponzi scheme investors. This is because the Code provides an affirmative defense for transferees who take these payments in good faith and for value. The Code explicitly defines value to include reduction in the

[9] Mr. Winters is currently a partner in the restructuring department in the Chicago office of Kirkland & Ellis LLP. The argument cited here was made by Mr. Winters in an article authored while attending the University of Michigan Law School.

> balance of an outstanding debt, which is exactly what the Ponzi investor transfers in return for her payouts. There are two plausible limitations on this general rule: The first is for Ponzi investors who, based on the circumstances, should have known that they were investing in a fraudulent scheme, such as when the promised rate of return was so excessive as to be preposterous. The second is for Ponzi investors who, rather than purchasing a debt instrument, took an ownership stake in the Ponzi scheme by purchasing an equity security. These investors had nothing of value to transfer in return for their payouts because they had no debt to discharge. Finally, despite the commonsense notion that the court should not permit the net winners to keep funds that were misappropriated from other investors, a closer analysis reveals that the unfairness runs both ways. Any differential in unfairness in favor of the net losers is likely outweighed by the value of providing investors with the certainty that the interest they earn will not be clawed back after the fact.

Spencer A. Winters, *The Law of Ponzi Payouts*, 111 Mich. L. Rev. 119, 144 (2012).

Here, Marshall obtained funds exclusively through debt instruments on identical terms and the terms of those instruments were not "so excessive as to be preposterous." *Id*. For these reasons, the Trustee submitted that honoring the terms of the notes in this case is the best possible result for the reasons better articulated by Mr. Winters.

Finally, the estate was relatively small by comparison to the amount of debt. The Trustee estimated having only approximately between $5.2 and $9 million to distribute to creditors absent outsized success in the pursuit of claims against financial institutions. These dollars are few and precious when compared to the nearly $95 million owed to noteholders. The Trustee did not believe that it was prudent to spend the estate's few resources, which would consequently reduce funds available for distribution to creditors, unless he was confident that the expenditure was either necessary to the administration of the estate or would result in an enhanced or more equitable distribution to creditors. The Trustee did not believe the pursuit of a net equity approach in this case was necessary. Nor did the Trustee believe that implementing a net equity approach would result in an enhanced or more fair distribution.

D. Conclusion

On July 22, 2024, the Court entered an order on the Trustee's motion to fix victim claims and for a Ponzi finding, finding and concluding "that Marshall was operating a Ponzi scheme via the Eight Percent Fund since at least 2011" and that the net equity approach should not be implemented and instead that noteholder claims should be honored pursuant to the contracts. *In re M. Burton Marshall, et al.*, Case No. 23-60263, Dkt. No. 433, ¶¶ 43 and 51 (Bankr. N.D.N.Y. July 22, 2024) (Radel, J.).

III. PRIME CAPITAL VENTURES

A. Summary

Prime Capital Ventures was an advance-pay lending scheme perpetrated by principals Kris Roglieri and Kimmy Humphreys. Prime received deposits from prospective borrowers in exchange for promises of providing inexpensive loans and then converted and used those deposits to spend lavishly and luxury goods, beach homes, and sports cars. The scheme only lasted for two years before it succumbed to litigation by prospective borrowers seeking the return of their deposits. In the end, prospective borrowers and victims were owed well over $125 million. The Trustee sought a Ponzi scheme finding in connection with confirmation of a Chapter 11 plan.

B. The Fraud

(i) The Debtor's Business was Founded upon an Unworkable and Fraudulent Premise

Prime Capital was formed on December 14, 2021, and purported to be a legitimate alternative (or nonbank) commercial lender. Prime Capital advertised proudly that:

See Prime Commercial Lending, Prime Capital Ventures & The Bailey [Video], May 16, 2022, https://www.youtube.com/watch?v=A4_RKBepUkA (YouTube) at 0:21.

Generally, alternative lenders offer borrowers some significant benefits over traditional bank lenders by having simpler application processes, fewer underwriting requirements, different and more flexible financing products, and more rapid funding.[10] Roglieri confirmed that this was Prime Capital's business model claiming that he "saw a rising demand from borrowers who needed to move projects forward with as little static as possible" and that Prime Capital could "provide solutions that are less restrictive than your average bank and offer generous terms that favor borrowers."[11] The disadvantage of going to an alternative lender is that they typically charge higher interest rates than what may be available at a traditional bank.[12] Prime Capital on the other hand offered all of the advantages of an alternative lender, while offering interest rates well below market as explained below.

On May 2, 2022, Prime Capital described its business in an article in DealMaker Magazine as "a fund specifically designed to provide capital for large development, commercial development and commercial real estate transactions from $50 million to more than $1 billion."[13] Prime Capital offered non-recourse loans with interest rates of 4 to 6% with interest only payments.[14] At the exact same time, interest rates were rising rapidly in response to inflationary pressure. At the time of Prime Capital's advertisement (May 2022), the prime interest rate was 4%, rising to 4.75% a month later, then to 6.25% by September 21, 2022, and peaking at 8.5% on July 26, 2023.[15] 15-year mortgages followed the same trend starting at 4.52% on May 5, 2022 and peaking at 7.03% on October 26, 2023.[16]

Prime Capital's business model sounds completely implausible because it was. For any lender to be successful, it must pay a lower cost of capital than it receives from its borrowers. Banks would never survive if they paid their depositors a higher rate of interest than they receive from their borrowers. This assertion can be easily verified by contrasting what Citibank will pay

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[10] See Calio, V., June 20, 2024, Traditional Bank vs. Alternative Lender, kapitus.com, https://kapitus.com/blog/manage-your-money/financing/traditional-bank-vs-alternative-lender-which-is-better-for-your-small-business-kapitus/.

[11] Prime Commercial Lending, March 17, 2022, Albany, New York's Prime Commercial Lending Funds the First 5-Star Hotel in Atlanta, GA Through Prime's Real Estate Fund, Prime Capital Ventures, [Press release] https://www.prnewswire.com/news-releases/albany-new-yorks-prime-commercial-lending-funds-the-first-5-star-hotel-in-atlanta-ga-through-primes-real-estate-fund-prime-capital-ventures-301505069.html.

[12] See Calio, V., June 20, 2024, Traditional Bank vs. Alternative Lender.

[13] See Koplin, I., May 2, 2022, Roglieri Unveils Prime Capital Ventures, Prime Commercial Lending's Newest Fund, dealmaker-magazine.com, https://www.dealmaker-magazine.com/magazine/roglieri-unveils-prime-capital-ventures-prime-commercial-lendings-newest-fund.

[14] See Id.

[15] See https://www.fedprimerate.com/wall_street_journal_prime_rate_history.htm.

[16] See Freddie Mac (https://www.freddiemac.com/pmms).

a depositor today for a 5-year certificate of deposit (1.98%)[17] versus the average 5-year commercial mortgage rate (6.22%)[18]. In simple terms, in order to be a successful lender, Prime Capital would have had the impossible task of obtaining capital at well below the 4 to 6% that it was offering to its prospective borrowers. In truth, Prime Capital had no known legitimate source of capital to lend to prospective borrowers. Instead, it obtained its capital by converting its prospective borrowers' own funds.

Prime Capital did this by requiring as a condition of providing a loan that its prospective borrower provide 20% of the contemplated loan as an upfront deposit (defined above as an "ICA Deposit," or collectively, the "ICA Deposits"). Roglieri stated that borrowers "have to come to the table with at least 20% and that's just an important function of how our product works."[19] Prime Capital claimed that it would hold the ICA Deposit "as prepaid interest throughout the term of the loan."[20] As interest payments became due, Prime Capital represented that it "would just deduct it from the [ICA DEPOSIT]".[21] Prime Capital admitted that this was "a unique way of doing things" but claimed that it "ensures [the Debtor's] payback, and [the ICA Deposit] serves as additional collateral for the loan throughout the term."[22]

The ICA Deposits were an investment by the borrowers to get access to Prime Capital's promise of cheap and readily available capital. A loan from Prime Capital would theoretically allow a prospective borrower to invest in its underlying business and hopefully make big returns. Prime Capital's prospective borrowers did not appear to have any other viable source of capital, or at least not any as inexpensive as Prime Capital. Prime Capital further enticed prospective borrowers with what appear to have been very little underwriting and collateral requirements. Prime Capital also did not require personal guarantees or recourse on the loans as far as the Trustee's professionals had been able to tell from reviewing the Prime Capital's books and records.

Of course, the ICA Deposits that Prime Capital claimed to be holding to service the prospective borrower's future interest payment were Prime Capital's only known source of capital.

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[17] See Source https://www.citi.com/banking/current-interest-rates/cd (last viewed Jan. 30, 2026).
[18] See Source https://www.commloan.com/commercial-mortgages/mortgage-rates (last viewed Jan. 30, 2026).
[19] See Koplin, I., May 2, 2022, Roglieri Unveils Prime Capital Ventures, Prime Commercial Lending's Newest Fund, dealmaker-magazine.com.
[20] See Id.
[21] Id.
[22] Id.

Prime Capital did not segregate or hold the borrowers' ICA Deposits as it had represented. In fact, based upon the detailed allegations of the Government, many ICA Deposits were largely if not completely consumed the minute they were received by Prime Capital to cover large and pervasive overdrafts in the Prime Capital's bank accounts.[23]

A few of the ICA Deposits were used to fund one of the five loans that Prime Capital actually made as discussed below. Others were used to buy luxury items and property for the exclusive benefit and enjoyment of Roglieri. For example, according to the Government, Roglieri spent the funds misappropriated from the Prime Capital's prospective borrowers in the following ways[24]:

- $916,201 in private jets from June 2022 to October 2023;
- $1,778,154.77 to Ai Design, a high-end automotive shop from December 2022 to October 2023;
- $3,194,454 to purchase a rare Mercedes-Benz "hybercar", which never materialized;
- $3,672,067.50 to purchase the Virginia Beach Property;
- $2,225,000 to purchase a single wristwatch called "RM-52-01 Tourbillion Skull";
- $4,729,745 to RM Sotheby's to purchase a 2003 Ferrari Enzo AB Version E and a 2014 Ferrari LaFerrari;
- $260,810 for a table constructed using a Ferrari V-12 engine;
- $2,076,900 for the combined purchase of a 1982 Mercedes Benz 500SL, a 1989 Mercedes Benz 560 SEL, a 2007 Mercedes Banz SLR McLaren, and a 1987 Mercedes Benz 560;
- $1,300,000 to TopGear Imports for a 2004 Porsche Carrera;
- $2,055,312 to Wide World Farrari for a 2022 Ferrari 812 Competizione;
- $3,811,000 to Bonhams Butterfields Trust for the purchase of a 2006 Maserati MC 12 Corse;
- $355,000 to Timepiece Trading for the purchase of a Richard Mille RM 65-01 watch; and
- $260,000 to Luxury Bazaar for the purchase of two Rolex watches.

[23] For example, on April 7, 2023, creditor 526 Murfreesboro provided Prime Capital with an ICA Deposit of $4,312,500 by wire transfer to the Prime Capital's account at Citibank. At the time, the Citibank account was overdrawn in the amount of $4,094,514.75, so nearly the entire ICA Deposit was spent immediately to cover Prime Capital's obligation to Citibank. Similarly, on April 27, 2023, Compass-Charlotte provided the Debtor with an ICA Deposit of $15,902,250 by wire into Prime Capital's Citibank account. $6,525,669.33 of that ICA Deposit was consumed immediately to cover an overdraw. See United States of America v. One 2003 Ferrari Enzo AB Version E., et al., Case No. 24-cv-1345 (MAD/DJS), Dkt. No. 20-1, Amended Complaint, ¶¶36-57 (N.D.N.Y. Jan. 15, 2025).

[24] See Id. at ¶¶80-162.

(ii) The Debtor Fraudulently Claimed to Have Made Large Loans to Attract Victims

In order to sell a business model that seemed entirely impossible if properly understood, and to get prospective borrowers to give Prime Capital new ICA Payments, Prime Capital had to demonstrate that it actually made loans. It did this by, among other ways, fraudulently claiming to have made a "$188,000,000 funding of ALUX Properties, LLC and their project 'The Bailey' which will be the only 5-star hotel in Atlanta".[25] Prime Capital made a glitzy promotional video published on YouTube where it boasted about making this loan. The video featured Roglieri and others trapsing around the wooded area in Atlanta where "The Bailey" was going to be constructed. The alleged principal of ALUX Properties, LLC ("ALUX"), Brandon Wheeless, expressed his appreciation in the video stating that "access to this type of capital with trusted individuals that you close deals with definitely makes life a heck of a lot easier for us and the company so we are fast-tracking to grow at an exponential rate moving forward."[26] Depicted here are Messrs. Wheeless and Roglieri surveying the site, along with the "after" rendering of "The Bailey" contained in Prime Capital's video advertisement[27]:

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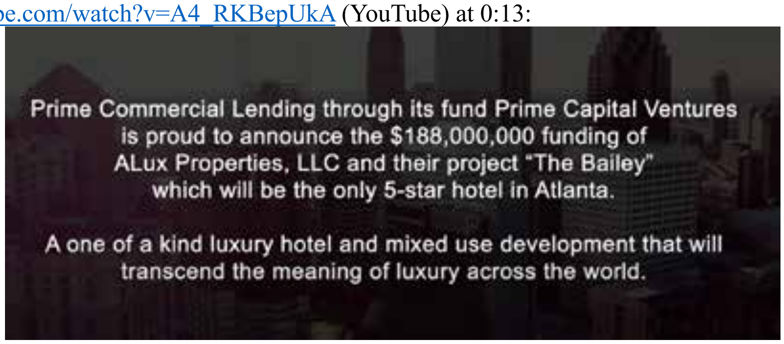
[25] See Prime Commercial Lending, Prime Capital Ventures & The Bailey [Video], May 16, 2022, https://www.youtube.com/watch?v=A4_RKBepUkA (YouTube) at 0:13:



See also, Prime Commercial Lending, March 17, 2022, Albany, New York's Prime Commercial Lending Funds the First 5-Star Hotel in Atlanta, GA Through Prime's Real Estate Fund, Prime Capital Ventures, [Press release].

[26] See Id. at 3:44 (transcribed by counsel).

[27] See Id. at 2:58 and 1:35, respectively.

The problem, of course, is that Prime Capital never made any such loan to ALUX. There is no "The Bailey" hotel in Atlanta and there is no sign that there was ever actually going to be. According to Prime Capital's books and records, Brandon Wheeless, the purported principal of ALUX and third-party borrower of Prime Capital, was actually on Prime Capital's payroll and received a total of $200,000 from Prime Capital between July 7, 2022 and September 18, 2023.

Indeed, ALUX, the purported borrower, was placed into a receivership by the Georgia Superior Court on September 13, 2022 in connection with a lawsuit where the plaintiffs alleged, among other things, to have been defrauded out of $10 million.[28] Featured in that litigation was an entity called Blackwater Capital Group, LLC" ("Blackwater") which purported to act as a lender to the project, not unlike Prime Capital in its promotional video.[29] Blackwater's lending agreement was dated December 14, 2021, the exact date that Prime Capital was formed, and was nearly identical in form and substance to the form of lending agreement employed by Prime Capital.[30] Compared here are the first pages of the table of contents of Blackwater's December 14, 2021 lending agreement (on the left), and the Prime Capital's April 24, 2023 lending agreement with creditor Compass (on the right)[31]:

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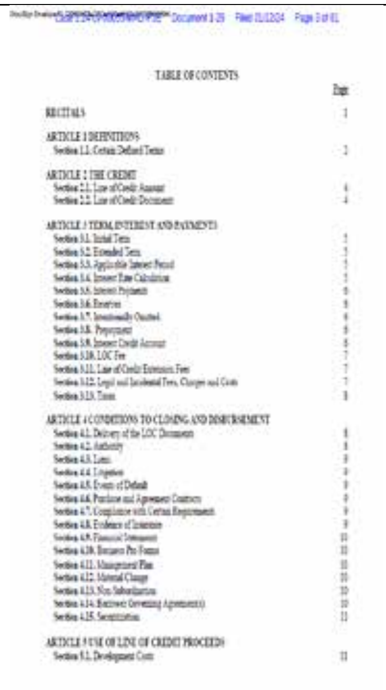
[28] See Capstone Diagnostics One, L.P., et al. v. Bailey LLC, et al., Case No. 2022cv366001 (GA Sup. Ct., Fulton Cty., Sept. 22, 2024).
[29] See Id., Judgment entered June 24, 2023.
[30] See Id., Verified Complaint, Exhibit E, executed June 9, 2022.
[31] See Id., compared to Exhibit 29 to the Complaint filed in Compass-Charlotte v. Prime Capital Ventures, LLC, et al., Case No. 24-cv-55 (MAD) (N.D.N.Y. Jan. 12, 2024).



Like Prime Capital, Blackwater required the payment of an ICA Deposit under its agreement, and Blackwater was ultimately paid its $10 million ICA Deposit. However, the source of that ICA Deposit did not come from ALUX (the borrower) but from funding from the plaintiffs in the litigation who sued to recover their money. Ultimately, the Georgia Superior Court found that "[t]he testimony evidence brought forth at the hearing revealed the [Blackwater lending agreement] to be a 'total fraud'".[32] Although the relationship between Blackwater and Prime Capital is not yet understood, both entities and/or their principals were using the same fraud model to defraud prospective borrowers out of ICA Deposits and Prime Capital or its affiliate Prime Commercial appeared to have acted as a loan broker in the transaction.

Fortunately for Blackwater's victim(s) in the ALUX transaction, but unfortunately for the Prime Capital's victims, Blackwater appears to have been discovered and stopped relatively quickly, whereas the Debtor continued on until at least in or around December 2023, obtaining an estimated $100 million in ICA Deposits that have yet to be repaid. *See* Ryniker Declaration, ¶ 25.

[32] See Id., Judgment entered June 24, 2023, p.4.

In addition to the fraudulent claim that Prime Capital had loaned $188 million to ALUX to build "The Bailey", Prime Capital also fraudulently claimed to have "gained prominence by committing $17 billion with a South Korean firm for projects in the United States and abroad."[33] Prime Capital also claimed that it had provided "$2.3 billion in funding for the first stage of a massive five-year, five-stage $22 billion project" "[i]n the heart of Dubai".[34] There is absolutely no indication that any of that is true.

(iii)The Only way to pay old Victims was by Getting new Ones

Prime Capital's business was never legitimate. It was founded upon lies. Those lies were compounded when prospective borrowers' ICA Deposits were immediately converted and never reserved for interest payments as represented. Finally, those lies were discovered when Prime Capital was unable to fund the loans promised to prospective borrowers who had already made ICA Deposits. Once most of the borrowers discovered that Prime Capital could not fund their loans, they demanded a return of their ICA Deposits and began to rush to courthouses all over the country.[35]

For a few of the Prime Capital's earliest prospective borrowers, Prime Capital was able to obtain sufficient additional ICA Deposits from new prospective borrowers to fund those loans. Even though Prime Capital advertised that its transactions ranged from $50 million to $1 billion,

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[33] See Prime Commercial Lending, March 17, 2022, Albany, New York's Prime Commercial Lending Funds the First 5-Star Hotel in Atlanta, GA Through Prime's Real Estate Fund, Prime Capital Ventures, [Press release]; see also Prime Commercial Lending, Prime Commercial Lending Commits to Lending $17 Billion [Video], Jan. 21, 2022, https://www.youtube.com/watch?v=PmvtmdkBUlo (YouTube) at 0:13:

[34] Koplin, I., May 2, 2022, Roglieri Unveils Prime Capital Ventures, Prime Commercial Lending's Newest Fund, dealmaker-magazine.com, https://www.dealmaker-magazine.com/magazine/roglieri-unveils-prime-capital-ventures-prime-commercial-lendings-newest-fund.

[35] See, e.g., Truss Financial LLC v. Prime Capital, et al., Index No. 2023/510389 (N.Y.Sup. Ct. Kings Cty. Apr. 5, 2023) (seeking and apparently obtained the return of $13.4 million); B&R Acquisition Partners v. Prime Capital (JAMS Arb., Aug. 2023) (seeking return of $4.3 million); Sturm v. Prime Capital, Case No. 23-cv-1033 (N.D.N.Y. Aug. 22, 2023) (seeking return of $2 million); Camshaft CRE 1, LLC v. Prime Capital, Case No. 2023-023173 (Fla. Circ. Ct., Miami-Dade Cty., Sept. 15, 2023) (seeking return of $12.4 million); The Lion Group DFW, LLC v. Prime Capital, Case No. 23-DCV-34617 (Tex. Dist. Ct., 146th Dist., Sept. 21, 2023) (demand unknown); Onward Partners, LLC, v. Prime Capital, et al., Case No. 23-cv-833 (D. Utah Nov. 13, 2023) (seeking return of $4 million).

none of the loans that it actually made even came close to the advertised $50 million floor. In fact, the largest loan was to Indigo Pharmaceuticals and was for principal of $20 million by agreement dated June 2, 2022.[36] The Trustee and his professionals believed that other loans were partially or fully funded and they are currently investigating such loans.

When Prime Capital was no longer able to fund loans and borrowers began to sue, the only way for Prime Capital to forestall discovery of its fraud was to obtain more ICA Deposits to repay those who had discovered what was going on. In at least the following situations, Prime Capital used new ICA Deposits to try to satisfy the claims of earlier prospective borrowers:

- 526 Murfreesboro delivered a $4,312,500 ICA Deposit to the Debtor on April 7, 2023. On April 17, 2023, Prime Capital used $2,000,000 of that ICA Deposit to repay a prior portion of the ICA Deposit received in September 2022 from borrower Onward Partners LLC, and another $2,000,000 of that ICA Deposit to repay a prior portion of the ICA Deposit from another client identified as "Business-1" by the Government.[37] Thus, the near entirety of 526 Murfreesboro's ICA Deposit was used to repay prior borrower/investors.
- Compass delivered a $15,902,250 ICA Deposit to Prime Capital on April 27, 2023, and HCW Biologics Inc. ("HCW") delivered a $5,250,000 ICA Deposit to Prime Capital that same day. Compass and HCW's ICA Deposits were commingled and were used for the following purposes, among others, not related to those borrowers: (i) $6,525,669.33 was used to fund a preexisting overdraw in Prime Capital's bank account (Citibank No. **6945); and (ii) $3,700,000 was transferred to a law firm and used, upon information and belief, in connection with another loan.[38]
- Newlight delivered a $2,500,000 ICA Deposit to Prime Capital on May 24, 2023, which was largely used for unrelated purposes in the one- week period that followed.[39]
- As required by the Line of Credit Agreement between ER Tennessee and Prime Capital, $15 million was required to be advanced by ER Tennessee as an ICA Deposit and held in a separate bank account. On September 21, 2023, Prime Capital received two (2) deposits of $9,2621,416 and $4,987,416.00, respectively, representing ER Tennessee's ICA Deposit. The ICA Deposit was deposited into Prime Capital's newly formed account at RBC (#0017). On September 26, 2023, Prime Capital transferred $7,000,000 of ER Tennessee's ICA Deposit to another newly formed Prime Capital bank account at Quad City / Farmer Bank account (#5665). That same day, Prime Capital issued six (6) wires from Farmers Bank account totaling $6,569,400.00 in various amounts to recipients Lion Group, Ketan Masters, Redeem Temple Courtyard, Lofts Phases 2 & 3 LLC, and Barclay Damon LLP

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[36] See Prime Commercial Lending, Prime Capital Ventures Presents Indigo Pharmaceutical in Las Vegas, NV [Video], Apr. 20, 2023, https://www.youtube.com/watch?v=GvmECqnuBkY (YouTube) at 0:13; Prime Commercial Lending, Prime Capital Ventures Presents Home Rentals in Carbondale, IL [Video], Mar. 3, 2023, https://www.youtube.com/watch?v=8D5GRnKecG0 (YouTube).

[37] See Civil Forfeiture Case Amended Complaint, Dkt. No. 20-1, ¶42.

[38] See Id. at ¶¶45-57.

[39] See Id. at ¶¶58-65.

(two separate transfers). It is believed that most, if not all, of those transfers were to replace other prospective borrowers' ICA Deposits.

Further, in early October 2023, Prime Capital obtained a $6,000,000 line of credit from RBC using the remainder to ER Tennessee's ICA Deposit in acct #0017 as collateral. Immediately, on October 11, 2023, $5,000,000 of the RBC loan proceeds was transferred to Prime Capital's Key Bank acct #2233 and then further transferred to Matthew Thacker. On October 16, 2023, Prime Capital transferred the remaining $1,000,000 of the RBC loan proceeds to Key Bank acct #2233. When Prime Capital defaulted on the terms of the RBC loan, RBC was repaid from the remainder of ER Tennessee's ICA Deposit which was used as collateral for the loan.

C. The Ponzi Analysis

In a Ponzi scheme, multiple victims are defrauded over the course of months or years, and the perpetrator forestalls discovery of the scheme by using newer victims' money to pay back earlier-in-time victims. Payouts are used to create the appearance of a legitimate, money-making enterprise; however, in reality, investors are the only source of funding and the person(s) involved in the Ponzi scheme will siphon off investor funds for their own personal gain. See Securities Fraud Awareness & Prevention Tips, FBI.gov.[40] "Ponzi schemes have no exact definition, since they manifest a kaleidoscopic variety of configurations." Honorable Dorothy T. Eisenberg, Nicholas W. Quesenberry, Ponzi Schemes in Bankruptcy, 30 Touro Law Review p. 502. "Thus, 'courts look for a general pattern, rather than specific requirements.'" Id., citing Manhattan Inv. Fund, Ltd. V. Gredd (In re Manhattan Inv. Fund, Ltd.), 397 B.R. 1, 12 (S.D.N.Y. 2007) (stating there is no precise Ponzi scheme definition).

Some courts use a four-factor test in determining whether a Ponzi scheme exists and consider whether: "1) deposits were made by investors; 2) the Debtor conducted little or no legitimate business operations as represented to investors; 3) the purported business operation of the Debtor produced little or no profits or earnings; and 4) the source of payments to investors was from cash infused by new investors." Sec. Inv'r Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC, 531 B.R. 439, 471 (Bankr. S.D.N.Y. 2015). Other courts identify "badges of fraud," "including the absence of any legitimate business connected to the investment program, the unrealistic

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[40] https://www.fbi.gov/stats-services/publications/securities-fraud (last visited Nov. 15, 2024).

promises of low risk and high returns, commingling investor money, the use of agents and brokers paid high commissions to perpetuate the scheme, misuse of investor funds, the 'payment' of excessively large fees to the perpetrator and the use of false financial statements." Gowan v. Amaranth Advisors LLC (In re Dreier LLP), No. 08-15051, 2014 WL 47774, at *9 (Bankr. S.D.N.Y. Jan. 2, 2014); see Sec. Inv'r Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC (In re Madoff), 528 F. Supp. 3d 219, 237-41 (S.D.N.Y. 2021), aff'd sub nom., Picard v. Jaba Assocs. LP, 49 F.4th 170 (2d Cir. 2022).

In the end, and most significantly, "the label 'Ponzi scheme' has been applied to *any sort of inherently fraudulent arrangement under which the debtor-transferor must utilize after-acquired investment funds to pay off previous investors in order to forestall disclosure of the fraud*." Bayou Superfund, LLC v. WAM Long/Short Fund II, L.P. (In re Bayou Group, LLC), 362 B.R. 624, 633 (Bankr. S.D.N.Y. 2007) (emphasis added). The Debtor had all the classic hallmarks of a Ponzi scheme.

Prime Capital's Ponzi scheme is also consistent with what the U.S. Securities and Exchange Commission has dubbed a fraudulent advance fee scheme. In such a scheme, the perpetrator gets the victim to pay an upfront fee based on the promise that the fee will enable large sums of money to flow to the victim. After the victim sends the fee, the perpetrator keeps the fee and never delivers the promised loan, windfall, etc. See Updated Investor Alert: Be on the Lookout for Advance Fee Fraud, SEC.gov.[41] This is precisely what Prime Capital was doing here.

There is no basis to dispute that Prime Capital was at all relevant times an advance fee/Ponzi scheme, but perhaps the most compelling admission is found in text messages between Roglieri and an undisclosed individual as follows:

Date	Time	From	Message
1/4/2024	11:20:42 am	Unknown	Can't you just keep working on those companies? I know it might be hard at first, but look what you build this up to beat from nothing
1/4/2024	11:20:56 am	Roglieri	Yea I can but not when I'm in f—king prison
1/4/2024	11:21:09 am	Unknown	Why do you think that's gonna happen? Why can't it just be a bankruptcy?
1/4/2024	11:21:47 am	Roglieri	**Because I unused others money to fund deals** I already told you this
1/4/2024	11:22:02 am	Unknown	And that's illegal?

[41] https://www.sec.gov/resources-for-investors/investor-alerts-bulletins/ia_lookforaff (last visited Nov. 15, 2024).

Date	Time	From	Message
1/4/2024	11:22:15 am	Roglieri	Yes
1/4/2024	11:22:36 am	Unknown	How bad . I mean, what's the worst you do a couple years who cares You have your family This whole family will support you through this It's a civil case it's not a criminal case
1/4/2024	11:27:42 am	Roglieri	**It will turn criminal as soon as they get into bank statements**

United States of America v. Kris Roglieri, Case No. 24-cr-00392 (MAD) (N.D.N.Y.) (the "Roglieri Criminal Case"), Docket No. 6-1, p. 20-24 (June 3, 2024) (emphasis added) (typographical and grammatical errors in original).

The plea agreements entered into by insiders of Prime Capital contain numerous admissions that support the contention that Prime Capital was at all times an advance fee/Ponzi scheme as follows:

- Roglieri admitted that he and Humphrey "began claiming that [Prime Capital] had the present ability to make large commercial loans, including loans in the tens of millions of dollars, through funding agreements with third-party hedge funds. As the defendant knew at all relevant times, [Prime Capital] had obtained no funds of its own and never had the present ability to independently make commercial loans of any size, and funding was based on possible third-party sources and funding agreements." Roglieri Criminal Case, Docket No. 90 (the "Roglieri Plea"), p.8, § 5(c); *United States v. Kimberly Humphrey a/k/a Kimberly Owen,* Case No. 25-cr-00238 (MAD) (N.D.N.Y.), Docket No. 4 (the "Humphrey Plea"), p.6, §5(b) and (g).

- Despite representations to prospective borrowers to the contrary ICA Deposits "were not deposited into a pledged account or accounts", "were not used to cover interest payments on loans", and portions of ICA Deposits were used to "fund [Roglieri's] purchases of luxury goods". Roglieri Plea, pp.8-9, §5(e); Humphrey Plea, p.9, §5(i).

- "Because [Prime Capital] never ultimately secured a proven, demonstrated or realized a source of loan funding, [Roglieri and the other Debtor Insiders] used ICA [Deposits] from newer borrower clients to partially fund loans to, and to refund ICA [Deposits] to, older borrower clients." Roglieri Plea, p.10, §5(g).

While prospective borrowers were not investing in Prime Capital in the traditional sense, their ICA Deposit was very much an investment for all intents and purposes. The ICA Deposits were made for the express purpose of obtaining much needed and impossibly low-priced capital amounting to at least five times the amount of the ICA Deposit. That capital was needed by the prospective borrowers for their projects and businesses. Prime Capital obtained the ICA Deposits not only on the promise of providing low-priced capital, but on the representation that the ICA

Deposit would be held and used to pay down the prospective borrower's interest during the life of the contemplated loan.[42] Prime Capital never retained the ICA Deposits in "trust" as represented but rather used them for: (i) in the rare instances, funding actual loans; (ii) returning other prospective borrowers' ICA Deposits when Prime Capital could not fund the promised loans in order to keep the fraud from being discovered; and (iii) buying a beach house, expensive cars, luxury wristwatches, private jet travel, and other extravagances for Roglieri. Most importantly, the only source of capital for any of Prime Capital's activities was obtaining more ICA Deposits from new prospective borrowers, which were not supposed to be used for anything other than servicing the respective prospective borrower's loan obligations.

It is difficult to describe Prime Capital's fraudulent scheme as anything but a Ponzi scheme. Regardless, even if Prime Capital had any divergence from the classic Ponzi scheme model, "[c]ase law has revealed that a clever twist on the Ponzi concept will not remove a fraudulent scheme from the definition of Ponzi." Forman v. Salzano (In re Norvergence, Inc.), 405 B.R. 709, 730 (Bankr. D.N.J. 2009), citing United States v. Sudeen, 434 F.3d 384, 386-87 (5th Cir. 2005); United States v. Antonakopoulos, 399 F.3d 68, 72 (1st Cir. 2005). What is most important is that Prime Capital and its former principal knew that the pool of prospective borrowers would at some point run dry, the scheme would consequently inevitably collapse, and those prospective borrowers with outstanding ICA Deposits would lose their money. This is the very essence of a Ponzi scheme. See Christian Bros. High Sch. Endowment v. Bayou No Leverage Fund, LLC (In re Bayou Group, LLC), 439 B.R. 284, 306 n.19 (S.D.N.Y. 2010).

For all the foregoing reasons, the Trustee sought a finding that Prime Capital was an advance pay/Ponzi scheme.

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[42] The principal of Indigo Pharmaceutical explained his expectations of precisely how the ICA Deposit works in the YouTube promotional video reference above as follows:

> So with Prime, they are committed just as much as we are because we put the money in, that is true, **but the money goes into a trust,** and you wait for the documentation of a trust meaning you have already been accepted. It's just a matter of time until you get funded. So once you understand that, although you're waiting and that sometimes can give people agita, but you know that the loan is going to come through because the trust has accepted all your documentation in advance and you know whether it's sixty or ninety days, or banking days actually, you're going to get funded. It's just a matter of time.

Prime Commercial Lending, Prime Capital Ventures Presents Indigo Pharmaceutical in Las Vegas, NV [Video], Apr. 20, 2023, *supra*, starting at 4:01 (transcription by counsel).

D. Conclusion

On February 11, 2026, the Court entered an order confirming the Trustee's plan of liquidation finding and concluding "that [Prime Capital] was an advance pay/Ponzi scheme since its formation." *In re Prime Capital Ventures LLC*, Case No. 24-11029, Dkt. No. 402, p.16 (Bankr. N.D.N.Y. Feb. 11, 2026) (Radel, J.).

Jacob Broadway, Moderator

Jacob Broadway is a member of McGuireWoods LLP's Restructuring & Insolvency practice group in Pittsburgh, PA, where his practice focuses on guiding clients through complex financial distress matters. His recent restructuring engagements have involved automotive, healthcare, metals, mining, and manufacturing. Mr. Broadway earned his J.D. from Duquesne University. He clerked for Hon. Jeffery A. Deller in the U.S. Bankruptcy Court for the Western District of Pennsylvania before joining McGuireWoods.

Kevin P. Clancy

Kevin Clancy is a Partner in CohnReznick Advisory's Restructuring and Dispute Resolution Practice. With more than 30 years of experience in accounting, restructuring, forensic investigations, and litigation support, he advises clients in complex bankruptcy, insolvency, and financial dispute matters. Kevin has served in a variety of court-appointed and fiduciary roles, including liquidating trustee, examiner, special master, and independent board member, and has testified as an expert in bankruptcy and state courts throughout the United States. He holds a J.D. and a B.S. in Accounting from The Catholic University of America and is a Certified Insolvency and Restructuring Advisor (CIRA), Certified in Financial Forensics (CFF), and Certified Turnaround Professional (CTP).

Hon. Eamonn J. O'Hagan

Hon. Eamonn J. O'Hagan was sworn in as a United States Bankruptcy Judge for the District of New Jersey on February 17, 2026. Judge O'Hagan earned his undergraduate degree, with highest honors, from Rutgers College in 2001 and his law degree, magna cum laude, from Boston College Law School in 2004. Judge O'Hagan clerked for the Honorable William G. Young, U.S.D.J., in the District of Massachusetts and served as Senior Bankruptcy Counsel at the United States Attorney's Office for the District of New Jersey. Prior to joining the U.S. Attorney's Office in 2015, Judge O'Hagan was a bankruptcy attorney in private practice in New York City.

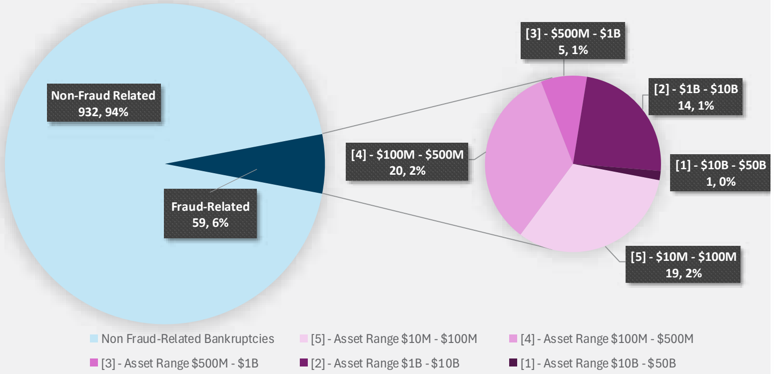
Fred Stevens

Fred Stevens is a partner with Klestadt Winters Jureller Southard & Stevens, LLP in New York. He is a professional fiduciary and commercial restructuring lawyer whose practice focuses on the representation of trustees, debtors and creditors in complex bankruptcy cases, debt restructurings and related litigation, with a focus on Ponzi schemes and similar frauds. Fred also routinely serves as a bankruptcy trustee, examiner, plan administrator and receiver in cases throughout the country. Fred received his B.S. in finance and J.D. from St. John's University, where he is currently an adjunct professor teach classes on the representation of bankruptcy trustees.

I. Bankruptcy Filing Statistics

Bankruptcy Filings – Fraud Related vs. Non-Fraud Related

Number of Chapter 7 & 11 Filings from 2024 to 2026 YTD
Assets & Liabilities at Filing > $10M

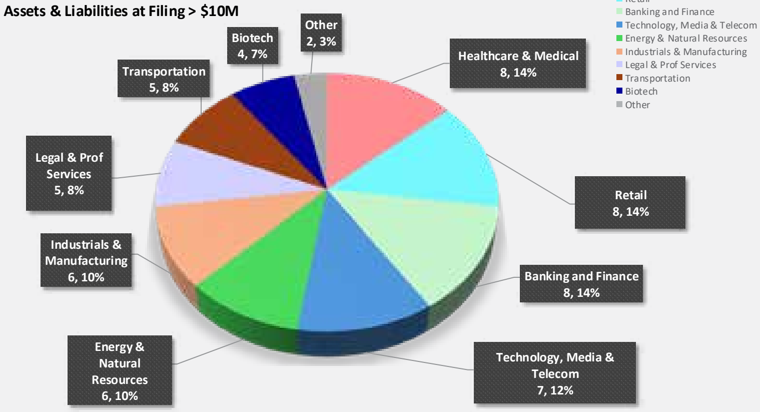


Source: BankruptcyData.com, download as of June 5, 2026; fraud-related classification is based on public research and is not explicitly identified in the underlying BankruptcyData dataset.

- Fraud-related filings represent a small share of total cases (~6%; 59 out of 991), with non-fraud filings making up the vast majority (~94%).
- Overall bankruptcy activity is therefore overwhelmingly driven by non-fraud situations across large filings.
- Within fraud-related cases, filings are concentrated in mid-sized asset ranges, particularly **$100-$500M (20 cases)** and **$10M-$100M (19 cases)**
- Higher-value fraud cases **($1B-$10B: 14 cases)** occur less frequently, and very large fraud cases **($10B+: 1 case)** are rare.
- Only one Chapter 7 filing is identified as fraud-related, indicating fraud cases are almost entirely concentrated in Chapter 11 during the study period.

Fraud-Related Bankruptcies by Industries

Number of Fraud-Related Filings from 2024 to 2026 YTD
Assets & Liabilities at Filing > $10M



Source: BankruptcyData.com, download as of June 5, 2026; fraud-related classification is based on public research and is not explicitly identified in the underlying BankruptcyData dataset.

- Fraud-related filings are relatively dispersed across industries, with no single sector dominating the landscape.
- **Healthcare & Medical**, **Retail**, and **Banking & Finance** are the Largest contributors, each accounting for **8 cases (~14% each)**.
- **Technology, Media & Telecom** follows closely **(7 cases, ~12%)**, indicating meaningful activity in tech-related fraud situations.
- **Energy & Natural Resources** and **Industrial & Manufacturing** each represent **~10%** of filings **(6 cases each)**, reflecting moderate exposure across asset-heavy sectors.
- **Legal & Professional Services** and **Transportation** show smaller but notable shares **(~8% each)**, while **Biotech (~7%)** and **Other (~3%)** remain more limited.
- Overall, fraud-related bankruptcies are broadly distributed across sectors, suggesting no single industry concentration but rather systemic exposure across the economy.

Concentration & Distribution of Fraud-Related BK Filings

Bankruptcy Court	Number of Fraud-Related Filings From 2024 to 2026 YTD [1]
Delaware Bankruptcy Court	18
Texas Southern Bankruptcy Court	17
Texas Northern Bankruptcy Court	5
New Jersey Bankruptcy Court	4
Florida Middle Bankruptcy Court	3
New York Southern Bankruptcy Court	2
New York Eastern Bankruptcy Court	2
West Virginia Northern Bankruptcy Court	1
California Central Bankruptcy Court	1
Missouri Eastern Bankruptcy Court	1
New York Northern Bankruptcy Court	1
Virginia Eastern Bankruptcy Court	1
Georgia Northern Bankruptcy Court	1
Arizona Bankruptcy Court	1
Puerto Rico Bankruptcy Court	1
Total	**59**

[1] **Assets & Liabilities at Filing > $10M**

Source: BankruptcyData.com, download as of June 5, 2026; fraud-related classification is based on public research and is not explicitly identified in the underlying BankruptcyData dataset.

- **Concentration in Top Courts**

  Delaware and Texas Southern courts account for nearly 59% (35 cases) of bankruptcy filings, showing strong venue preference

- **Texas Counts' Collective Presence**

  Including both Southern and Northern, Texas courts collectively make up about 37% (22 cases) of filings, rivaling Delaware's dominance

- **Decline in Other Jurisdictions**

  New York (SDNY+EDNY+NDNY, 5 cases) appears less dominant vs. historical norms, where SDNY was often among the top venues

- **Regional Filings Still Occur**

  Single filings across states like California, Virginia, Geogia, Missouri, and Arizona indicate localized or smaller cases still file closer to business operations

II. Selected Fraud-Related Case Matrix

II. Selected Fraud-Related Cases Matrix(1/2)

Case Information	Nikola Corporation (Ch.11 Case No. 25-10258)	Tricolor Holdings, LLC (Ch. 7 Case No. 25-80037)	First Brands Group, LLC (Ch. 11 Case No. 25-11073)
Industry	Electric vehicles / hydrogen trucks	Subprime auto lending and financing	Automotive aftermarket manufacturing
Court	District of Delaware	Northern District of Texas	District of Delaware
Petition Date	February 19, 2025	September 10, 2025	September 28, 2025
Assets Range	$500M – $1B	$1B – $10B	$1B – $10B
Approx. No. of Creditors	5,001 – 10,000	25,001 – 50,000	25,001 – 50,000
Fraud/Misconduct Category	Capital Markets Fraud	Lending / Structured Finance Fraud	Accounting and Financing Fraud
Nature of Fraud / Misconduct	- Misleading statements regarding technology capabilities, commercialization readiness, and production progress - Founder (Trevor Milton) convicted of securities fraud	- Alleged collateral valuation issues - Receivable reporting irregularities - Securitization-related misconduct	- Alleged receivable, inventory, factoring, and borrowing-base irregularities - Disputed collateral values
Primary Bankruptcy Trigger	- Loss of investor confidence - Regulatory scrutiny, inability to raise capital - Liquidity crisis	- Lender confidence collapse and withdrawal of financing support	- Liquidity collapse following lender and creditor challenges to collateral and financial reporting
De-SPAC Activity & Impact	- Public via SPAC merger with VectoIQ Acquisition Corp. in June 2020 at a ~$3.3B valuation, raising ~$700M+ - Significant, provided early capital and hype but masked execution and governance issues, contributing to cash burn, loss of credibility, and its eventual 2025 bankruptcy	None	None
Restructuring & Plan Status	- Confirmed Ch.11 Liquidation Plan - Plan wen effective on December 12, 2025	- Trustee-led process: selling vehicles and auto loans - On-going with claims reconciliations	- Plan is filed not yet approved (April – June 2026) - There is an active risk of conversion of Ch.7
Typical Constituency Most Impacted & Recovery	- GUCs: Projected recovery at ~20.7% - Equity Holders: No recovery	- Secured Lenders: Not disclosed; likely impaired due to alleged ~$800M fraud and distressed loan performance - GUCs: Unknown, likely dependent on liquidation proceeds	- Secured / DIP Lenders: Receiving proceeds from asset sales - GUCs: Low and highly uncertain

II. Selected Fraud-Related Cases Matrix(2/2)

Case Information	Fisker Inc. (Ch.11 Case No. 24-11390)	Lugano Holdings, Inc. (Ch. 11 Case No. 25-10765)	Bitcoin Depot Inc. (Ch. 11 Case No. 26-90528)
Industry	Electric vehicles	Luxury jewelry and diamonds	Cryptocurrency / fintech
Court	District of Delaware	District of Delaware	Southern District of Texas
Petition Date	June 14, 2024	November 16, 2025	May 18, 2026
Assets Range	$500M – $1B	$100M – $500M	$10M – $100M
Approx. No. of Creditors	200 – 999	200 – 999	1 – 49
Fraud/Misconduct Category	Disclosure / Governance Failure	Executive Misconduct	Compliance / Regulatory Fraud Exposure
Nature of Fraud / Misconduct	- Alleged disclosure deficiencies - Governance concerns - Production and operational transparency issues	- Alleged founder-related fraud - Investor misconduct - Questionable transactions involving insiders	- Alleged deficiencies in anti-fraud controls - Facilitation of crypto ATMs network for scams - Regulatory and litigation exposure
Primary Bankruptcy Trigger	- Severe liquidity constraints - Operational failures: missed production targets, inability to scale production	- Reputational damage - Litigation exposure - Liquidity pressure	- Regulatory crackdown on crypto ATMS - Rising litigation and fraud exposure - Revenue collapse following stricter compliance measures
De-SPAC Activity & Impact	- Public via SPAC merger with Spartan Energy Acquisition Corp. in October 2020 at a ~$2.9B valuation, raising ~1B - Significant, enabled rapid access to capital but outpaced execution, contributing to cash burn, missed projections, and ultimately its 2024 bankruptcy	None	- Public via SPAC merger with GSR II Meteora Acquisition Corp. in June 2023 at a ~$755M valuation, raising ~$300M+ - Significant, enabled rapid scaling of its crypto-ATM network but exposed the business to regulatory and fraud risks, contributing to revenue collapse, mounting litigation, and ultimately its 2026 bankruptcy
Restructuring & Plan Status	- Confirmed Ch. 11 Liquidation Plan - Plan went effective on October 16, 2024	- Plan is in development, with filing expected mid-2026	- Active Ch.11 liquidation, still in its early stage - Debtors are shutting down operations & pursuing a sale
Typical Constituency Most Impacted & Recovery	- DIP/Secured Noteholder: Substantial but impaired - GUCs: Low and uncertain, likely de minimis to modest - Equity Holders: No recovery	- DIP Lender ($12M DIP with roll-up features): est. ~100% - Pre-petition Secured Lender: Impaired, moderate-to-high - GUCs: Low but not zero - Equity Holders: Minimal recovery expected	- DIP/Cash Collateral Lenders (~$22M): est. ~100% - Secured Creditors (~$15-$16M): likely strong recovery - GUCs (litigation & trade vendors): Uncertain, low-to-modest - Equity Holders: No recovery (likely wiped out)

Fraud Case Studies

1. La Cremaillere Resaurant – Who Would Have Thought?
2. Herman Segal – The Serial Frauster

Case Studies - La Cremaillere Restaurant

- Storied French Restaurant in Bedford, New York
- Constant Operation Since 1948
- Owned by the Meyzen Family since 1962 and Run by the Second Generation – Husband and Wife Robert and Bobbie Meyzen
- High-End Clientele
- Filed for Bankruptcy in SDNY – September 2018

La Cremaillere Restaurant – Pre-Petition Crimes

- Provided Lenders with Falsified Bank Statements
- Put $80k on Credit Card of Elderly Patron
- Sent Fake Email to Lender as Another Bank Officer
- Created and Transmitted Fake Mortgage Satisfaction
- Filed Fake Mortgage Satisfaction and Paid Fee
- Lied to the FBI About Filing the Satisfaction and Tried to Pin it on a Loan Broker

La Cremaillere Restaurant – Bankruptcy Crimes

- Provided U.S. Trustee with Falsified Proof of Insurance
- Diverted $40k into an Account in her name
- Diverted $20k into an Account in LLC name
- Lied Under Oath About the Insurance Lapse

La Cremaillere Restaurant – Post-Trustee

- Arrested on July 23, Trustee Appointed July 25
- Trustee left her in place as with strict protocols, protections, and a stern warning - No more shenanigans!
- Issue with flood insurance requirement. Bank said she needed flood insurance and she maintained otherwise.
- Trustee requested proof that the property was not in a flood zone or was excepted from designation by FEMA, and received . . . . .

La Cremaillere Restaurant – Post-Trustee


Page 1 of 1
Date: December 15, 2011 | Case No.:
LOMA
Federal Emergency Management Agency
Washington, D.C. 20472
LETTER OF MAP AMENDMENT
DETERMINATION DOCUMENT (REMOVAL)
COMMUNITY AND MAP PANEL INFORMATION
LEGAL PROPERTY DESCRIPTION
COMMUNITY
WESTCHESTER COUNTY, NEW YORK
AFFECTED MAP PANEL
FLOODING SOURCE:
DETERMINATION

LOT	BLOCK/ SECTION	SUBDIVISION	STREET	OUTCOME	FLOOD ZONE	1% ANNUAL CHANCE FLOOD ELEVATION	LOWEST ADJACENT GRADE ELEVATION	LOWEST LOT ELEVATION
[illegible]	[illegible]		[illegible]	Structure	[illegible]	[illegible]	[illegible]	--

NOTE – Each reference to the property looks like it was printed on a sticker and pasted on top and then the document was scanned.

Except . . . .

La Cremaillere Restaurant – Post-Trustee

Former Owner Of La Cremaillere Restaurant Sentenced To Federal Prison For Fraud

Wednesday, September 23, 2020

Share

For Immediate Release

U.S. Attorney's Office, Southern District of New York

Audrey Strauss, the Acting United States Attorney for the Southern District of New York, announced that BARBARA MEYZEN, a/k/a "Bobbie Meyzen," the former owner and operator of La Cremaillere Restaurant in Banksville, New York, was sentenced in White Plains federal court to two years in prison for fraud in connection with her multi-year scheme to defraud the restaurant's lenders, mortgagee, bankruptcy creditors and customers and to obstruct the bankruptcy process. MEYZEN had previously pleaded guilty to one count of wire fraud and was sentenced today by U.S. District Judge Vincent L. Briccetti.

Case Studies – Herman Segal

- Storied French Restaurant in Bedford, New York
- Constant Operation Since 1948
- Owned by the Meyzen Family since 1962 and Run by the Second Generation – Husband and Wife Robert and Bobbie Meyzen
- High-End Clientele
- Filed for Bankruptcy in SDNY – September 2018

1. Cash on hand — I refuse to provide this information & claim such right under the 5th Amendment.

2. Checking, savings or other financial accounts, certificates of deposit, or shares in banks, savings and loan, thrift, building and loan, and homestead associations, or credit unions, brokerage houses, or cooperatives. — I respectfull exercise my rights under the 5th Amendment not to disclose

3. Security deposits with public utilities, telephone companies, landlords, and others. — 5th Amendment Right Not to disclose

Herman Segal – Fraudulent Concealment

- Held Real Property with Around $250k in Equity in Undisclosed LLC
- Sold it Post-Petition and Spent the Money Before Discovery

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

NRT NEW YORK LLC., d/b/a
THE CORCORAN GROUP,

Plaintiff,

-against-

HERMAN SEGAL,

Defendant.

Index No.
Date purchased

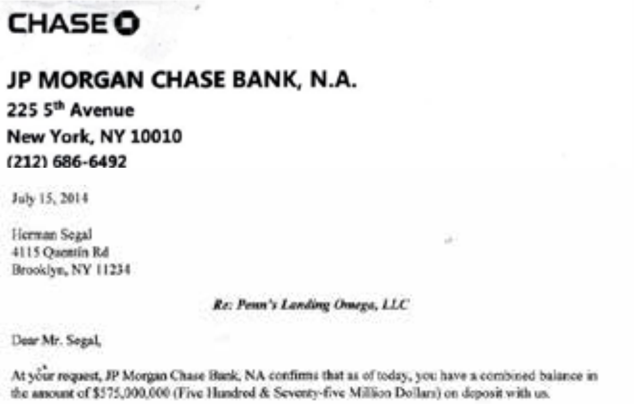
Plaintiff designates New York County as the place of trial.
The basis of the venue is Plaintiff's addresses

Summons

Herman Segal – Spoilation of Books and Records

The Debtor purchased and installed encryption software on his personal computer on August 6, 2015, seven days after the Court entered the Imaging Order and one day before the deadline for producing the Devices for imaging. By installing the encryption software, the Debtor had the opportunity to wipe all deleted material from the computer. We have determined that nearly 90% of the computer's unallocated/deleted space contains random characters, which is indicative of an encryption program having been run against it to overwrite/destroy data. As a result, the encryption software installed by the Debtor on August 6, 2015 appears to have successfully made any deleted data in those areas permanently unrecoverable. Within the remaining 10% of the unallocated/deleted spaces, we located fragments of emails and other documents that may relate to matters in this case.

Herman Segal – Falsified Bank Documents



CHASE

JP MORGAN CHASE BANK, N.A.
225 5th Avenue
New York, NY 10010
(212) 686-6492

July 15, 2014

Herman Segal
4115 Quentin Rd
Brooklyn, NY 11234

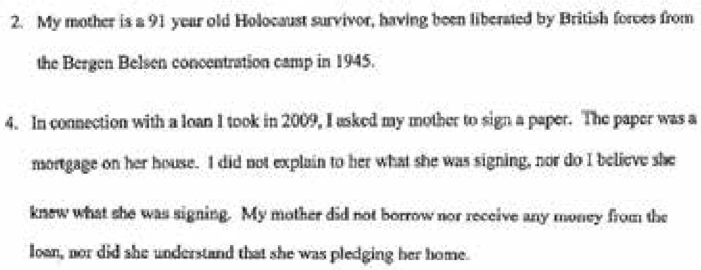
Re: Penn's Landing Omega, LLC

Dear Mr. Segal,

At your request, JP Morgan Chase Bank, NA confirms that as of today, you have a combined balance in the amount of $575,000,000 (Five Hundred & Seventy-five Million Dollars) on deposit with us.

Herman Segal – Fraud Against Mother

- Testimony Submitted by Debtor in Defense of Foreclosure by Mother's Mortgage



2. My mother is a 91 year old Holocaust survivor, having been liberated by British forces from the Bergen Belsen concentration camp in 1945.

4. In connection with a loan I took in 2009, I asked my mother to sign a paper. The paper was a mortgage on her house. I did not explain to her what she was signing, nor do I believe she knew what she was signing. My mother did not borrow nor receive any money from the loan, nor did she understand that she was pledging her home.

Herman Segal – 16 Incidents of Confirmed Forgery

Sworn to before me
this 1st day of August, 2008

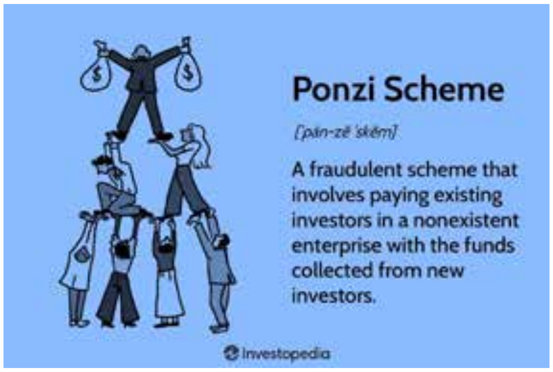
Notary Public

YOCHEVED SIMON
Notary Public, State of N. Y
No. 24-4680093
Qualified in Kings County
Term expires. March 30 2010

- Notary Acknowledgment of Debtor's Spouse Existed on Numerous Deeds and Other Documents where the Signatory Claimed Forgery
- Spouse Testified that she had a Notary License Since 1982 and had not Acknowledged any of the Subject Signatures
- Debtor Ultimately Admitted it

PONZI FINDING
-in-
Prime Capital Ventures, LLC

Advantages of a Ponzi Finding



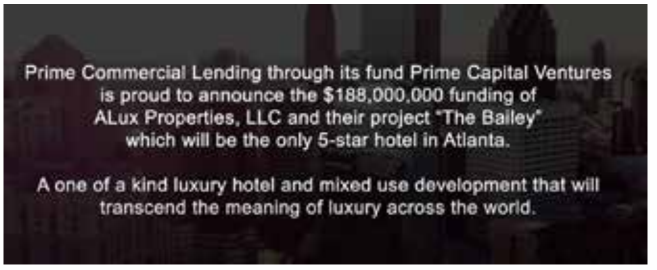
- Presumption All Transfers Were Made in Furtherance of the Fraudulent Scheme
- Shifting Burden
- Streamlines Avoidance Actions
- Increases Settlement Leverage

Prime Capital Ventures, LLC – RIP 2021 - 2023

- December 2021 – Advance Pay Lending Fraud / Ponzi Scheme
- No Capital or Ability to Make any Promised Loans – Only Source of Capital was new Deposits

Founded on a Fraudulent Representation

- Prime Used Glitzy YouTube Videos as Advertising
- Started with a Fraudulent Representation About Making a Loan it Never Made Published Before Prime Ever Received a Deposit
- Borrower was Actually on Prime's Payroll



Where Did The Money Go?

- Took in ≈ $200 Million in Two Years (Loaned $34 Mil; Returned $60 Mil)

American Bankruptcy Institute
Mid-Atlantic
Bankruptcy Workshop

Where Did The Money Go?

American Bankruptcy Institute
Mid-Atlantic
Bankruptcy Workshop

Another New Car?

Things a Fraudster Probably Shouldn't Text

Date	Time	From	Message
1/4/2024	11:20:42 am	Unknown	Can't you just keep working on those companies? I know it might be hard at first, but look what you build this up to beat from nothing
1/4/2024	11:20:56 am	Roglieri	Yea I can but not when I'm in f—king prison
1/4/2024	11:21:09 am	Unknown	Why do you think that's gonna happen? Why can't it just be a bankruptcy?
1/4/2024	11:21:47 am	Roglieri	**Because I unused [*sic*] others money to fund deals** I already told you this
1/4/2024	11:22:02 am	Unknown	And that's illegal?
1/4/2024	11:22:15 am	Roglieri	Yes
1/4/2024	11:22:36 am	Unknown	How bad . I mean, what's the worst you do a couple years who cares You have your family This whole family will support you through this It's a civil case it's not a criminal case
1/4/2024	11:27:42 am	Roglieri	**It will turn criminal as soon as they get into bank statements**

Ponzi Scheme

- Court Made Ponzi Finding in Confirmation Order Entered February 11, 2026
- Complete Analysis and Briefing References are in the Materials (along with M. Burton Marshall)

Faculty

Jacob R. Broadway is an associate in the Pittsburgh office of McGuireWoods, where he focuses his practice on guiding clients through complex financial distress matters, including business insolvencies, restructuring, bankruptcy and related matters. He previously clerked for Hon. Jeffery A. Deller of the U.S. Bankruptcy Court for the Western District of Pennsylvania. Mr. Broadway is a member of ABI, the Allegheny County Bar Association's Bankruptcy & Commercial Law Section, the Hon. Judith K. Fitzgerald Western Pennsylvania Bankruptcy American Inn of Court and the Federalist Society. He received his B.S. from Liberty University and his J.D. from Duquesne University in 2022.

Kevin P. Clancy, CTP, CIRA, CFF is a partner in CohnReznick Advisory's Restructuring and Dispute Resolution Practice in Parsippany, N.J., and has more than 30 years of experience in accounting, restructuring, forensic investigations and litigation support. He advises clients in complex bankruptcy, insolvency and financial dispute matters. Mr. Clancy has served in a variety of court-appointed and fiduciary roles, including liquidating trustee, examiner, special master and independent board member, and he has testified as an expert in bankruptcy and state courts throughout the U.S. He has represented court-appointed trustees, receivers and examiners and has been involved in a large number of high-profile cases, including Madoff, TOUSA, Yellowstone, Ginn/St. Lucie, Chemtura, UMDNJ, Fleming Foods, Federal Mogul, Pittsburgh Corning, Wall Street Deli, ICH (Arby's), Enron and WorldCom. Mr. Clancy has written articles on bankruptcy-related topics and financial fraud issues, and has spoken before various professional organizations. He also has been involved in some of the most complex bankruptcies and restructuring cases in the healthcare industry, dealing with such issues as health insurance fraud investigations, sale-leaseback transactions and bankruptcy remote vehicles. Mr. Clancy received his B.S. in accounting and his J.D. from Catholic University of America.

Hon. Eamonn O'Hagan is a U.S. Bankruptcy Judge for the District of New Jersey in Trenton, sworn in on Feb. 17, 2026. He previously clerked for Hon. William G. Young in the U.S. District Court for the District of Massachusetts and served as senior bankruptcy counsel at the U.S. Attorney's Office for the District of New Jersey. Prior to joining the U.S. Attorney's Office in 2015, he was a bankruptcy attorney in private practice in New York City. Judge O'Hagan received his undergraduate degree with highest honors from Rutgers College in 2001, and his J.D. *magna cum laude* from Boston College Law School in 2004.

Fred Stevens, CFE is a partner with Klestadt Winters Jureller Southard & Stevens, LLP in New York. He is a professional fiduciary and commercial restructuring lawyer whose practice focuses on the representation of trustees, debtors and creditors in complex bankruptcy cases, debt restructurings and related litigation, with a focus on Ponzi schemes and similar frauds. Mr. Stevens also routinely serves as a bankruptcy trustee, examiner, plan administrator and receiver in cases throughout the country. He is admitted to the bars of the District of Columbia, Massachusetts, New Jersey, New York and Texas, and before the Districts of Connecticut, Massachusetts, New Jersey, the Eastern, Northern and Southern Districts of New York, the Northern and Southern Districts of Texas, the Second Circuit Court of Appeals and the U.S. Tax Court. Mr. Stevens received his B.S. in finance in 1996 from St. John's University, and his J.D. in 1999, from St. John's University School of Law.