

NOV 21 2014

In re:

DANE COUNTY CIRCUIT COURT

AMERICAN TV & APPLIANCE OF MADISON, INC.,

Case No. 14CV477

Assignor.

RECEIVER'S STATUS REPORT DATED NOVEMBER 20, 2014

Michael S. Polsky, Esq., Wis. Stats. Chapter 128 Receiver in this matter, hereby submits the following Status Report dated November 20, 2014.

1. On February 18, 2014 (the "Appointment Date"), this Court entered an Order Appointing Receiver, Enjoining Creditors from Proceedings Against Assignor and Granting Other Relief.

2. Since the Appointment Date, Michael S. Polsky, Esq. (the "Receiver") has acted as Receiver of American TV & Appliance of Madison, Inc. ("American TV") pursuant to the Orders entered by this Court and Chapter 128 of the Wisconsin Statutes.

ASSETS

3. **Cash on Deposit.** As of November 4, 2014, the receivership estate had cash on deposit in the amount of \$12,351,818.44. That amount included funds on deposit at BMO Harris Bank, N.A. in the amount of \$9,599,446.44 and funds on deposit at Park Bank, Milwaukee in the amount of \$2,752,372.00. The funds on deposit at Park Bank, Milwaukee are being held by the Receiver pursuant to an Escrow Agreement with Whirlpool Corporation which is described below.

4. **FIS Global ("FIS").** FIS acted as American TV's credit card processor and after the Appointment Date unilaterally established a reserve in the amount of \$14 million for potential chargeback claims by American TV's customers. The Receiver filed a motion to compel FIS to pay those funds to American TV, and the parties resolved the matter. At the time of the Receiver's Status Report dated June 20, 2014, that reserve had been reduced to \$2 million based on the agreement of the parties.

5. FIS has made all of the payments required by the agreement with the Receiver and is no longer holding any funds claimed by American TV.

6. **Real Estate.** American TV currently owns the real estate commonly known as the Rockford store and the Des Moines store.

7. Since the Appointment Date, the Madison West store, Madison East store, Appleton store, Oak Creek store, Pewaukee store, Brown Deer store and a vacant lot owned by American TV have all been successfully sold by the Receiver with the prior approval of this Court, after notice to all creditors and parties-in-interest.

8. On October 29, 2014, the Receiver filed a Motion to Sell the Real Estate Located at 5355 NW 86th Street, Johnston, Iowa Free and Clear of Liens, Claims and Encumbrances (the "Iowa Sale Motion"). The Iowa Sale Motion seeks to sell the Des Moines store for the sum of \$5.9 million to Goodwill Industries of Central Iowa ("Goodwill Industries"). A hearing on that Iowa Sale Motion is scheduled for November 24, 2014.

9. Goodwill Industries is ready, willing and able to proceed with the purchase of the Des Moines store pursuant to the terms of the written Sale Agreement between the parties. The Des Moines store has been listed for sale with Hubbell Commercial Brokers, L.C., d/b/a CBRE/Hubbell Commercial, which is entitled to a commission of 4.5% of the sale price.

10. The Rockford store is currently listed for sale. At the present time, there are no accepted offers or agreements to sell the Rockford store.

11. **Notes Receivable.** American TV is the owner and holder of three separate Promissory Notes from Palomaki & Anderson (the "Notes"). The total principal balance due American TV was \$976,508.60 plus interest as of September 30, 2014. The Notes are secured by various collateral, and the amount due American TV appears to be more than the value of that collateral. The value of the Notes is unknown at this time and is being investigated.

12. **Patent.** American TV is the owner of the United States Patent Number 5,873,069 for a System and Method for Automatic Updating and Display of Retail Prices (the "Patent"). In order to maximize the value of the Patent, the Receiver has retained Sherwood Partners, Inc., a national firm with substantial experience marketing intellectual property.

13. The Patent was issued in 1995 and expires in about one year. Under the circumstances, the Patent has limited value.

14. A hearing to sell the Patent, and pay Sherwood Partners a success fee in connection with that sale, is scheduled for November 24, 2014.

15. **Miscellaneous Assets.** In addition to the Patent, American TV owns certain intangible assets including rights to American TV's domain name, website and various trademarks and service marks. The value of those intangible assets is unknown at this time.

16. In addition, American TV may have various other rights, causes of action and claims. Those claims are being investigated at this time and their value is unknown.

SECURED CLAIMS

17. **BMO Harris Bank, N.A (“BMO”).** As of the Appointment Date, American TV was obligated to BMO Harris Bank in the amount of approximately \$28,000,000 plus interest and costs. That claim was secured by a properly perfected first position security interest in all of American TV's assets, except certain purchase money security interests, and first mortgage interests in all of American TV's real estate. All of the principal and interest due BMO has been paid in full.

17. Recently, BMO contacted the Receiver's consultant and indicated that American TV is obligated to the BMO in connection with a forbearance fee that remains unpaid. After negotiations between the parties, an agreement has been reached, subject to Court approval, to pay BMO's remaining secured claim. Under the circumstances, the Receiver intends to file a Motion to Approve the Settlement Agreement Between American TV and BMO Harris Bank, N.A. and to provide appropriate notice to all creditors and parties-in-interest of the hearing on that Motion.

18. **Whirlpool Corporation (“Whirlpool”).** Whirlpool has asserted a secured and unsecured claim in this matter which is unliquidated but is in the minimum amount of \$5,000,000. Whirlpool has a first position properly perfected purchase money security interest in certain goods which Whirlpool sold to American TV.

19. The Whirlpool secured and unsecured claim includes two parts: First, a claim for unpaid goods sold to American TV, and, second, a claim for indemnification pursuant to the terms of a Distribution

Agreement. American TV has paid Whirlpool for all goods which were sold to American TV. The indemnification claim relates to a disputed products liability claim which Whirlpool has asserted against American TV. American TV has denied that it is obligated to Whirlpool in connection with that claim. In addition, American TV has insurance coverage which the Receiver believes will pay the costs of defending the claim and any damages sustained by Whirlpool.

20. Whirlpool and American TV have agreed that the Receiver will hold the sum of \$2,752,372 in escrow pending the outcome of the disputed Whirlpool claim. That amount represents the remaining secured portion of the disputed Whirlpool claim.

21. The Receiver has filed an Objection to the Whirlpool claim. In an effort to amicably resolve the dispute between the parties, the Receiver and Whirlpool have agreed to attempt to mediate the matter and the parties are in the process of expedited discovery to facilitate that mediation.

22. **Unsecured Claims.** The time for filing Proofs of Claim expired on May 23, 2014. Since that date, American TV and the Receiver has attempted to reconcile Proofs of Claim and the amounts due creditors according to American TV's books and records. In addition, American TV and the Receiver have had substantial negotiations with unsecured creditors in an effort to avoid the cost of litigating Objections to Proofs of Claim.

23. As of October 31, 2014, there were outstanding unsecured Proofs of Claim in this matter in the amount of \$64,054,904.58.

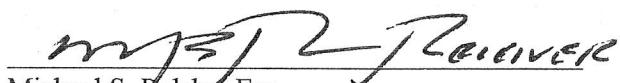
24. The process of voluntary claims resolution is ongoing. The Receiver intends to attempt to negotiate with American TV's unsecured creditors regarding resolution of their Proofs of Claim.

25. In addition, the Receiver intends to file Objections to Proofs of Claim in cases where efforts to resolve claim disputes are unsuccessful.

26. **Landlords.** American TV's former landlords have pending Proofs of Claim in the total amount of approximately \$38,000,000. Except for amounts which represent unpaid common area charges and real estate taxes due for the period prior to the Appointment Date, which is a relatively small amount, those landlord claims represent future rent. The Receiver intends to attempt to negotiate with American TV's former landlords regarding resolution of their Proofs of Claim or file the appropriate Objections.

27. **Comenity Bank.** Comenity Bank has filed two Proofs of Claim in this matter in the amount of approximately \$11.4 million. The Receiver believes that claim is a contingent liability, and is therefore disputed. The Receiver intends to attempt to negotiate with Comenity Bank regarding resolution of its claims or file the appropriate Objections.

Respectfully submitted this 20th day of November, 2014.


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Wis. Stats. Chapter 128 Receiver
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