

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN  
GREEN BAY DIVISION

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SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

Civil Action No: 09-C-506

WEALTH MANAGEMENT LLC;  
JAMES PUTMAN; and SIMONE FEVOLA,

Defendants, and

WML GRYPHON FUND LLC;  
WML WATCH STONE PARTNERS, L.P.; WML  
PANTERA PARTNERS, L.P.; WML PALISADE  
PARTNERS, L.P.; WML L3, LLC; and WML  
QUETZAL PARTNERS, L.P.

Relief Defendants.

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**RESPONSE OF RECEIVER TO OBJECTION FILED BY JAMES PUTMAN  
TO PROPOSED PLAN OF DISTRIBUTION**

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Faye B. Feinstein, the duly appointed Receiver in this action for Wealth Management LLC (the "Company"), Employee Services of Appleton, Inc. ("ESA"), and the Relief Defendants, WML Gryphon Fund LLC ("Gryphon"), WML Watch Stone Partners, L.P. ("Watch Stone"), WML Pantera Partners, L.P. ("Pantera"), WML Palisade Partners, L.P. ("Palisade"), WML L3, LLC ("L3"), and WML Quetzal Partners, L.P. ("Quetzal," and together with Gryphon, Watch Stone, Pantera, Palisade, and L3, the "WM Funds", and collectively with the Company and ESA, the "Receivership Entities"), by and through her attorneys, Quarles & Brady LLP, hereby responds to the Objection to Proposed Plan of Distribution filed by James E. Putman ("Putman").

### Background

1. On September 8, 2009, the Receiver filed with this Court her proposed Plan for the Allocation of the Assets of the Receivership Entities (the "Plan").

2. On September 11, 2009, This Court entered an Order granting the Receiver's Motion to set a briefing schedule on the proposed Plan (the "September 11 Order"). The September 11 Order required that all objections to the Plan be filed by September 30, 2009, and that the Receiver's responses to all such objections be filed by October 14, 2009. The September 11 Order scheduled hearing on the Plan for November 4, 2009.

3. Putman did not file an objection before September 30. Instead, on October 28, 2009, well after the date by which the Receiver was to respond to objections, and only one week before the scheduled hearing on the Plan, Putman served his Objection on the Receiver. A copy of the e-mail transmitting the Objection to the Receiver is attached hereto as Exhibit "A". Putman did not file his Objection until November 2. Putman falsely dated the Objection as of September 30, yet he labeled the pdf file served on the Receiver as "Objection signed 10-28-09". Putman fraudulently back-dated the Objection in an effort to circumvent this Court's September 11 Order, and evade any penalty for late filing. Although Putman may be acting without the benefit of counsel, there is no excuse for blatant dishonesty, and sanctions are clearly warranted under Federal Rule of Civil Procedure 11 for filing a false statement with this Court.

4. The Objection is addressed only to that portion of the Plan providing for subordination and disallowance of Putman's investor claim against the Funds. Putman alleges that unless and until this Court rules against him in the captioned litigation, he has a property interest entitled to be protected, and that he is, therefore, entitled to a distribution.

## Response

5. Regardless of whether Putman is successful in the captioned litigation, he is not entitled to any distribution from the receivership estate unless and until he satisfies his obligations to reimburse the Funds for the undisclosed payments he received in the total amount of \$1.24 million (the "Commissions"), including his obligations under that certain promissory note dated as of February 1, 2009, made payable to Gryphon, Watch Stone and Palisade in the principal amount of \$722,000, plus interest (the "Note"). A copy of the Note is attached hereto as Exhibit "B".

6. Putman executed the Note in an apparent effort to partially reimburse the Gryphon, Watch Stone and Palisade Funds for the undisclosed Commissions. The Note requires Putman to pay interest commencing on October 1, 2009. Putman failed to make that first payment, and demand was made therefor by the Receiver. The Receiver is in the process of preparing a Complaint against Putman in order to recover the amounts due under the Note.

7. Putman does not dispute that he received the Commissions. *See Answer and Counterclaims* (Docket No. 70) at ¶ 2. Nor can he dispute his obligations to the Funds under the Note.

8. Putman is an investor in Watchstone, allegedly with a cash "investment" noted on the Fund's records as of December 31, 2008 of \$152,000. *See Putman's Memorandum in Opposition to the SEC's Motion to Dismiss Counterclaims and in the Alternative in Support of Motion for Consideration* (Docket No. 119) at 13. The Receiver is entitled to offset any distribution Putman may otherwise be entitled to against Putman's obligation to the Gryphon, Watch Stone and Palisade Funds in the amount of \$1.24 million. Since Putman owes far more to the receivership estate than he would otherwise recover, he is not entitled to any distribution

from the Funds. *See Lincoln Crest Realty v. Standard Apt. Devel.*, 61 Wis. 2d 4 (1973) (recognizing the right of a creditor under Wisconsin common law to offset property in his possession owned by his debtor in partial satisfaction of a debt).

Wherefore, the Receiver requests that this Court enter an order (i) overruling Putman's Objection; (ii) approving the Plan; and (iii) granting such other and further relief as this Court deems appropriate, including awarding sanctions.

/s/ Faye B. Feinstein  
Faye B. Feinstein, Receiver

QUARLES & BRADY, LLP

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**Feinstein, Faye B.**

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**From:** James Putman [performanceworksinc@gmail.com]  
**Sent:** Thursday, October 29, 2009 2:48 PM  
**To:** Feinstein, Faye B.  
**Cc:** levines@sec.gov  
**Subject:** Objection.  
**Attachments:** Distribution Plan Objection Signed 10-28-09.pdf

Attached please find my objection to the receiver's plan of distribution.

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Jim Putman  
311 Cleveland Street  
Menasha, WI 54952

920.809.9950  
[performanceworksinc@gmail.com](mailto:performanceworksinc@gmail.com)

Exhibit "A"

## PROMISSORY NOTE AND AGREEMENT

February 1, 2009

FOR VALUE RECEIVED, James E. Putman ("Maker") hereby promises to pay to the WML Gryphon Fund LLC, WML WatchStone Partners, LP and WML Palisade Partners LP ("Holder"), a principal amount equal to the Holder's Pro-Rata Share of Seven Hundred and Twenty Two Thousand Dollars (\$722,000), plus accrued interest (computed on the basis of actual days elapsed in a year of 364 days) on the unpaid principal balance hereof outstanding from time to time calculated in the manner set forth below.

Principal shall be due on the seventh anniversary of this Note. Mandatory prepayments of principal shall be due within ten (10) days following Maker's receipt of proceeds from the voluntary or involuntary sale of any of the assets listed on Exhibit A to this Note ("Identified Assets") in an amount equal to the Holder's Pro-Rata Share of the After-Tax Net Sales Proceeds. In the event of damage or destruction of an Identified Asset, Maker shall have the right to use insurance proceeds for restoration of the Identified Asset, but any insurance proceeds not applied to restoration within thirty (30) days of receipt of such insurance proceeds, net of applicable income taxes due, shall be deemed After-Tax Net Sales Proceeds. Maker can deliver investment assets in-kind in addition to cash to apply to principal payments.

Mandatory prepayments of principal shall be accompanied by Maker's calculation of the mandatory prepayment, together with reasonable documentation supporting the calculation. Holder shall be entitled to inspect such relevant books and records of Maker as shall be reasonably necessary to verify the calculation of the mandatory prepayment.

Until payment in full of this Note, Maker covenants as follows:

(a) Maker shall notify Holder of the sale, damage or total destruction of any Identified Assets, and on each annual anniversary of this Note, Maker shall confirm in writing to Holder that he continues to own each Identified Asset, except those which he has previously notified Holder have been sold.

(b) From time to time on reasonable advance notice, Holder may inspect such relevant books and records, or the assets themselves, as applicable, to confirm their existence and ownership by Holder.

(b) Maker shall not allow any Identified Asset to be encumbered by liens for borrowed money or other debts of Maker or others, except for (i) liens for unpaid taxes not yet due, (ii) liens existing on the date hereof securing debt in the principal amounts set forth on Exhibit A and (iii) liens granted in refinancing of any debt securing those existing liens for an amount not exceeding the principal amount indicated on the Exhibit A. In the event of any grant by Maker of any security interest or mortgage on any on any Identified Asset in violation of this covenant (b), a majority of the Funds may by notice to Maker deem such grant a sale of the Identified Asset and deem the principal amount of the debt securing such security interest or mortgage (without duplication) as the After-Tax Net Sales Proceeds.

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(c) In the case of voluntary transfers, Maker shall only transfer an Identified Asset for fair consideration determined on an arm's length basis. Any sale to a party which is not a Related Party shall be deemed to be for fair consideration determined on an arm's length basis. In the event of any breach by Holder of this covenant (c), the mandatory prepayment due shall be the Holder's Pro-Rata Share of the Deemed After-Tax Net Sales Proceeds rather than actual Deemed After-Tax Net Sales Proceeds. Maker shall be liable for the cost of any appraiser engaged to determine Fair Market Value of an Identified Asset in connection with calculation of Deemed After-Tax Net Sales Proceeds.

Interest on unpaid principal shall accrue at the rate of 3.13% and shall be due on each October 1 and April 1, commencing October 1, 2009. In the event of any default in payment of principal, the principal payment overdue shall bear interest at 6.13% until paid. In the event of any default in the payment of interest, overdue interest shall bear interest at 6.13% until paid.

All payments under this Note shall be payable in lawful money of the United States of America in immediately available funds.

The Maker shall have the right to make voluntary prepayments of this Note, in whole or in part, at any time without charge, premium or penalty, provided that all Funds receive their Pro-Rata Share of any prepayments made at any time.

As used herein, the following terms shall mean the following:

"After-Tax Net Sales Proceeds" means the actual sales proceeds received by Maker from a voluntary or involuntary sale of an Identified Asset, net of (i) transaction costs (including but not limited to transfer taxes and attorneys fees), (ii) amounts paid to obtain release of liens encumbering the Identified Asset (but not in excess of the sum of debt encumbering the Identified Asset identified on Exhibit A) and (iii) net of income taxes due in respect of such sale, based on income tax rates in effect for the year in which the sale occurs. If the income tax due is determined by reference to Maker's income tax bracket, his tax bracket for the prior calendar year shall be applied.

"Deemed After-Tax Net Sales Proceeds" means sales proceeds that would have been received by Maker from sale of an Identified Asset, net of (i) transaction costs (including but not limited to transfer taxes and attorneys fees), (ii) amounts paid to obtain release of liens encumbering the Identified Asset (but not in excess of the sum of debt encumbering the Identified Asset identified on Exhibit A) and (iii) net of income taxes due in respect of such sale, based on income tax rates in effect for the year in which the sale occurs, had the Identified Asset been sold for Fair Market Value. If the income tax due is based upon Maker's tax bracket, his tax bracket for the prior calendar year shall be applied.

"Fair Market Value" shall mean the value of the Identified Asset determined by an independent appraiser agreed to by Maker and a majority of the Funds, or in the absence of such agreement, as determined by an independent appraiser selected by an appraiser selected by Maker and an appraiser selected by a majority of the Funds.

**"Funds"** means the following entities: WML Gryphon Fund, LLC, WML Palisade Partners, LP, and WML WatchStone Partners, LP.

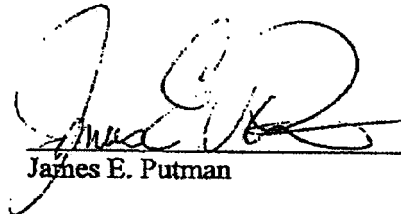
**"Pro-Rata Share"** means the following percentages as to each Fund:

WML Gryphon Fund, LLC	64%
WML Palisade Partners, LP	3%
WML WatchStone Partners, LP	33%

**"Related Party"** means Maker's spouse, any parent, any sibling, any child, any trust for any of their benefit, or any entity in which any of the foregoing collectively own more than a 10% equity interest.

This Note shall be construed in accordance with and governed by the internal and substantive laws of the State of Wisconsin.

IN WITNESS WHEREOF, the undersigned has executed this Note as of the date first written above.

  
James E. Putman

1/30/09  
Date