

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND**

2018 NOV 29 P 12: 38

Case # 1:15-cv-00191-WES-LDA

Securities and Exchange Commission

Plaintiff

v.

Patrick Churchville,

ClearPath Wealth Management, LLC

Defendants

And

CLEARPATH MULTI-STRATEGY FUND I, L.P.,

CLEARPATH MULTI-STRATEGY FUND II, L.P.,

CLEARPATH MULTI-STRATEGY FUND III, L.P.,

HCR VALUE FUND, L.P.,

Relief Defendants.

**MOTION TO COMPEL THE RECEIVER AND SEC TO ANSWER QUESTIONS  
ABOUT THE PROPOSED DISTRIBUTION PLAN**

Now comes Patrick Churchville ("Churchville") movant/defendant herein, appearing Pro Se, and respectfully requests that the Court compel the Receiver and the SEC to answer the following questions regarding the proposed distribution plan and the recovery process to date.

The answers to these questions are critical to the investors with regard to both the recovery and tax treatment of certain investments.

Churchville requests that the Court compel the Receiver and SEC to answer these questions and provide supporting documents and data where applicable, with special attention to details of all recovery investigations.

### **I. PRELIMINARY STATEMENT**

As a preliminary matter, Churchville respectfully requests that this Court be mindful that pro se pleadings are to be construed liberally. See *Voravongsa v. Wall*, 349 F.3d 1 (1st Cir. 2003); *Estelle v. Gamble*, 429 U.S. 97,106 (1976) (same); and *Haines v. Kerner*, 404 U.S. 519, 520 (1972) (same)

### **II. RELEVANT BACKGROUND**

On or about October 11th, 2018, the Receiver submitted the long-awaited recommendation and motion to allow class 3 claims (see Cv Doc128).

The report raises a number of questions that are critical to the investors with regard to both investment recoveries and tax treatments. In addition, there were three (3) sealed Exhibits that were the basis for the Receiver's calculations.

Defendant requests that the Court release these Exhibits to the Defendant for review. The Restitution numbers presented at Sentencing were completely inaccurate, therefore it is imperative that the Receiver's work be thoroughly checked for accuracy.

### **III. DISCUSSION**

#### **RP & JER**

There are several issues and questions involving JER and RP that need to be addressed and answered.

The investors and the Court may not be aware of the significant amount of work Churchville has put into recovery efforts over the last three years - both before and during his incarceration. These potential recover sources totalled over \$20,000,000. Copies of letters and emails between Churchville and the Receiver are available if needed.

Unfortunately, on a phone call in May 2018, the Receiver told Churchville that he had not made much progress and was still in "phase one" with many of these investigations - and that in at least one case, the subpoenas for information were "lost in the shuffle" and never delivered.

Since that call, Receiver has not responded to Churchville despite numerous requests, but has announced his intention to end the Receivership estate in 2019. Perhaps in the last five months the Receiver fully investigated and exhausted all of these potential sources.

**-Are all the recovery sources fully explored?**

**-Provide details of each investigation and the findings.**

By way of background, in late 2015, after repeated requests, Churchville was finally provided the RP bank statements by prosecutors.

It was immediately clear that Jonathan Rosenberg was using the RP account for the benefit of himself, his family, his mother's company (Rosenberg and Associates), his attorney Bill Weiner of Duane Morris, and other unauthorized beneficiaries.

It was so blatantly obvious because Rosenberg wrote checks directly to these unauthorized recipients and made notes of their purposes.

For example, he wrote a check to an insurance company with a policy number and a note stating "Dad's insurance". He wrote a check to his daughter's private school with a note stating "Tuition". And he made payments to Rosenberg and Associates with a note stating "loan repayment".

He also wrote checks to his attorney, Bill Weiner of Duane Morris totaling more than \$450,000. There were specific invoices noted with each payment. There is absolutely NO WAY that Bill Weiner did half a million dollars worth of legal work for RP.

Clearly Bill Weiner and Duane Morris were accepting payments from RP for other legal work they had done for Rosenberg. That money should be returned to RP for the benefit of the investors. There were also a number of transactions that had no notes or identification and deserve further investigation.

In short, unbeknownst to Churchville, millions of dollars went missing from RP at the hands of Rosenberg.

Churchville's discoveries were compelling enough that the Receiver petitioned, and was granted, approval by the Court in August 2016, to investigate these missing funds.

**-What has been done to investigate and recover these missing funds? Including but not limited to:**

- Rosenberg & Associates (R&A) - \$200,000
- Bank of Princeton (for R&A?) - \$1,000,000
- Bank of America (for R&A?) - \$200,000
- Axiom (for R&A?) - \$200,000
- Michael Rosenberg Insurance - \$130,000
- Attorney Bill Weiner / Duane Morris - \$450,000
- Attorney Sam Rosenberg - \$150,000
- Attorney Becker Glynn - \$200,000
- Florida condo contractor - \$50,000
- Unidentified - \$4,500,000+

**-Provide details of each investigation (subpoenas, responses, bank statements etc) and identify where the money ended up and what is being done to recover it.**

**-If there is no action being taken to investigate and recover that money, why?**

One point needs to be clarified here regarding RP. One of the most slanderous and damaging accusations against Churchville was that he knew Rosenberg was a fraud and was stealing money in 2010. THIS IS FALSE.

Churchville moved forward with RP intending to become the largest buyer of Healthcare receivables in the country, (Churchville would eventually achieve this with the HCR value fund and Capio Partners).

The only thing Churchville knew in 2010 was that Rosenberg's purchasing and processing agent, IPI, had abandoned them. Churchville wrote a threatening email to IPI, but it was an empty threat as Churchville did not have a contract with IPI and his lawyers advised him he had no real recourse against them.

Rosenberg gave no indication that he was in cahoots with IPI and Churchville had no reason to suspect him as Rosenberg's parents were the largest investors in JER.

A new purchasing and collection agent was hired (ARS), and the goal was to create a huge, profitable business for everyone involved. Unfortunately, Rosenberg and ARS did not fulfill their end of the bargain.

An important fact that has not been mentioned is that in 2011, Churchville secured a very large, legitimate investment inside RP. Specifically, the purchase of more than \$900,000,000 (\$900 million dollars) face value of healthcare receivables that were bought through Capio Partners at a cost of \$1,250,000. This investment was extremely profitable, with gains over 300%.

**-Why did Churchville make this purchase in RP? If RP was created solely as a fraud, that doesn't make any sense.**

Moreover, when coupled with the evidence (discovered by Churchville) that Rosenberg was using RP money for other purposes (without Churchville's knowledge), it is clear that Churchville's intent was to invest and work through the JER situation by building a new, large, legitimate Healthcare Receivables business. This is further proven out by the creation and management of the very successful HCR Value Fund.

Churchville did not know that Rosenberg was deceiving him in 2010. It was not until Rosenberg's arrest in September 2013. And the extent of his deceptions was not revealed until Churchville was finally able to review the RP bank statements in 2015.

The Receiver told Churchville that he did subpoena Duane Morris for the invoices from the RP payments , but they responded by claiming the Receiver did not have authority to request them (despite the Court order). As of May 2018, that was as far as that investigation went.

**-If the Receiver does have authority, why not demand them? If not, who does?**

**-Rosenberg cooperated with the government in the Maryland case. Why not just have him request the invoices for RP? If he won't cooperate, can the government force him to?**

**-Why about the other lawyers and law firms who received RP money?**

**-Does either of them actually do legal work for RP? If not, why did they accept hundreds of thousands of dollars from RP?**

Lawyers are supposed to confirm who is paying them, and from what source. If any of these lawyers were paid with money that Rosenberg pilfered from RP then they should be required to return it for the benefit of the investors.

The bottom line is, there is still a very large amount of JER and RP money unaccounted for, a number of people and companies that need to be held accountable, and a number of questions that need to be answered. Such as:

**-Does the Receiver have the JER statements? If yes, can he share them for review? If he does not, who does, and can they share them?**

**-How does the Receiver account for the \$1,250,000 investment and the profits made from it?**

**-Is that investment treated as legitimate, or fraudulent?**

**-Do the gains from that investment have any impact on clawbacks?**

**-Who is managing the JER recovery process in Maryland?**

**-Have they issued a recovery report similar to the Receiver's quarterly reports showing assets recovered to date? If so, please provide a copy for review.**

**-Is Maryland also managing recoveries on behalf of RP? If not, who is, and what is the status?**

**-If Maryland sends a recovery payment to the Receiver, how will it be applied to JER and / or RP?**

**-Where did the JER investment money from Clearpath investors end up? Who traced it, and when? Are clawbacks from those recipients being processed?**

## **FLORIDA CONDOMINIUM**

Churchville's review of the RP bank statements led him to the discovery of a condominium in Florida purchased by Jonathan Rosenberg's mother, Linda Rosenberg, in 2013 for over \$5 million dollars.

The condominium was sold in 2015 for over \$8 million dollars. The timing of this seems very suspicious, especially since there is evidence of at least one contractor in Florida being paid directly out of the RP bank account.

**-Was the purchase and sale of this condominium explored? If so, what did it reveal? If not, why?**

**-What was the source of funds for the purchase and any renovations?**

**-How much money did Jonathan Rosenberg contribute renovation purchase of the condominium? And where did that money come from?**

### **CREDIT LINES**

The two credit lines, Commerce Bank and Oppenheimer, were ruled as being illegal. However, the lenders underwrote and approved these loans, earned interest on them, and paid themselves in full out of fund bank accounts when they abruptly terminated the loans.

Neither lender ever asked the investors for approval or consent to these loans. Clearly the lenders did not do appropriate due-diligence, and they did not "know their customer" fully.

Churchville brought this to the Receiver's attention on numerous occasions, but as of May 2018 nothing had been done to explore it.

The SEC sanctioned and fined multiple accounting firms for their negligence in these matters, but nothing has ever been done with the lenders. This is surprising given the loans are the basis of millions of dollars worth of deficits.

**-Why did these lenders not ask for investor consent for these credit lines before issuing them?**

**-Why have these lenders not been held accountable for their negligent underwriting practices?**

**-For the Commerce bank loan, multiple lawyers reviewed and were paid to write opinion letters approving these loans. Why have they not been held accountable as well?**

**-If the Commerce bank loan was legitimate - and if the \$1,250,000 Capio purchase inside RP was legitimate - is that money being treated as fraudulent? If so, why?**



Recoveries or settlements from these lenders could be substantial, and would be of great value to the investors in FOK and OPCO series and deserve to be explored to their fullest.

If the Receiver and the SEC are unable to pursue the lenders, perhaps the Court can allow the investors to pursue recoveries on their own.

### **PHARMLOGIC (DRUG DISCOVERY) AND UPA (KIDNEY DIAGNOSTIC)**

These Investments were determined to be legitimate by the Receiver and SEC. However there are many questions that investors should get answers to:

**-What is the plan for the "unallocated equity" of both PharmLogic (PL) and UPA?**

**-Who determined the value of PL and UPA in the proposed plan?**

This is particularly important to any IRA investors with regard to year-end valuations and required minimum distributions by the IRS.

**-How will distribution of PL and UPA equity for IRA investors be handled? Is there an IRA custodian willing to accept those shares?**

**-How are the management fees owed by PL and UPA investors prior to 2015 being handled and accounted for (approximately \$350,000)?**

**-The Receiver charged and accepted fees from the HCR value fund, another legitimate investment. Why not from the other legitimate Investments that are still active and viable (Hastings, PL, UPA, Etc)?**

## **TAXATION AND RECOVERY PARTICIPATION**

The IRS has specific laws regarding the treatment of losses due to exposure to financial fraud, and subsequent participation in recovery payouts.

In short, a taxable investor has to decide to either:

- A. Write off 75% of the loss immediately, and participate in any future recoveries and payouts.
- B. Write off 90% of the loss and NOT participate in or receive any future payouts.

They must elect this treatment in the year of Discovery, in this case, tax year 2015.

If an investor writes off 90% of the loss and then makes a claim with the Receiver they are committing tax fraud at the expense of their fellow investors who only wrote off 75% with the hopes of participating in a recovery down the road.

Anyone who wrote off 90% should be disqualified from receiving any distributions, and their share should be paid to benefit the other investors who only wrote off 75%.

**-What steps have been taken to determine how each claimant wrote off their investment for tax purposes - and if they are eligible to participate in a payout?**

**-There should be no double-dipping at the expense of other investors.**

## **INSIDERS**

It is clear from RP bank account statements that Jonathan Rosenberg's parents received benefits and money from that account. At a minimum, that needs to be explored in great detail, and any payout under the distribution plan be held until the extent of their involvement can be verified.

However, the same CANNOT be said of the Churchville and Employee groups. There was NO Insider knowledge by either of these groups, and there is NO evidence to that effect. THESE PEOPLE ARE BEING PRESUMED GUILTY UNTIL PROVEN INNOCENT - THAT IS JUST PLAIN WRONG.

**-Is there any evidence of Insider knowledge or transactions by either the Churchville or employee group?**

If so, produce it prior to any distribution to other investors - if not remove that designation and treat these people as the normal investors that they are.

#### **IV. CONCLUSION**

The Receiver's long-awaited report has raised a number of important questions for investors with regard to both recovery status and taxation.

There is a LOT of money still unaccounted for, and a number of people and companies that have yet to be held accountable for their actions or made to return money they should not have received.

Restitution in the IRS judgments cannot be made until all of this money is accounted for properly.

Churchville has **NO** desire to slow down the distribution process. That is counterproductive to his goal of maximizing recoveries for investors and reducing his financial burdens. Bringing these questions and issues to light will hopefully increase recoveries and payouts for the investors.

For the above and foregoing reasons, Churchville respectfully request that his motion be, in all things granted, and that the Court compel the Receiver and SEC to answer these questions and provide details of their investigations. in addition, provide JER bank statements and all sealed Exhibits to the defendant for review.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that on November 29, 2018, a true and correct copy of the above and foregoing Motion to Compel Receiver *and SEC to Answer Questions about the proposed Distribution Plan* was sent via U. S. Mail, postage prepaid, to Marc J. Jones / Plaintiff Counsel at United States Securities and Exchange Commission, 33 Arch Street, Boston, MA 02110, and Stephen F. Del Sesto /Receiver, Pierce Atwood LLP at One Financial Plaza, 26th Floor, Providence, RI 02903.

PATRICK CHURCHVILLE