

VIA E-MAIL

**To:** Community Foundation for Northeast Georgia  
Fieldale Farms Corporation  
Holy Family Hospital of Bethlehem Foundation  
Resort Hotels Insurance Company  
Savannah Country Day School (c/o Wade Herring, Esq.)  
Montford Associates  
St. Josephs/Candler Health Systems, Inc. and GeeChee Reinsurance Company, LLC  
(c/o Robert Brennan, Esq. and Leonard Panzitta, Esq.)  
Hickory Springs Retirement Plan  
Sea Island Resort and Pension Benefit Guaranty Corporation  
Shelter Bay Fund, LP  
Georgia Ports Authority  
Stanley and Traci Kowalewski (c/o Tom Todd and William Hill)

**From:** David Dantzler

**Date:** May 5, 2011

**Re:** Investor Update - *SEC v. Stanley J. Kowalewski and SJK Investment Management LLC*

Since our last Investor Update several weeks ago (see my memorandum dated April 6, 2011), there have been several important developments that will affect how the receivership moves forward. We continue to believe that we are on track with the basic timeline we projected in conjunction with the First Interim Report. However, as we learn more about SJK and the hedge funds, the process is far more complicated than we had envisioned.

***Underlying Litigation***

Early on, we believed that a settlement of the SEC's claims would be achieved; however, it now appears that Mr. Kowalewski intends to contest the claims. While he has every right to assert defenses, prolonged litigation will also add to the issues in the receivership and increase the expenses incurred, especially related to discovery. The deposition testimony of Traci Kowalewski and two SJK employees were taken during the week of April 18th. Three more SJK employees will be deposed next week, and Stan Kowalewski's deposition is scheduled for May 17, 2011.

As indicated in the last update, Mr. Kowalewski has made an advancement and indemnity demand to the two offshore SJK Funds. The Funds' Cayman Islands' counsel is advising the Funds regarding issues of Cayman Islands' law. Because some of the issues are governed by Delaware law, the Funds also have been required to retain independent counsel in

the United States to advise them regarding this issue. These expenses will be charged to the offshore SJK Funds, not the receivership.

Traci Kowalewski is asserting an ownership interest in various assets, including the houses titled in her and Mr. Kowalewski's names, the "Kowalewski interests" in the hedge funds, and various items of personal property. As a result, the recovery and disposition of these assets likely will require further litigation.

***SS&C/Investor Statements***

SS&C has completed the net asset valuation *as of December 31, 2010* for the SJK Absolute Return Fund, Ltd. (Offshore); SJK Long/Short Equity Fund, Ltd. (Onshore); SJK Absolute Return Fund, LLC (Onshore); and SJK Long/Short Equity Fund, LLC (Onshore). Investors who owned units in those funds should be receiving statements in the very near future. Importantly, neither Hickory Springs Retirement Plan nor Shelter Bay Fund, LP are included as investors as of that date (which means that their respective investments and ownership interests are not accounted for in the December 31<sup>st</sup> statements).

The only outstanding item in connection with the December 31 statements is the valuation of the SJK Special Opportunities Fund ("SOF"), which is the Receiver's responsibility. As of November 30, 2010, SJK reported that the SOF had cumulative net assets valued in excess of \$24 million. As a result of our investigation, the Receiver has determined that this valuation was greatly inflated and that the purported assets had relatively little value. Given the overall circumstances of this case (and our knowledge of facts that occurred after December 31, 2010), the Receiver has valued the assets of SOF at \$4,655,447.19 as of December 31, 2010. Again, this does not include the monies received from Hickory Springs and Shelter Bay as of January 1, 2011 or other subsequent transfers of money into or out of SOF (or any reserve for the cost of the receivership). The asset valuation is as follows:

SOF Cash at FSB 12/31/10	1,636,173.87
Cash transferred to KSTSO	224,773.32
KSTSO Retainer	25,000.00
Pawley's Island Property (\$2.9 less 4.5% commission)	<u>2,769,500.00</u>
SOF Asset Value 12/31/10	<u><u>4,655,447.19</u></u>

While there were other assets of the SOF as of December 31, 2010, the Receiver's investigation shows that there is little likelihood of potential recovery on these assets. For example, the SOF paid \$1.15 million for a 50% ownership interest in CDLD Holdings, LLC, an entity whose only asset is a partially developed subdivision called McNairy Pointe. As of November 30, 2010, SJK valued the SOF's 50% interest in CDLD Holdings at \$6.29 million, despite the fact that the McNairy Pointe property had been appraised at \$3.1 million and served as security on an outstanding note to SunTrust that had a balance of almost \$4 million at the time. CDLD Holdings recently entered into an agreement to sell McNairy Pointe for \$3.25

million. We do not expect the Receiver Estate to obtain any recovery from this sale. The Receiver will file a Notice of Sale with the Court in the next week. The other assets of the SOF are described in the Receiver's First Interim Report, which was filed on March 3, 2011.

As a result of the significant adjustment in the net asset value of the SOF, investors in the two Absolute Return Funds will see a material decrease in the net asset values (and individual account values) as of December 31, 2010. Based on information recently received from SS&C, the decrease in net asset values in these funds is solely the result of this adjustment of the asset values of the SOF.

### *Plan of Distribution*

As with other aspects of this case, the distribution issues are not as straightforward as we had envisioned. As more fully explained below, we have begun the redemption process with third-party hedge funds and expect that the SJK funds will begin to receive cash proceeds in July and August. However, there will be holdbacks, and there is one fund that cannot be redeemed right now, and two others that remain subject to fees for early redemption.

Even as we work through the various redemption issues, we continue to believe that the funds will be in a position to make distributions by late summer. As previously indicated, however, this can be accomplished only after we have resolved issues related to Hickory Springs' and Shelter Bay's respective ownership interests in the SJK Funds. Our hope is that this can be done by consent. We will send the Receiver's recommended solution to the affected investors – *i.e.*, Hickory Springs and the other investors in the offshore funds with respect to its interest; and Shelter Bay and the other investors in the SJK Absolute Return Fund, LLC (Onshore). If we cannot reach agreement on these issues, we will need to address them with Judge Batten for a decision before any distribution can be made (though we continue to consider whether we can deal with the "offshore" and "onshore" groups separately if one group reaches agreement and one does not).

Assuming that the ownership issues will be resolved by the time that we are in a position to make distributions, we will seek approval of a plan of distribution. The initial plan will likely be interim in nature. Because the underlying litigation is ongoing and because there are significant tax issues and other creditor claims that must be resolved before a distribution of receivership assets can be made, the plan process likely will be conducted in several phases, with the first phase focused on distributions from the third-party fund redemptions. The Receiver will retain any distribution made in connection with the Kowalewskis' purported interest in certain SJK Funds pending resolution of the underlying litigation.

It is important to emphasize that the final plan of distribution will need to address the claims of the other creditors of Stan Kowalewski, SJK, and the SOF. Accordingly, we will be sending claim forms to those creditors in the next few weeks.

Because the Georgia Ports Authority ("GPA") was not an investor in any of the hedge funds and its monies were managed separately, we plan to turn over those accounts in the near

future. We are working through the various issues with counsel for GPA and expect to file a motion seeking approval of the turnover in the next week or two.

### ***Third-Party Fund Redemptions***

We have provided a written redemption notice to the majority of the third-party funds effective June 30, 2011. As a result, the SJK Funds should begin receiving money for distribution to investors beginning in late July, which means that the majority of the money invested with third-party funds should be available for distribution in August 2011 (assuming the issues discussed in the section above have been resolved). However, there are several issues that will affect when subsequent distributions will be made.

### **Holdbacks**

Most of the third-party funds have “audit holdbacks” of between 5% and 10%. Therefore, the third-party funds will retain a portion of the SJK account balances until after the 2011 audits of those funds are completed in 2012. In addition to these holdbacks, the SJK Funds will also hold back a portion of each investor’s account until the time of final distribution to cover audit and other professional fees for the SJK Fund and other fund-specific expenses. (To be clear, these are not holdbacks for receivership fees and expenses.) Our best current estimate is that each investor should receive a substantial portion of its 12/31/10 account balance in or about August 2011. However, the two offshore SJK Funds – the SJK Absolute Return Fund, Ltd. and the SJK Long/Short Equity Fund, Ltd. – will also be required to hold back in excess of \$1 million until the resolution of Mr. Kowalewski’s demand for advancement of attorneys’ fees and indemnity is resolved, which will further reduce those distributions. To the extent that the amounts retained by the third-party funds and the SJK Funds are not used, they will be distributed in 2012.

### **Lock-ups**

Several of the SJK Funds’ investments with third-party funds are subject to lock-up provisions. “Hard lock-ups” prohibit redemption for a certain period of time after an investment. “Soft lock-ups” impose certain fees for redemptions made prior to the expiration of a certain period of time after an investment. Most of the lock-up periods have expired and are not an issue; however, the following lock-up provisions remain applicable:

- *SJK Long Short/Short Equity Fund LLC’s Investment in Artis Partners 2X, L.P. and Artis Partners 2X, Ltd.*

SJK Absolute Return Fund, Ltd. invested \$1,000,000 in Artis Partners 2X, L.P. on October 30, 2009. On July 1, 2010 the entire investment was transferred to SJK Long/Short Equity Fund, LLC. As of December 31, 2010, the Net Asset Value of this investment was \$1,113,011.

SJK Absolute Return Funds Ltd invested \$1,700,000 in Artis Partners 2X Ltd on October 30, 2009. On July 1, 2010 the entire investment was transferred to SJK Long/Short Equity Fund Ltd. As of December 31, 2010, the Net Asset Value of this investment was \$1,909,662.

These investments in the Artis Partners funds are subject to identical soft lock-up provisions, which impose the following fees upon any withdrawals made prior to three years from the date of the investment: (a) 6% for any withdrawals made prior to the first anniversary; (b) 4% for any withdrawal made on or after the first anniversary and prior to the second anniversary; (c) 2% for any withdrawal made on or after the second anniversary and prior to the third anniversary.

Thus, any withdrawals made by the Long/Short Equity Fund, LLC prior to November 1, 2011 are subject to a 4% fee, and any withdrawals made between November 1, 2011 and October 31, 2012 are subject to a 2% fee. Withdrawals made on or after November 1, 2012 are not subject to the lock-up.

Artis Partners has quarterly liquidity upon 60 days prior notice. Pursuant to an agreement with Artis Capital Management, L.P, our notice period for a June 30, 2011 withdrawal has been reduced to 30 days, meaning we need to provide notice by the end of this month for any withdrawal on June 30, 2011.

The Receiver's current plan is to wait until the quarter ending December 31, 2011 to redeem the investments in these two Artis Partners funds. Waiting until December 31, 2011 would reduce the early redemption fee from 4% to 2%, and would keep these investments on track with others for final redemption upon the completion of the fund's 2011 audit. Waiting until the quarter-ending December 31, 2012 would eliminate the fee, but the final redemptions would first occur sometime in 2013, upon the completion of the fund's 2012 audit.

While we do not intend to put this issue to a "vote" among investors, we are well aware that this is the investors' money. Accordingly, if you have a strong reaction to the Receiver's anticipated course of conduct with respect to these investments, please let us know.

- *SJK Absolute Return Fund LLC's Investment in Double Black Diamond LP – Series D*

On December 1, 2010, the SJK Absolute Return Fund LLC made a \$500,000 investment in Carlson Capital's Double Black Diamond LP fund. This investment is subject to a one-year hard lock-up. The Receiver intends to redeem this investment effective December 31, 2011.

### ***Receivership Fees and Expenses***

Within the next week or two, we expect to file our first application for approval of professional fees and expenses. We are doing our best to allocate our time keeping between "core functions," which are subject to the fee cap, and "extraordinary functions," which are not. Given the amount of work required, the amounts will be substantial.

As this case has developed, it is apparent that some of the issues (*e.g.*, Kowalewski's income taxes) are substantially more complicated than we or the SEC anticipated. Even the "core receivership" activities have been more complicated than expected, including fund management and redemption issues. It also is now evident that the underlying litigation will go forward, requiring substantial discovery and electronic evidence management activities. We also may be required to commence litigation to resolve asset ownership issues, so that assets can be recovered for the SOF.

We are realizing that it is very difficult to allocate our activities precisely. For example, the Kowalewski tax issues and potential asset recoveries permeate many aspects of this receivership. While we will continue to allocate between "core" and "extraordinary" activities, it is important to us that we clearly communicate with investors about fees and expenses. The bottom line is that regardless of how our time is allocated, this receivership is going to be more expensive than any of us anticipated because it is not as simple and straightforward as it appeared in January.

Though we have been involved in many receivership cases with the SEC, we have never worked under a structure that includes a fee cap component. In our proposal to the SEC, we indicated that we would inform investors, the SEC, and the Court if we encountered issues that raised concern about fees and expenses. We have raised this issue with the SEC and will inform the Court when we file the fee application. If you have questions or would like to discuss this further (now or at any time in the future), please do not hesitate to contact me.

cc: S. Gregory Hays, Receiver  
Known Attorneys for Investors  
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