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6 UNITED STATES BANKRUPTCY COURT
7 DISTRICT OF ARIZONA

8 In re:
9 AMERICAN NATIONAL MORTGAGE
10 PARTNERS, LLC,
11 Debtor.

In Proceedings Under
Chapter 11
Case Nos: 03-03803 PHX RJH
03-03799 PHX RJH

12 In re:
13 ANMP 74TH ST., LLC,
14 Debtor.

**DEBTORS' SECOND POST
CONFIRMATION REPORT
TO CREDITORS' COMMITTEE**

15
16 American National Mortgage Partners, LLC ("ANMP") and James C. Sell, the
17 Court appointed Receiver (the "Receiver" or "Sell")), submit the following Second Post
18 Confirmation Report (the "Report") to inform this Court and all parties in interest of the
19 present status of the Debtors' reorganization, and post confirmation activities. This
20 Report shall supplement the Response to Order to Show Cause filed with this Court on
21 March 5, 2010, the First Post Confirmation report filed September 2, 2010, and the
22 Quarterly Post Confirmation Reports on file with the Clerk of the United States
23 Bankruptcy Court.

24
25 I. **INTRODUCTION.**

26 On March 10, 2010, the Court held a hearing at the request of certain ANMP
27 Investors regarding the Post-Confirmation Status of this Case. Specifically, the Investors
28

1 had questions regarding the progress of the Case since Confirmation, and ANMP's
2 Professionals' services, fees and strategies regarding collection.

3 Prior to the Hearing, the Receiver filed a detailed response to the Investors'
4 Inquiries ("Response to Order to Show Cause") (Docket No. 723) and several filings
5 under seal (Docket Nos. 724 & 725) (the "Sealed Documents"). The Sealed Documents
6 set forth detailed accountings of the Estates revenue and expenses - including professional
7 fees. The filings under seal were necessitated by confidentiality provisions of various
8 settlements entered into by ANMP and approved by this Court.

9 After considering the Investor's inquiries and comments, and after reviewing the
10 Response and other Documents filed in connection with the Hearing, the Court was
11 satisfied with the progress since confirmation. (Minutes of Hearing, Docket No. 727).
12 The Court specifically recognized the inherent difficulties with the assets the Receiver and
13 ANMP are pursuing, stating:

14 And, I mean, I've seen the detailed report that Mr. Sell has
15 provided, detailing the work that's gone on and the nature of
16 the litigation that's gone on both in Castle - well, in all of
17 these sources of recovery, for example, primarily the Castle
18 litigation has been very long and protracted and I'm extremely
19 familiar with that. And from the report - I mean, I've not
20 been directly involved - but from the report I'm seeing, the
21 financial institution litigation has been extremely long and
22 protracted. And these financial institutions are mounting
extremely vigorous defenses, as you might assume that they
would. And unfortunately, we've simply got to work through
the processes. They do take skilled attorneys to work through
them. (Docket No. 727, pg 35).

23 The Court also noted the complexity of the litigation required to pursue these
24 assets, the fact that this process could take years, the costs involved, and even
25 complimented the Estate's Professionals, stating:

26 It's going to be a substantial time. And it's going to take a lot
27 of attorneys fees and it's precisely because it's difficult,
28 complex litigation that you need highly qualified attorneys to
manage it under the market these days those attorneys charge
hefty hourly rates. That's just a fact of the market. And

1 you're not going to get the job done and you probably
2 wouldn't be as well off as you are today if you didn't have the
3 kind of attorneys that you've got involved in this case
4 pursuing this kind of litigation. And frankly, it appears to me
5 that the Receiver is pursuing a lot of this at his own risk, as
6 well. (Docket No. 727, pg. 36).

7 Additionally, the Court set forth a periodic reporting structure to be provided by the
8 Estate at six (6) month intervals (unless significant activity requires a more frequent
9 report) detailing changes/progress as to anticipated sources of recovery. The Court
10 suggested that the reports include:

- 11 ➤ Descriptions of the known sources of recovery;
- 12 ➤ Amount being sought; and
- 13 ➤ A timeline of where the Estate is in the Process. (Docket No. 727, pg 7).

14 This periodic reporting is in addition to the Quarterly Post Confirmation Reports
15 filed with this Court each quarter, which include fees, expenses and disbursements.

16 Finally, the Court also required that the Creditors Committee post this report on its
17 Website (Docket No. 727, pg 16)¹.

18 In compliance with the Court's comments, on September 2, 2010, Debtors filed its'
19 First Post Confirmation Report.

20 **II. CURRENT STATUS OF PURSUIT OF MAJOR ASSETS.**

21 During the March, 2010 Hearing, the Court identified and discussed the status of
22 ANMP's four major sources of recovery: (A) the recovery from the Castle Plan of
23 Reorganization; (B) the Financial Institution Litigation; (C) the Guccione Judgment; and
24 (D) Collections.

25 The investors requested updated financial information which the Receiver provided
26 in the First Post Confirmation Report. In accordance with the Court's mandate, an
27 updated statement of the Sources and Uses of Funds of the Receivership Estate is annexed
28 hereto as Exhibit "A".

¹ The full transcript of the March 10, 2010 Hearing is available on the Receiver's and Committee's websites.

1 The following is a summary of the change in status of each of these major sources
2 of recovery, since the Hearing, and the First Post Confirmation Report:

3 **A. The Castle Plan of Reorganization.**

4 The details regarding the Estate's claims in the Castle Plan of Reorganization were
5 set forth at the Hearing (Docket No. 727, pgs 25-27). Since that time the most significant
6 progress that has been made regards the Castle Liquidating Trust's negotiations to sell a
7 parcel of its real property. The transaction is still in process, and not yet finalized. For
8 further reference, attached hereto and incorporated herein as Exhibit "B" is a report
9 prepared by Ted Burr, on behalf of the Castle Trust Board, delineating the activity of the
10 Trust Board.

11 Taylor Coleman has appealed the Order confirming the Plan. The initial Appellate
12 review by the District Court resulted in a ruling upholding the Plan. Taylor Coleman has
13 sought review by the Ninth Circuit of Appeals. There have been several attempts to
14 resolve the Ninth Circuit Appeal through mandatory Mediation. These attempts have
15 been unsuccessful and the Appeal is pending. This matter has now been fully briefed and
16 is awaiting argument before, or a ruling from, the Ninth Circuit Court of Appeals.

17 **B. The Financial Institution Litigation.**

18 The details regarding the Estate's claims in the Financial Institutions Litigation
19 were set forth at the Hearing (Docket No. 727, pgs 21-23). Previously, this Court
20 approved three Settlements under Seal (Dockets Nos. 735, 736 & 737). These Settlements
21 resolved the claims against:

- 22 ➤ The Estate of Darrell Coulter; and
- 23 ➤ Western Security Bank
- 24 ➤ Titus Bruekner & Berry
- 25 ➤ First International Bank & Trust
- 26 ➤ Marshall Boyce

27 Additionally, discovery has been proceeding. The following Depositions have
28 been taken:

- Larry Dunning;

- 1 ➤ Shelia Dunning;
- 2 ➤ Paul Muscenti;
- 3 ➤ Philip Vigarino;
- 4 ➤ Tricia Vigarino;
- 5 ➤ Carol Meka;
- 6 ➤ Paul Meka;
- 7 ➤ Brian Sell, 30(b)(6);
- 8 ➤ Tony Valles;
- 9 ➤ Carla S. Ball; and
- 10 ➤ Larry Steve Davis.
- 11 ➤ Cathy Ghiglieri; and
- 12 ➤ Gary Freed.²

13 There are no dispositive motions pending before the State Court. Defendants have
14 filed a Motion to Compel Turnover of Documents. The Receiver believes the documents
15 requested are privileged and not subject to disclosure. The Receiver is currently preparing
16 a response to the Motion. A trial date has not been set.

17 Presently, the following are the Extended Deadlines pending with the Court:

- 18 ➤ Deadline to Complete Fact Witnesses Depositions: April 29, 2011
- 19 ➤ Deadline to Complete Discovery: April 29, 2011
- 20 ➤ Deadline For Filing Dispositive Motions: June 17, 2011

21 Formal and informal settlement discussions continue.

22 **C. The Guccione Judgment.**

23 The details regarding the Estate's claims with respect to the Guccione Judgment
24 were set forth at the Hearing (Docket No. 727, pgs 19-20). Since that time, Richard Taxe,
25 the proposed purchaser of the Guccione Residence in New Jersey, failed to consummate
26 the transaction.

27 As discussed at the Hearing, absent a sale to Mr. Taxe, the Receiver could seek the
28 re-opening of Mr. Guccione's personal Bankruptcy Case in New Jersey to compel a sale
29 of the Residence.

30 Since the last report, Mr. Guccione has passed away.

² Cathy Ghiglieri and Gary Freed are expert witnesses hired on behalf of the ANMP Investors to establish bank liability and damages.

1 Mr. Guccione's personal Bankruptcy Case has been re-opened, and the Trustee of
2 his Estate has obtained court approval for the sale of the Guccione New Jersey residence
3 for a sales price of \$850,000.00, subject to a first mortgage in the approximate amount of
4 \$300,000.00. After closing costs, commissions and Trustee's fees, the Trustee will
5 disburse the remaining funds. There is a motion currently pending in the New Jersey
6 Bankruptcy Court authorizing the disbursal of all excess funds to ANMP. In addition to
7 the house, all personal property (not previously sold) subject to our prior execution has
8 been moved to Arizona and is currently in storage while the Receiver determines the most
9 effective manner of liquidating the assets and maximizing the return to the Estate.

10 **D. Collections.**

11 The following is a summary of the pending judgments:

Judgment Debtor	
Beckwith	244,279.00
Caspere	402,955.78
Dedmon	183,577.00
Ron Kelly	5,539,343.26
FutureCom	1,461,271.60
Riesterer	3,115,932.50
Wanek	4,221,700.90
Isaacs	85,000.00
TOTAL	15,169,060.04

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Post judgment collection efforts are proceeding with respect to these matters. Judgment Debtors' examinations are ongoing, as well as requests for production of documents. These efforts have proved somewhat ineffective. Several of the borrowers and/or judgment debtors have either filed bankruptcy, have been incarcerated, or have asserted that they do not have available assets to pay the outstanding obligations.

1 **E. Coleman Litigation.**

2 The last report inadvertently failed to report on the status of the litigation instituted
3 by Taylor Coleman against ANMP, Sell, Lyman Davis and additional third parties who
4 were involved in the initial restructuring activities, and subsequent restructuring activities
5 of Castle. Pursuant to the original Plan of Reorganization in the Castle matter, the Board
6 of Directors of the restructured entity included Lyman Davis and Sell. Lyman Davis and
7 Sell were named in the Coleman Complaint individually, and in their representative
8 capacity as Board Members. Sell and Lyman Davis, as Board Members, were covered
9 under Errors and Omissions Insurance Policies that were obtained for their protection. As
10 a result, the defense of the Board Members was covered by the existing policies, and
11 counsel was retained by the insurance carrier to defend the individuals. ANMP was not
12 covered by the policies and was required to incur substantial costs of defense. This
13 litigation has been settled during this reporting period, and ANMP, Sell and Lyman Davis
14 have been released from all liability arising out of that litigation. All parties were required
15 to bear their own costs and attorneys' fees.

16 **F. Sentencing.**

17 The following persons were subject to criminal proceedings initiated by the United
18 States Attorneys Office. During this reporting period, the following persons have pled
19 guilty to their criminal activity and have been sentenced as follows:

20 (1) Lawrence William Dunning. Mr. Dunning has been sentenced to
21 twenty-four (24) months in the Bureau of Prisons and supervised release for three
22 (3) years thereafter. In addition, there is a restitution judgment against him in the
23 amount of Two Million Eight Hundred and Eighty-nine Thousand Four Hundred
24 Ninety-Two Dollars and Seventy-seven cents (\$2,889,492.77). Mr. Dunning is
25 currently serving his jail sentence.

26 (2) James Marshall Boyce. Mr. Boyce was sentenced to three (3) years
27 of supervised probation.
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1 (3) Philip Eugene Vigarino. Mr. Vigarino was sentenced to sixty (60)
2 days in jail, supervised release for one (1) year. In addition, there is a restitution
3 judgment of One Hundred Fifty-Thousand Dollars (\$150,000.00).

4 (4) Paul Jeffrey Mecca. Mr. Mecca was sentenced to sixty (60) days in
5 jail, one (1) year probation and a restitution judgment in the amount of Four
6 Hundred Ninety-seven Thousand Dollars (\$497,000.00).

7 (5) Robert Kenneth Rehm. Mr. Rehm was sentenced to three (3) years
8 probation.

9 (6) Eric Jon Strasser. Mr. Strasser was sentenced in Nevada and has
10 received sixty (60) months probation due to his physical infirmities.

11 See attached Exhibit "C" for details.

12 **G. Las Palmas Property In Rocky Point, Mexico.**

13 Since the last report, the Receiver has discovered a luxury home in Rocky Point,
14 Mexico, which is currently titled in the names of insiders in the ANMP proceeding. The
15 Receiver has initiated an action in the United States Bankruptcy Court in Arizona to
16 enjoin the sale of the property and obtain title. It is believed that there is equity in the
17 property which would substantiate the action which has been undertaken. The Receiver
18 has obtained a preliminary injunction precluding the sale of the property by the insiders.
19 A trial is scheduled for April, 2011. While the recovery is anticipated to be in the six
20 figure range, the exact amount is unknown at this time.

21 DATED this 1st day of March, 2011.

22 **JABURG & WILK, P.C.**

23 /s/Lawrence E. Wilk
24 Lawrence E. Wilk
25 Scott J. Richardson
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