

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 12-81033-CIV-MIDDLEBROOKS/BRANNON

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

JOSEPH HILTON, f/k/a JOSEPH YURKIN,  
PACIFIC NORTHWESTERN ENERGY LLC, et al.,

Defendants.

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**RECEIVER'S FIRST INTERIM STATUS REPORT**

David S. Mandel, the court-appointed receiver for Pacific Northwestern Energy LLC, Rock Castle Drilling Fund LP, Rock Castle Drilling Fund II LP and Rock Castle Drilling Fund III LP (hereinafter "Pacific Northwestern" or the Pacific Northwestern Receivership entities), hereby files this first Interim Report to inform the Court and the investors and creditors of the Receivership Estate of his activities to date.

**I. PROCEDURAL BACKGROUND**

On September 24, 2012, the Securities and Exchange Commission ("SEC") filed under seal a civil complaint in U.S. District Court for the Southern District of Florida, West Palm Beach Division, charging Defendant Joseph Hilton, f/k/a Joseph Yurkin, Pacific Northwestern Energy, and other entities, with seven counts of violating federal securities laws based on the sale of unregistered securities and fraud. [DE 3]. On September 25, 2012, on the SEC's motion, the Court entered: (1) a Temporary Restraining Order ("TRO") against all Defendants that, among other things, temporarily enjoined all Defendants from further violations of the federal securities laws and froze the assets of

the Defendants [DE 12]; and (2) an Order Appointing Receiver that appointed David S. Mandel, Esq., as Receiver over the Receivership Entities (the "Receivership Order"). [DE 11].

On September 28, after learning that Defendant Hilton had vacated any business offices he had previously been using (discussed further below), the SEC filed a motion and supplemental briefing seeking to expand the Receiver's authority in order to gain access to Hilton's residence to seize any Receivership property, including business records, computers and the like. [DE 13, 14, 15]. On October 2, 2012, the Court denied the SEC's motion for the Receiver to access Hilton's residence. The next day, the Court entered an order unsealing the case [DE 18], and Defendant Hilton was served with the Complaint, the Temporary Restraining Order and the Order Appointing Receiver. [See DE 31].

On or about October 10, 2012, the Defendants having consented, the Court entered agreed orders of Preliminary Injunctions, preserving the status quo with regard to all matters set forth therein. [DE 23, 25-27].

On October 15, 2012, the Receiver moved to extend the receivership to include Rock Castle Drilling Fund III LP, which the Court granted. [DE 33, 36].

On November 15, 2012, the Receiver filed a Petition for an Order Requiring John Conley and CNG Technology Inc. to show cause why they should not be held in contempt for violating this Court's Orders, specifically by filing several mechanics' liens against Pacific Northwestern Energy LLC. [DE 41]. The Court granted the petition and ordered Conley to respond [DE 43]. Conley recently filed a response, having released the mechanics' liens on November 26, 2012. [DE 49].

The Court issued the Order Referring Case and Setting Trial Date, setting the matter for trial during the two-week period beginning May 6, 2013. [DE 38]. Following a scheduling conference on December 3, 2012, the Court issued its Pretrial Scheduling Order. [DE 46].

## II. THE RECEIVER'S ROLE AND RESPONSIBILITIES

In the Receivership Order, the Court directed that the Receiver engage in three categories of activities: (A) “take immediate possession of all property, assets and estates of every kind of Pacific, Rock Castle I and Rock Castle II, . . .” [DE 11, ¶1]; (B) “[i]nvestigate the manner in which the affairs of Pacific, Rock Castle I and Rock Castle II were conducted, and institute such actions and legal proceedings for the benefit and on behalf of Pacific, Rock Castle I and Rock Castle II and their investors and other creditors, as the Receiver deems necessary against those individuals, corporations, partnerships, associations and/or unincorporated organizations, which the Receiver may claim have wrongfully, illegally or otherwise improperly misappropriated or transferred money or other proceeds directly or indirectly traceable from investors in the Defendants . . .” *Id.*, ¶ 2; and (C) “[p]resent to this Court a report reflecting the existence and value of the assets of the Pacific, Rock Castle I and Rock Castle II and the extent of liabilities, both those claimed to exist by others and those the Receiver believes to be legal obligations of Pacific, Rock Castle I and Rock Castle II.” *Id.*, ¶ 3.

Pursuant to that authority granted in the Receivership Order, the Receiver engaged the following professionals to search, recover and protect the Pacific Northwestern Receivership's corporate assets, and to otherwise untangle the entities' financial and operational affairs: (1) the law firm of Mandel & Mandel LLP; and (2) Kapila & Co. (“Kapila”), a forensic accounting and investigation firm. The Receiver attempted to take possession and control over the offices and business locations of the Receivership entities, ultimately securing the Defendants' computers.

The Receiver has set forth below the status of his activities, investigation and analysis of the assets of the Pacific Northwestern Receivership entities to date.

**A. Taking Possession of Receivership Property**

Immediately upon his appointment, the Receiver took various steps to carry out his mandate to take possession of the Receivership property and to protect the estate from further dissipation or liability. In an effort to take possession of the Defendants' books and records (both electronic and in hardcopy), the Receiver's team immediately went to the following locations previously identified as places where Defendant Hilton and the Receivership Entities conducted business or received mail:

- a. 5970 SW 18<sup>th</sup> Street  
Suite 159  
Boca Raton, FL 33433

At approximately 5:00 p.m. on Tuesday, September 25, 2012, upon arriving at the 5970 SW 18<sup>th</sup> Street address, the Receiver learned that the address was only a private post office box facility known as the Eagle Shipping Center. Apparently, Defendant Hilton had rented a post office box there, Box # 159. Significantly for the Receiver, the facility had no record of any post box in the name of any of the Receivership Entities. The Receiver informed the SEC immediately.

- b. 4400 North Federal Highway  
Suite 123  
Boca Raton, FL 33433

Also on September 25, 2012, the Receiver investigated the 4400 N. Federal Highway address. However, the Receiver learned that Suite 123 was not occupied by the Defendants, but was occupied by an unrelated business.

The Receiver promptly filed change of address notices with the U.S. Postal Service for all Receivership Entities. The Receiver subsequently learned that a mail forward notice filed with the U.S. Postal Service is not effective for private post office boxes. The Receiver also directed the Eagle Shipping Center to forward the receivership mail; the facility's director would not agree to forward the mail, but agreed hold the mail for the Receiver to retrieve periodically.

**B. Securing the Receivership Entities Finances**

In accordance with ¶7 of the Receiver’s Order, the Receiver assumed possession of, closed and received turnover of funds from all bank accounts maintained in the names of the Defendants, and established a new bank account in the name of David S. Mandel, as Receiver of Pacific Northwestern Energy, LLC et al.

In accordance with ¶5 of the Receiver’s Order, Kapila has assisted the Receiver with many tasks including, but not limited to, the following:

- a. Investigation and analysis of the Defendants’ books and records pursuant to ¶2 of the Receiver’s Order;
- b. Investigation of the Defendants’ oil well drilling operations;
- c. Conduct of various forensic computer investigation tasks;
- d. Providing advice to the Receiver about tax compliance matters, including preparation of all necessary Federal and state tax filings; and
- e. Conduct Receivership treasury functions.

As a result of the Receiver’s actions, funds totaling \$485,563 were transferred to the Receivership account from the Defendants’ accounts maintained at the following financial institutions:

<b><u>Financial Institution</u></b>	<b><u>Funds Remitted To The Receiver</u></b>
TD Bank	\$39,500
Wells Fargo Bank	28,852
JP Morgan Chase	<u>\$417,211</u>
<b>Total</b>	<b><u>\$485,563</u></b>

Kapila reviewed the electronic records produced by Defendant Hilton and the Receivership Entities. The records were incomplete and disorganized. They did not contain any type of traditional accounting system, general ledger, trial balance, bank ledgers or reconciliations. Instead they contained piecemeal bank statements, investor ledgers, and check copies.

Kapila prepared an inventory of the bank records received and assisted the Receiver in preparing document request letters to be sent to each financial institution where a Defendant bank account was held:

- (1) Bank of America
- (2) JP Morgan Chase
- (3) TD Bank
- (4) Wells Fargo

The Receiver has obtained most of the bank account records, and Kapila is in the process of completing the reconstruction of the Receivership Entities' banking activity based on the records produced to date. The financial institutions are still producing additional records and Kapila will continue to update the reconstructions as the records are made available.

Kapila also prepared a preliminary investor database based on the information contained in Pacific Northwestern Receivership Entities' electronic records.

### **C. Oil Wells in Kentucky**

From the records reviewed, it appears Pacific Northwestern Energy and the Rock Castle Drilling Fund partnerships either own interests or have some rights in approximately ten (10) oil wells located within Rockcastle and Clinton counties in Kentucky. The Receiver requested Kapila to visit the oil wells to assess the status of the wells. The Receiver has also retained local special counsel experienced in the oil well and energy industry to examine the rights of the Receiver.

The Receiver has reviewed various documentation relating to each of wells, including assignments of leases, applications for permit to drill, and the drilling permits. From these documents, the Receiver learned that CNG Technology, the company identified as the drilling contractor, is party to certain oil and gas leases with various land owners in Rockcastle and Clinton counties. CNG is owned and operated by a felon, previously convicted of oil and gas fraud. As for the particular wells at issue, in essence, CNG assigned a percentage of profits, if any, to Pacific Northwestern. Further, Pacific Northwestern, through Defendant Hilton, entered into contracts with CNG to drill and operate each oil well. The operating agreements that CNG designated as “turnkey contracts” do not include financial terms or conditions, but simply set a flat fee of \$135,000 to drill the well. CNG also unilaterally imposed additional fees and costs for items such as re-working wells that it allegedly had just finished, pumping fees, and costs for equipment (such as holding tanks) that were not present. In sum, many of CNG’s invoices appear to be inaccurate and/or false, and the Receiver’s investigation is ongoing.

From Kapila’s site visits, it was determined that only two wells are operational and producing small quantities of oil. The remaining wells are not operational. Kapila provided a more detailed report to the Receiver.

Based on a review of the available bank documentation, Defendant Hilton and the Pacific Northwestern Receivership Entities paid CNG at least \$475,000 for the drilling of some of the oil wells. The bank reconstruction process is ongoing and additional funds paid to CNG may be identified.

Further, CNG claims Pacific Northwestern Energy owes CNG approximately \$118,000 for additional work performed and filed mechanics’ liens totaling \$262,000 against the oil wells. As noted herein above (Section I), the Receiver filed a motion with the Court for CNG and its principal

John Conley to show cause why they should not be held in contempt of the Court's Receivership Order, which prohibits an alleged creditor from taking action like filing mechanics' liens against the Receivership entities. [D.E.41]. On November 26, 2012, CNG withdrew those liens. [D.E. 49].

The Receiver continues to investigate the oil wells and related contracts, including the Receivership's interests and options.

**D. Securing Computer Data**

After the Court unsealed the case and the Court Orders were served on Defendant Hilton, The Receiver contacted Hilton's counsel and demanded turnover of all books, records and property of the Defendants. Hilton's counsel produced two computers, a desktop and a laptop; Kapila was advised that these computers contained all the Receivership Entities' books and records. Kapila personnel, who are experienced in securing electronic data, took custody of these computers, and created exact copies of all data on the computers.

Kapila also promptly took control of Pacific Northwestern's internet domain name and its related internet website. The Receiver set up a new website, [www.pacificnorthwesternreceivership.com](http://www.pacificnorthwesternreceivership.com), for the purpose of disseminating information regarding the Receivership and related litigation to investors and creditors. Pertinent information will be continually posted and links to relevant documents are established so that investors can keep current with the litigation.

Regarding the email activity of the Receivership Entities, early in the receivership activity the website consultant for the Pacific Northwestern Energy website, Webraven, informed Kapila that there were no email accounts linked to the website. Kapila's computer forensic team examined the imaged-copies of Defendant's two computers. However, no email data existed nor was there any email in deleted format on either computer that Defendant produced.



The Receiver's counsel and Kapila again contacted Webraven regarding any email that may have been linked to the Pacific Northwestern website. After several discussions, Webraven confirmed that there had been email addresses linked to the website, but upon Hilton's request Webraven had deleted the email. The Receiver set Webraven for deposition; the deposition began but has not yet concluded due to Webraven's production of additional documents and records. The Receiver continues to investigate the circumstances of the Receivership email and will inform the Court in a subsequent report.

**E. Outstanding liabilities of the Pacific Northwestern Receivership Entities:**

Other than the invoices presented by CNG Technology, the Receivership has not been contacted by or received outstanding invoices from other creditors. The Receiver will update this issue as needed.

**F. Investors**

The Receiver has undertaken several steps regarding identification of those persons who invested in the Pacific Northwestern Receivership entities, including the following:

- reviewing investor files found on Defendant Hilton's computers;
- creating a database of investors in the Pacific Northwestern Receivership investors;
- communicating with many investors via email and telephone;
- maintaining a dedicated telephone message system for the Receivership and cataloguing of messages from investors; and
- reviewing records from bank accounts used by Defendant Hilton in operating Pacific Northwestern and the Rock Castle Drilling Fund partnerships to identify additional investors.

**G. Continuing Investigation of Receivership Affairs**

In addition to the efforts enumerated above regarding marshaling assets, the Receiver and his professionals have performed many services in connection with the Pacific Northwestern Receivership entities, including, but not limited to:

- closing the related entities and identifying investors and creditors;
- taking depositions of key individuals, including Defendant Hilton, prior counsel for Hilton and the Receivership entities, and Webraven;
- reviewing investor files and attempting to identify investors;
- investigating and attempting to reconstruct Pacific Northwestern Receivership Entities' financial and operational affairs, despite disorganized and incomplete records;
- reviewing financial records to trace fraudulent transfers and other potential asset diversions;
- analyzing potential claims to be pursued on behalf of the Receivership estate;
- communicating with numerous investors and creditors of the Pacific Northwestern Receivership entities;
- communicating and coordinating efforts with the SEC;
- seeking Court-approval to extend the Receivership over another Pacific Northwestern Energy investor fund, Rock Castle Drilling Fund III LP;
- researching and evaluating any potential assets belonging to the Pacific Northwestern Receivership entities;
- locating and consolidating the Pacific Northwestern Receivership entities' bank accounts into a single interest bearing account;
- reviewing legal authorities on real property issues, securities issues, debt collection and receivership issues;
- investigating the receivership's interest in the oil wells in Kentucky, including expenses, contracts, legal and financial obligations, etc;
- researching transfers of Receivership funds to various entities and individuals;

- imaging Defendant Hilton's computers and laptops and reviewing all data;
- gaining control over the Pacific Northwestern Receivership entities' website and domains; and
- creating a new Pacific Northwestern Receivership website to provide notice to investors and creditors about the status of the SEC's and the Receiver's actions against the Defendants.

**H. Supplemental Reports**

The Receiver will file further reports from time to time as his investigation proceeds.

Respectfully submitted,

MANDEL & MANDEL LLP  
Counsel for the Receiver, David S. Mandel  
1200 Alfred I. duPont Building  
169 East Flagler Street  
Miami, Florida 33131  
Telephone: 305.374.7771  
Facsimile: 305.374.7776  
[nsmandel@mandel-law.com](mailto:nsmandel@mandel-law.com)

*/s/ Nina Stillman Mandel*

By: \_\_\_\_\_

NINA STILLMAN MANDEL  
Florida Bar No.: 843016

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed by CM/ECF this  
6<sup>th</sup> day of December, 2012.

*/s/ Nina Stillman Mandel*