

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF WISCONSIN**

In re:)	Chapter 7
)	
James E. Putman and)	Case No. 10-32980-mdm
Christine A. Putman,)	
Debtors.)	
)	Hon. Margaret Dee McGarity

**MOTION FOR ENTRY OF AN ORDER PURSUANT TO FED. R. BANKR. P. 2004 FOR
AUTHORITY TO CONDUCT EXAMINATION OF DEBTOR JAMES E. PUTMAN AND
TO OBTAIN RELATED DOCUMENT PRODUCTION**

Faye B. Feinstein (the “Receiver”), the Court-appointed Receiver for Wealth Management LLC (“WM”), Employee Services of Appleton, Inc. (“ESA”), and six investment funds for which WM was general partner or managing member – all of which were formed and controlled by Debtor James E. Putman (“Putman”) – brings this motion, pursuant to Fed. R. Bankr. P. 2004, for entry of an Order (a) requiring Putman to produce certain documents to the Receiver, and (b) authorizing the Receiver, through her counsel, to conduct an examination of Putman (the “Examination”). In support thereof, the Receiver represents:

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§157 and 1334 and the general order of reference of the United States District Court for the Eastern District of Wisconsin.

2. Venue is proper in this district pursuant to 28 U.S.C. §§1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2).

3. On May, 20, 2009, the United States Securities and Exchange Commission (“SEC”) filed an enforcement action (the “SEC Action”) against Putman and others, in the United States District Court for the Eastern District of Wisconsin (the “Receivership Court”), which was assigned Case No. 09-C-506 (the “Receivership Docket”).

4. Pursuant to the Receivership Court's *Order Appointing Receiver* dated May 20, 2009 (Receivership Docket No. 8) and the subsequent *First Modified Order Appointing Receiver* (Receivership Docket No. 14) (the "Modified Receiver Order"), Faye B. Feinstein was appointed Receiver for WM and the WM Funds, which receivership was later extended by the Receivership Court to include ESA.

5. Pursuant to the Receivership Court's Modified Receiver Order, the Receiver possesses the authority to take control of all assets of WM and the WM Funds and to "take such steps as [she] deems necessary to secure such . . . property." Modified Receiver Order, §II.A, at 3-4. Those assets include claims against Putman.

6. In furtherance of her obligations under the Modified Receiver Order, the Receiver obtained the Receivership Court's approval (Receivership Docket Nos. 161 and 167) of her plan for the allocation of the assets of WM and the WM Funds. She is currently implementing the plan by, among other things, seeking to recover assets of the receivership estates of WM and the WM Funds for distribution to claimants and investors.

Putman's Management of WM and Loss of Client Funds

7. Among other things, the SEC has alleged the following in the SEC Action:

(a) Putman was the founder, Chief Executive Officer, and, at various times, the President or Chairman of the Board of Managers of WM and exercised general control over the operations of WM until the Receiver's appointment. WM operated as a financial planning firm for families and individuals. Putman, through WM, established six investment funds (the "WM Funds"), for which WM served as general partner or managing member.

(b) Putman, through WM, invested approximately \$102 million of his clients' money, representing over 300 client accounts, in the WM Funds. The WM Funds are unregistered investment pools – *i.e.*, hedge funds – that were themselves invested in a total of twenty-two (22) alternative investments, virtually all of which were illiquid and speculative, including, among others, life insurance premium financing vehicles, water parks, and real estate funds.

(c) Most of the investors in the WM Funds are retirees who entrusted Putman with their primary source of retirement income, seeking relatively safe, low-risk investments. Many of the investors believed that the investments were stable and appreciating in value and did not understand the significant risks and illiquidity inherent in the types of investments into which Putman was placing their money.

(d) Putman encouraged that belief by overstating the values of the WM Funds, which values he based, at least in part, on reports from the managers of the various alternative investments in which he had placed the assets of the WM Funds, without any independent due diligence or verification of those reports.

8. The vast majority of the \$102 million invested by Putman through WM for his clients has been lost and will not be recovered. Putman has scheduled the Receiver and all or nearly all of his client investors as creditors.

Putman's Acceptance of Payments from Entities in Which Putman Caused the WM Funds to Invest

9. The complaint filed in the SEC Action also alleges, among other things, that Putman engaged in a kickback scheme through which he accepted at least \$1.24 million in undisclosed payments (the "Commissions") derived from certain investments made by the WM Funds, even as he continued to cause his clients to invest in those same WM Funds.

10. During an interview with the SEC, Putman admitted that the Commissions were paid to an entity called Amalgamated Consolidated Enterprises, Inc. ("ACE"), a corporation created by Putman.

11. At the first meeting of creditors in Putman's case, Putman testified that most of the Commissions were distributed by ACE to Putman's wife and his children. Putman and his wife (a co-Debtor in this chapter 7 case) also testified that all of such funds distributed to their family by ACE have been spent.

The Promissory Note Executed by Putman in Favor of Certain WM Funds

12. On February 1, 2009, Putman executed a promissory note (the "Note") in favor of three of the WM Funds, pursuant to which Putman agreed to pay to those Funds the sum of

\$722,000, plus accrued interest, which, upon information and belief, is the amount of the Commissions he had received, net of taxes allegedly accrued and/or paid on such amounts.

13. On February 10, 2010, the Receiver brought an action in the Receivership Court against Putman (Case No. 10-C-00115, the “Note Action”), alleging claims for breach of contract, breach of fiduciary duty, and breach of his obligations under the Note. In the Note Action, Putman has denied any liability under the Note. The Note Action was stayed by the filing of the captioned case.

Inquiry into Dischargeability of Certain Obligations of Putman to WM or the WM Funds

14. As noted above, it appears from Putman’s schedules of assets and liabilities that Putman named all of the investors in WM and the WM Funds as creditors. Certain of those investors have retained counsel to investigate the liability of Putman and of certain third parties to such investors or to the receivership estates.

15. The Receiver is preparing a motion to the Receivership Court seeking approval for the creation of a litigation trust, which would be vested with some or all of the causes of action described above. The trustees of that litigation trust would be responsible for selecting counsel to pursue those causes of action. Some of the investors in the WM Funds have been in discussions with David A. Melnick, Esq., of Melnick & Melnick, S.C., regarding his willingness and ability to become one of the counsel to the litigation trust.

16. Mr. Melnick currently represents certain of the investors listed by Putman as his creditors. Mr. Melnick has informed the Receiver that he wishes to examine Putman on issues related to the causes of action described above and to Putman's right to a discharge and that he is willing to do so on behalf of his individual investor-clients and the WM Funds.

REQUEST FOR EXAMINATION

17. This Court may authorize any party in interest, including a creditor like the Receiver, to examine a debtor. Fed. R. Bankr. P. 2004(a). Unlike discovery under the Federal Rules of Civil Procedure, an examination under “Rule 2004 is a broad ‘fishing expedition’ into a party’s affairs for the purpose of obtaining information relevant to the administration of the bankruptcy estate.” *In re Handy Andy Home Improvement Ctrs., Inc.*, 199 B.R. 376, 380 (Bankr. N.D. Ill. 1996); *see also, e.g., In re Bakalis*, 199 B.R. 443, 447 (Bankr. E.D.N.Y. 1996) (purpose of Rule 2004 examination is “to facilitate the discovery of assets and the unearthing of frauds”).

18. Pursuant to Fed. R. Bankr. P. 2004, the Receiver seeks entry of an order authorizing her, as well as Mr. Melnick, to examine Putman regarding, and to inspect and copy all documents (such documents to be identified by the Receiver in a separate document request) relating to, the acts, conduct, property, liabilities, and/or financial condition of Putman and/or his entitlement to a discharge, including the matters described in this Motion and, specifically, but without limitation, the following matters: the facts and circumstances related to the Note; the receipt and expenditure of the Commissions by ACE, Putman, and/or his family, and Putman’s entitlement to a discharge.

19. The Receiver and Mr. Melnick will make every effort to refrain from duplicative inquiries of Putman at the Examination and to refrain from duplicating the Trustee’s scheduled examination.

20. Many of Putman’s former investment clients have contacted the Receiver about Putman’s chapter 7 case and have expressed keen interest in the Examination. Putman has taken the position that his former investor-clients are also creditors of his estate. They are also the parties most directly injured by Putman’s prepetition actions. The Receiver therefore asks that

any former client of Putman who invested in the WM Funds be permitted to attend the Examination as an observer, but not as a questioner.

21. The Receiver does not intend to file a brief in further support of this Motion, but reserves the right to file a responsive or reply brief, if necessary.

WHEREFORE, the Receiver requests that this Court enter an Order, in a form to be submitted:

A. Requiring Debtor James E. Putman to produce the documents requested by the Receiver no later than seven (7) days prior to the first scheduled date for the Examination; and

B. Requiring Debtor James E. Putman to appear for one or more examinations by counsel for the Receiver and by Mr. Melnick, beginning on one or more dates to be determined by agreement with Putman or, absent such agreement, by subsequent Court order and to be continued from time to time until completed; and

C. Granting such other relief to the Receiver as is just and appropriate under the circumstances.

Dated this 3d day of November, 2010.

s/ Christopher Combest
One of the Receiver's Attorneys

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