

<p>District Court, Denver County, Colorado 1437 Bannock Street Denver, CO 80202</p> <hr/> <p>GERALD ROME, Securities Commissioner for the State of Colorado, Plaintiff, v. SEAN MICHAEL MUELLER, MUELLER CAPITAL MANAGEMENT, LLC, and MUELLER OVER UNDER FUND, LP, Defendants.</p>	<p>DATE FILED: May 2, 2017 3:25 PM FILING ID: 623F4B56CB330 CASE NUMBER: 2010CV3280</p> <p style="text-align: center;">▲ COURT USE ONLY ▲</p>
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<p>RECEIVER'S MAY 2017 STATUS REPORT</p>	

C. Randel Lewis, as Receiver for Mueller Capital Management, LLC (“MCM”), Mueller Over Under Fund, LP, and related businesses, including Mueller Partners, LP, MCM, LLC, and Mueller Fund, LP, submits this report on the status of the Receivership.

1. On April 23, 2010, the Commissioner filed his Complaint for Injunctive and Other Relief. On April 27, 2010, this Court entered an Order Appointing the Receiver for MCM, Mueller Over Under Fund, LP, as well as any related businesses, including Mueller Partners, LP, MCM, LLC, and Mueller Fund, LP (collectively, the “Business” or the “Estate”). Sean Michael Mueller (“Mueller”) had been operating the Business as a Ponzi scheme.

2. On November 1, 2010, Mueller pled guilty in Denver District Court to violating the Colorado Organized Crime Control Act, C.R.S. § 18-17-104(3), a class two felony, and Securities Fraud and Theft, both class three felonies. On December 6, 2010, he was sentenced to forty years in prison and ordered to pay in excess of \$65 million in restitution. The Receiver has been informed that some investors have received minimum restitution payments from Mueller, and those payments may continue. Those payments have not been made by the Receiver or from assets of the Estate.

3. The Receiver has collected the assets of the Estate and with the exception of the *Taylor* case discussed below concluded all litigation efforts on behalf of the Estate.

4. On July 28, 2014, the Receiver filed his Proposed Plan of Distribution (“Proposed Plan”) and a motion seeking approval of the Proposed Plan. The Proposed Plan summarizes the Receiver’s recovery efforts and the liabilities and assets of the Estate. A copy of the motion and the Proposed Plan were served on all parties in interest, including all claimants in the Receivership and all investors in the Business.

5. After several hearings, the Court ordered the Receiver to amend the Proposed Plan, which he did on April 3, 2015. On April 17, 2015, the Receiver’s Amended Plan of Distribution became effective and in early May 2015, interim distributions of \$10 million were made as ordered by the Court. Copies of the Proposed and Amended Plans (and other relevant materials) remain available at www.muellerreceivership.com. On August 8, 2016, the Receiver made a second interim distribution of \$1 million. Approximately \$900,000 remains in the Estate’s accounts, which includes the \$500,000 deposited by Mr. Taylor discussed below.

6. The only remaining Estate litigation (and the only impediment to making final distributions to investors) is a case pending against Steve Taylor. Mr. Taylor received \$487,305.29 in purported “net profits” from Mueller before the Receiver was appointed. The Receiver sued Taylor in October 2011, to recover that money under Colorado’s Uniform Fraudulent Transfer Act (“CUFTA”). On January 4, 2013, the Receivership Court entered summary judgment for the Receiver and against Taylor for the entire \$487,305.29. Taylor appealed but deposited \$500,000 with the Receiver to secure the judgment. That \$500,000 is being held in a segregated account pending the final outcome of the *Taylor* case.

7. On March 13, 2014, the Colorado Court of Appeals reversed the Receivership Court’s summary judgment order in the Taylor case on the ground that the time-period for bringing CUFTA claims had expired before the Receiver sued and that the express tolling agreement between Taylor and the Receiver was not enforceable. The court of appeals did not decide the other issue on appeal – whether Taylor provided reasonably equivalent value to the Estate for the “net profits” he received.

8. On June 19, 2014, the Receiver filed a petition for certiorari with the Colorado Supreme Court asking it to review the court of appeals’ decision. On August 3, 2015, the Colorado Supreme Court granted the Receiver’s petition and agreed to review the *Taylor* case. On June 20, 2016, the Supreme Court reversed the court of appeals decision and remanded the case to the court of appeals to decide the remaining issue on appeal.

9. On February 9, 2017, the Colorado Court of Appeals reversed the Receivership Court's summary judgment order once again, this time because the Receivership Court did not account for the time-value of the money Taylor invested with Mueller. According to the court of appeals opinion, the time-value of Taylor's investment may constitute reasonably equivalent value, which might allow Taylor to retain some, or all, of his net profits. The court of appeals remanded the case to the trial court to determine that value.

10. On February 23, 2017, Taylor filed a motion for rehearing with the court of appeals asking it to instead remand the case to the trial court with directions to enter judgment allowing him to retain all of his net profits (\$487,305.29). On March 9, 2017, the court of appeals denied Taylor's petition for rehearing.

11. On April 4, 2017, the Receiver filed a petition for writ of certiorari with the Colorado Supreme Court asking it to review the court of appeals' February 9 decision, which the Receiver believes is contrary to applicable law. The Commissioner has filed an amicus brief supporting the Receiver's request that the Supreme Court review the case. Taylor's response to the Receiver's petition is not due until May 16, 2017.

12. Final distributions in this case will not be made until the Taylor case is finally resolved; the Receiver cannot project when that may occur. Before then, the Receiver does not anticipate making additional interim distributions.

Dated: May 2, 2017.

LINDQUIST & VENNUM L.L.P.

original signature on file

By: /s/ Michael T. Gilbert

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CERTIFICATE OF MAILING

The undersigned hereby certifies that on May 2, 2017, a true and correct copy of the foregoing **RECEIVER'S MAY 2017 STATUS REPORT** was served via ICCES and/or first class U.S. Mail, postage prepaid, on the following, and is also available at www.muellerreceivership.com:

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