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Corporation, et al., Civil Action No. 3:05-CV-1328-L (N.D. Tex.). Megafund was an unregistered securities broker that solicited investor funds and then systematically diverted large amounts for commissions, *Ponzi* payments to earlier investors, and other expenses unrelated to any legitimate investments. Defendant solicited new investors on Megafund's behalf and was instrumental in procuring \$9.365 million in contributions from Lancorp—Megafund's largest investor.

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As compensation for his efforts, Defendant personally negotiated a 40% share of all profits that Lancorp realized from Megafund's *Ponzi* payments. He then directed that those funds be paid to MexBank S.A. de C.V. In two separate transfers, Megafund and Lancorp paid \$304,272.58 in compensation as directed. Although these payments were laundered through accounts held by MexBank S.A. de C.V. and First Global Foundation, account records show that most of those funds ultimately returned to Defendant, his wife, and a business associate named Robert Reese.

The Receiver is now entitled to summary judgment for the full \$304,272.58 because those funds constitute fraudulent transfers out of a *Ponzi* scheme, or proceeds therefrom. The undisputed material facts clearly show that (1) Megafund was a *Ponzi* scheme and (2) funds or proceeds from Megafund investors were transferred to or for the benefit of Defendant. Furthermore, the undisputed material facts show that all proceeds from those transfers are held in constructive trust for the defrauded investors' benefit and ought to be disgorged.

II. STATEMENT OF UNDISPUTED MATERIAL FACTS

The Receiver's Appointment in this Case

1. On July 1, 2005, the Securities and Exchange Commission ("SEC") initiated *SEC v. Megafund Corporation, et al.*, Civil Action No. 3:05-CV-1328-L (N.D. Tex.) (the "Receivership Proceeding"). *Receiver's Declaration*, Exhibit "A" at ¶ 3 (App. at 2-3). In its Complaint the SEC

alleged that Stanley A. Leitner (“Leitner”), the director of Megafund Corporation (“Megafund”), falsely promised investors a 10% monthly return on investments and then diverted their money towards various personal and undisclosed expenses. *Complaint* [Dkt. No. 1] at ¶¶ 17, 20 (3:05-CV-1328); *see also Megafund Promotional Material*, Exhibit “B” (App. at 51-52).

2. In connection with that lawsuit, the SEC sought to have a receiver appointed for the defendants and relief defendant in that case. *Receiver’s Declaration*, Exhibit “A” at ¶ 3 (App. at 2-3). The Court appointed Michael J. Quilling as Receiver for Megafund, Leitner, and others and he has since continued to function in that capacity. *Order Appointing Temporary Receiver* [Dkt. No. 9], as amended July 19, 2005 [Dkt. No. 36] (3:05-CV-1328).

3. In January 2006, the receivership was expanded to include Lancorp Financial Group, LLC and Lancorp Financial Fund Business Trust (collectively, “Lancorp”). *Receiver’s Declaration*, Exhibit “A” at ¶ 5 (App. at 3). The Court appointed Michael J. Quilling as Receiver for those entities and he has since continued to function in that capacity. *Agreed Order Expanding Receivership and Appointing Receiver* [Dkt. No. 84], as amended March 1, 2006 [Dkt. No. 98] (3:05-CV-1328).

4. Since his appointment, the Receiver has investigated the businesses, transactions, assets, liabilities, books, and records of Leitner, Megafund, and Lancorp. *Receiver’s Declaration*, Exhibit “A” at ¶ 6 (App. at 3). He has also interviewed witnesses, taken depositions, and reviewed all available documents concerning their underlying investment programs. *Id.*

The Megafund Investment Scheme

5. The Receiver’s investigation has revealed that Leitner operated a *Ponzi* scheme and fraudulent investment program through Megafund, an entity under his sole direction and control. *Id.* at ¶ 7 (App. at 3-4). Leitner relied on friends and associates to solicit investors for Megafund in

exchange for commissions or other compensation. *Id.* Those investors then sent money to Megafund's accounts at Wells Fargo Bank and SouthTrust Bank. *Id.* Leitner assured investors that their funds would be sent to a "Trader" to execute various trades on their behalf and that the principal investments were never at risk. *Id.*; *Megafund Promotional Material*, Exhibit "B" (App. at 51-52). Megafund, however, was not a licensed securities broker and was never operated in a manner consistent with Leitner's representations. *Receiver's Declaration*, Exhibit "A" at ¶ 7 (App. at 3-4).

6. Instead, as investors sent their money to Megafund, Leitner fraudulently diverted large amounts as *Ponzi* payments to earlier investors. *Id.* Megafund's own bank records clearly establish that: (1) investor funds constituted virtually all of Megafund's revenue; (2) those funds were commingled and used for expenses not related to any legitimate investment; and (3) any investment "returns" to earlier contributors were actually *Ponzi* payments from the commingled funds of later contributors. *Id.* at ¶ 8 (App. at 4). These account records are voluminous so the Receiver's accountant has prepared spreadsheet summaries that are attached as Exhibits "A-1" (App. at 7-16) and "A-2" (App. at 17-21), which are fully incorporated for all purposes.

7. Gary McDuff was one of Leitner's associates who helped solicit new investors into the Megafund investment scheme. *Receiver's Declaration*, Exhibit "A" at ¶ 9 (App. at 4). According to Megafund records, Defendant introduced at least 100 investors to the Megafund and Lancorp investment schemes. *Id.*

8. In conducting business with Megafund and Lancorp, McDuff acted in his individual capacity as well as d/b/a Secured Clearing Corp, First Global Foundation, and Southern Trust Co. (collectively "Defendant"). *Receiver's Declaration*, Exhibit "A" at ¶ 10 (App. at 4).

Defendant's Role in Lancorp

9. Defendant also helped create a separate investment vehicle called Lancorp, which became Megafund's largest investor. *Id.* at ¶ 11 (App. at 4-5). Defendant was centrally involved in Lancorp's affairs and paid many of the up-front legal fees necessary to set up the fund. *See Letter from Gary McDuff*, ("McDuff Letter"), March 17, 2005, Exhibit "C" (App. at 54-55); *Deposition of Gary Lancaster*, ("Lancaster Deposition"), March 25, 2006, Exhibit "D" at 189, 194 (App. at 61-62). It was Defendant who approached Gary Lancaster ("Lancaster") about managing the fund and introduced him to Norman Reynolds ("Reynolds"), the attorney who handled Lancorp's corporate and securities filings. *Lancaster Deposition*, Exhibit "D" at 189, 193-194, 198 (App. at 61-63). Even when Lancaster took over, Defendant remained personally involved in the conversations with Reynolds. *Id.* at 194, 203, 214-215 (App. at 62, 67).

10. Reynolds helped Lancorp structure its profit-sharing plan. *Id.* at 203 (App. at 64). Under the plan, approximately 22% of all profits would be directed to a Client Trust Account for distribution to Lancorp's investors. *Id.* at 214-215, 217-218 (App. at 67-68). The remaining 78% was considered "profit" and would be sent to a Business Trust Account. *Id.* Those "profits" were then split approximately 60-40 between Lancaster and Defendant, respectively. *Id.* at 220-222 (App. at 68-69); *McDuff Letter*, Exhibit "C" (App. at 54-55); *Note from Gary McDuff*, March 18, 2005, Exhibit "E" (App. at 74). Defendant's share was to compensate him for recruiting all of Lancorp's investors with the help of a business associate named Robert Reese. *Lancaster Deposition*, Exhibit "D" at 192, 197, 200, 203-205, 213 (App. at 61, 63-65, 67).¹

¹ Part of the compensation that Defendant negotiated from Lancorp was used to pay \$45,792.89 to Robert Reese. *Receiver's Declaration*, Exhibit "A" at ¶ 12 n.2 (App. at ____). To recover those funds, the Receiver included Robert Reese in this lawsuit and has since negotiated a settlement agreement to be approved by the Court overseeing the Receivership Proceedings. *Id.*

11. On March 17, 2005, Defendant directed Lancorp (1) to pay Defendant's share of the "profits" to MexBank S.A. de C.V. ("MexBank") and (2) to invest Lancorp's money in the Megafund investment scheme. *Id.* at 203-205 (App. at 64-65); *McDuff Letter*, Exhibit "C" at 1-3 (App. at 54-56).

12. Defendant and his associates successfully generated millions of dollars in Lancorp investments by May 2005. *Receiver's Declaration*, Exhibit "A" at ¶ 11 (App. at 4-5). Of that amount, Lancorp contributed \$9,365,000.00 to Megafund—making it Megafund's largest investor. *Id.*; *see also Summary of Megafund's Wells Fargo Account*, Exhibit "A-1" at 3, 7, 8 (App. at 10, 14-15); *Summary of Lancorp's Bank of America Account*, Exhibit "A-4" at 3, 4 (App. at 27-28).

13. For his efforts, \$304,272.58 of *Ponzi* payments from Megafund were paid to Defendant or for his benefit. *Receiver's Declaration*, Exhibit "A" at ¶ 12 (App. at 5). As explained more fully below, these funds were laundered through accounts held by MexBank and First Global Foundation, but eventually forwarded to Defendant, his wife, and Robert Reese. *Id.* In addition, Defendant used a significant portion of the second payment to purchase the house at 1318 Minchen Drive in Deer Park, Texas. *Id.* The Receiver has prepared a diagram summarizing these transactions, which is attached as Exhibit "A-3" and fully incorporated for all purposes.

The First Transfer of Investor Funds to Defendant

14. On March 23, 2005, Megafund made its first *Ponzi* payment to Lancorp in the amount of \$500,000.00. *See Summary of Megafund's Wells Fargo Account*, Exhibit "A-1" at 5 (App. at 12). That day, Defendant e-mailed Lancaster directing payment of his share to MexBank through an account at Union Bank of California. *See E-mail from Gary McDuff*, March 23, 2005, Exhibit "F" (App. at 76) (directing payment through the account of Ridabeo Casa de Cambio). Six days later, Lancaster wired \$128,437.58 to that account as directed. *See Funds Transfer Request*, March 29,

2005, Exhibit “G” (App. at 78); *Summary of Lancorp’s Bank of America Account*, Exhibit “A-4” at 3 (App. at 27).

15. From there, \$70,000.00 was forwarded to an account at Cash Cards International (“CCI”)² in the name of First Global Foundation (V-Cash Acct. No. 175165) on April 5, 2005. *See Summary of First Global Foundation’s CCI Account*, Exhibit “A-5” at 2 (App. at 32); *E-mail from Sean Shiff*, May 17, 2006, Exhibit “H” (App. at 80-81). In the next three weeks, a substantial portion of those funds were further distributed to Robert Reese d/b/a Excel Financial Inc. (V-Cash Acct. No.335851) and Shannon McDuff d/b/a Secured Clearing Corp (V-Cash Acct. No. 186077). *See Summary of First Global Foundation’s CCI Account*, Exhibit “A-5” at 1-2 (App. at 31-32) (reflecting a \$45,792.89 transfer to Excel Financial on April 6, 2005 and a \$4,000.00 transfer to Shannon McDuff on April 22, 2005); *Summary of Robert Reese’s CCI Account*, Exhibit “A-6” at 2 (App. at 37); *Summary of Secured Clearing’s CCI Account*, Exhibit “A-7” at 3 (App. at 41).

The Second Transfer of Investor Funds to Defendant

16. On April 26, 2005, Megafund paid \$175,835.00 directly to MexBank’s account at CCI (V-Cash Acct. No. 336463). *See Summary of Megafund’s SouthTrust Account*, Exhibit “A-2” at 3 (App. at 20); *Summary of MexBank’s CCI Account*, Exhibit “A-8” at 3 (App. at 45); *Funds Transfer Request Form*, April 26, 2005, Exhibit “I” (App. at 83).

17. From there, \$170,000.00 was forwarded to the CCI account held jointly between Gary McDuff and Southern Trust Company (V-Cash Acct. No. 186074) on April 27, 2006. *Summary of MexBank’s CCI Account*, Exhibit “A-8” at 3 (App. at 45); *Summary of Gary McDuff’s CCI Account*,

² CCI is an online depository that allows users to create and manage web-based accounts (called V-Cash Accounts) that can receive and transfer funds. *Receiver’s Declaration*, Exhibit “A” at ¶ 15 (App. at 5). CCI assigns customers a “portal” under which the customer’s accounts are created. *Id.* The First Global Foundation account (V-Cash Acct. No. 175165) was part of the First Global Foundation portal, which also included accounts under the names of Gary McDuff d/b/a Southern Trust Company, MexBank, MexBank Fiduciary Services, Secured Clearing Corporation, Robert Reese, and First Global Foundation. *Id.*

Exhibit “A-9” at 3 (App. at 49).

18. That same day, Defendant paid \$152,401.55 to the Tipton Living Trust to purchase the home at 1318 Minchen Drive in Deer Park, Texas. *Summary of Gary McDuff’s CCI Account*, Exhibit “A-9” at 3 (App. at 49).

19. Within a week, Defendant distributed an additional \$11,500.00 to the CCI account jointly held by Shannon McDuff and Secured Clearing Corp (V-Cash Acct. No. 186077). *Id.*; *Summary of Secured Clearing’s CCI Account*, Exhibit “A-7” at 3 (App. at 41).

III. ARGUMENTS AND ANALYSIS

A. Standards for Granting Summary Judgment.

A party may obtain summary judgment when there is no genuine issue as to any material fact. Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). A fact is “material” only if it might affect the outcome of the case. *MacDonald v. Delta Air Lines, Inc.*, 94 F.3d 1437, 1440 (10th Cir. 1996); *see also Poulis-Minot v. Smith*, 388 F.3d 354, 363 (1st Cir. 2004). An issue is “genuine” only if a reasonable jury could return a verdict for the non-movant on the evidence. *MacDonald*, 94 F.3d at 1440; *Poulis-Minot*, 388 F.3d at 363. Stated another way, the Court should award summary judgment where the record, taken as a whole, could not lead a rational jury to find for the non-moving party. *See Logan v. Commercial Un. Ins. Co.*, 96 F.3d 971 978 (7th Cir. 1996).

B. Summary Judgment is Appropriate in this Case Because the Undisputed Material Facts Show that Funds Fraudulently Transferred from a *Ponzi* Scheme were Paid to Defendant or for his Benefit.

There is no genuine issue as to the material facts establishing the Receiver’s claim under the Texas Uniform Fraudulent Transfer Act (“UFTA”). In relevant part, the UFTA provides that:

- (a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor’s claim arose within

a reasonable time before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

- (1) with actual intent to hinder, delay, or defraud any creditor of the debtor . . .

Tex. Bus. & Com. C. § 24.005. While creditors must ordinarily prove fraudulent intent in order to recover under this provision of the UFTA, the presumption is automatically established for transfers out of a Ponzi scheme. *Quilling v. Gilliland*, Civil Cause No. 3:01-CV-1617 (N.D. Tex. Mar. 6, 2002); *S.E.C. v. Cook*, 2001 WL 256172, *3 (N.D. Tex. Mar. 8, 2001); see also, *In re Ramirez Rodriguez*, 209 B.R. 424, 434 (Bankr. S.D. Tex. 1997); *In re Independent Clearing House Co.*, 77 B.R. 843 (Bankr. D. Utah 1987). This presumption is necessarily true because a Ponzi scheme is insolvent from its conception. *Warfield v. Byron*, 2006 WL 118250, *5 (5th Cir. Jan. 17, 2006), citing *Cunningham v. Brown*, 265 U.S. 1, 7-8 (1924). Accordingly, all payments from a Ponzi scheme—including those purporting to be compensation—are fraudulent transfers hindering, delaying and defrauding creditors. See *Cook*, 2001 WL 256172 at *3, 4 (granting Receiver's motion for summary judgment to recover compensation paid out of a Ponzi scheme); see also *Warfield*, 2006 WL 118250 at *6-7 (disgorging compensation skimmed from investments into a Ponzi scheme); *In re Alpha Telecom, Inc.*, 2004 WL 3142555, *4 (D. Or. Aug. 18, 2004) (disgorging compensation for selling securities for a Ponzi scheme).

In this case, the undisputed material facts show that (1) Megafund was operated as a Ponzi scheme and (2) \$304,272.58 of Megafund investors' money was transferred according to Defendant's instructions as compensation for recruiting investors. Therefore, as explained more fully below, those transfers were fraudulent under the UFTA and the Receiver is entitled to recover those funds or their proceeds.

1. The Undisputed Material Facts Show that Megafund was a *Ponzi* Scheme.

For purposes of summary judgment, a *Ponzi* scheme may be proved by uncontroverted testimony offered by the Receiver. *See Cook*, 2001 WL 256172 at *3. In his affidavit, the Receiver clearly explains how the undisputed material facts show that Megafund was operated as a *Ponzi* scheme. *Receiver's Declaration*, Exhibit "A" at ¶¶ 7-8 (App. at 3-4). The Defendant has not challenged this conclusion and no legitimate evidence to the contrary has yet been offered this case, the Receivership Proceedings, or in any ancillary cases.³ *Id.* at ¶ 8 n.1 (App. at 4).

As explained in the Receiver's Affidavit, the evidence before this Court conclusively shows that Megafund was, in fact, a *Ponzi* scheme. A *Ponzi* scheme exists where money from new investors is used to pay "profits" to earlier investors, without the operation of an actual revenue-producing business. *See Black's Law Dictionary* 1180 (7th ed. 1999); *Receiver's Declaration*, Exhibit "A" at ¶ 8 (App. at 4). The Receiver has taken possession of Megafund's account records at Wells Fargo Bank and SouthTrust Bank, where Leitner received all known contributions from Megafund investors. *Id.* Those records conclusively show that: (1) investor funds constituted virtually all of Megafund's revenue; (2) those funds were commingled and used for expenses not related to any legitimate investments; and (3) what funds remained were commingled and used to pay "returns" to earlier investors. *Id.*; *See also Summary of Megafund's Wells Fargo Account*, Exhibit "A-1" (App. at 8-16). This kind of arrangement illustrates a classic *Ponzi* scheme. *Receiver's Declaration*, Exhibit "A" at ¶ 8 (App. at 4).

³ In fact, in *Quilling v. Humphries*, this Court determined that Megafund was "a classic *Ponzi* scheme." *See Findings and Recommendation* [Dkt. No. 23] at 6, as adopted by the Court's *Opinion and Order* [Dkt. No. 33] (3:06-CV-299).

2. There is No Genuine Issue of Material Fact Regarding Megafund's Transfer of \$304,272.58 out of a Ponzi Scheme.

Receivership Estate records clearly show that \$304,272.58 of Megafund investors' money was transferred out of the *Ponzi* scheme and wired according to Defendant's instructions as compensation for recruiting investors.

Following Megafund's first *Ponzi* payment to Lancorp, Lancaster dedicated a portion to Lancorp investors and then split the remainder between himself and Defendant. *Lancaster Deposition*, March 25, 2006, Exhibit "D" at 220-222 (App. at 68-69). Defendant personally negotiated this arrangement as compensation for recruiting the Lancorp investors who contributed \$9.365 million to Megafund. *Id.* at 197, 203-204, 214-216 (App. at 63-64, 67). Therefore, according to Defendant's instructions, Lancaster wired Defendant's payment of \$128,437.58 (the "First Payment") to MexBank on March 29, 2005. *Summary of Lancorp's Bank of America Account*, Exhibit "A-4" at 3 (App. at 27); *E-mail from Gary McDuff*, March 23, 2005, Exhibit "F" (App. at 76); *Fund Transfer Request*, March 29, 2005, Exhibit "G" (App. at 78); *E-mail from Sean Shiff*, May 17, 2006, Exhibit "H" (App. at 80).

Soon thereafter, Defendant had arranged for Megafund to send his share of the *Ponzi* payments directly to MexBank. *Fax from Gary McDuff to Megafund*, May 20, 2005, Exhibit "J" (App. at 85, 87). Accordingly, on April 26, 2005, Megafund wired \$175,835.00 (the "Second Payment") to MexBank's account at CCI. *Summary of Megafund's SouthTrust Account*, Exhibit "A-2" at 3 (App. at 20); *Funds Transfer Request Form*, April 26, 2005, Exhibit "I" (App. at 83).

Without question, both the First Payment and Second Payment are traced directly back to the *Ponzi* scheme and, therefore, constitute either fraudulent transfers or proceeds therefrom. *Receiver's Declaration*, Exhibit "A" at ¶ 14 (App. at 5-6). Receivership Estate records further show that these

transfers were made directly to or for the benefit of Defendant. First, these payments were negotiated by Defendant to compensate himself (either individually or d/b/a Secured Clearing Corp) for recruiting investors who contributed money to Megafund through Lancorp. *Deposition of Gary Lancaster*, March 25, 2006, Exhibit “D” at 192, 197, 203-204, 214-216 (App. at 61, 63-64, 67); *see also Letter from Gary McDuff*, March 17, 2005, Exhibit “C” (App. at 54-55). Then, at Defendant’s direction, Lancorp and Megafund sent his “share” of the *Ponzi* payments to MexBank. *Letter from Gary McDuff*, March 17, 2005, Exhibit “C” (App. at 54-55); *E-mail from Gary McDuff*, March 23, 2005, Exhibit “F” (App. at 76); *Summary of Megafund’s SouthTrust Account*, Exhibit “A-2” at 3 (App. at 20); *Summary of Lancorp’s Bank of America Account*, Exhibit “A-4” at 3 (App. at 27). Of the \$304,272.58 sent to MexBank on Defendant’s behalf, at least \$240,000.00 was immediately forwarded to CCI accounts held or controlled by Defendant, his wife, or Robert Reese. *Receiver’s Declaration*, Exhibit “A” at ¶ 12 (App. at 5). In fact, \$152,401.55 of those funds were ultimately used to purchase the house at 1318 Minchen Drive in Deer Park, Texas—the very residence where Defendant received service of process in this lawsuit. *Affidavit of Process Server*, Exhibit “K” (App. at 90); *Summary of Gary McDuff’s CCI Account*, Exhibit “A-9” at 3 (App. at 49); *see also Title Report on 1318 Minchen Drive*, Exhibit “L” (App. at 92-96).

In short, Defendant received the benefit of \$304,272.58 of investor funds fraudulently transferred out of a *Ponzi* scheme. Therefore, under the settled law of this district, the Receiver has satisfied his burden for establishing a fraudulent transfer claim against the Defendant.

C. Summary Judgment is Also Appropriate in this Case Because the Undisputed Material Facts Show that Defendant Received Funds Impressed with a Constructive Trust.

As explained above, the Defendant controlled the CCI accounts that ultimately received at least \$240,000.00 of the \$304,272.58 that Megafund and Lancorp fraudulently transferred as

compensation. *Receiver's Declaration*, Exhibit "A" at ¶ 12 (App. at 5). Those funds were impressed at all times with a constructive trust for the benefit of the defrauded investors. *Id.* at ¶ 14 (App. at 5-6).

It is a long-standing principle of equity that assets acquired by fraud are held subject to a constructive trust for the benefit of the defrauded parties. Restatement (First) of Restitution § 166 (1937). Under Texas law, a constructive trust is an equitable remedy for situations where a person holding title to property would be unjustly enriched if he were allowed to retain it. *See, e.g., Dyll v. Adams*, 167 F.3d 945, 948 (5th Cir.1999), *citing Omohundro v. Matthews*, 161 Tex. 367, 341 S.W.2d 401, 405 (1960); *United States v. Durham*, 86 F.3d 70, 72 (5th Cir.1996) (District Court has discretion to impose a constructive trust pursuant to its inherent equitable powers). While there is no strict formula dictating when a District Court sitting in equity is bound to impose a constructive trust, this remedy is appropriate to protect investor funds paid into a fraudulent investment scheme. *See Meadows v. Bierschwale*, 516 S.W.2d 125, 131 (Tex.1974) (no strict formula for creating constructive trust under Texas law); *see also SEC v. Paige*, 1985 WL 2335 (D.D.C. July 30, 1985), *aff'd* 810 F.2d 307 ("federal legal precedent [is] clear that a thief obtains no title to the stolen property and holds such property and the proceeds thereof in trust for the victim"); *United States v. Fontana*, 528 F.Supp. 137, 146 (S.D.N.Y. 1981) ("Where the title to property is acquired by one person under such circumstances that he is under a duty to surrender it, a constructive trust immediately arises"), quoting 5 A. Scott, LAW OF TRUSTS § 462.4 (3d ed. 1967).

The Court overseeing these Receivership Proceedings clearly anticipated that the funds of Megafund investors were likely impressed with such a constructive trust. In fact, the Order Appointing Receiver expressly directs that "[t]he Receiver is hereby authorized to institute such actions or proceedings to impose a constructive trust ... with respect to persons or entities who

