

BAYOU FUND UPDATE

The Arizona Attorney General's Office seized \$101,000,000 on May 19, 2005. It was in an account in the name of Majestic Capital Management, the sole signer on which was an individual named Karl E. Johnson.

The Arizona forfeiture action is captioned:

In the matter of:

The proceeds of Wachovia Corporation
Direct Deposit Account Numbers:
2000026084477, 2000026090429,
2000026090432 and 2000026096326,
in the name of Majestic Capital Management

Case No: CV 2005-008698

(Cross Reference # SW 2005-001633)

It is based on the Court's May 19, 2005 finding of probable cause to believe that the seized funds were in the process of being used in a fraud on various financial institutions as part of a so-called "prime bank instrument" fraud, based on an affidavit presented by the Arizona Attorney General's Office, Special Investigations Section. The seized funds in the four accounts total about \$101,000,000. The above-listed accounts were seized pursuant to a judicial Seizure Warrant dated May 19, 2005, and were transferred to the control of the Arizona Superior Court May 24, 2005. They are now in an interest-bearing account at the Arizona Treasury (where interest is higher than available through the certificates of deposit employed by the clerk of the court). The entire case file, including the affidavit supporting the seizure, is a public record. You may access the Superior Court case file at: <http://www.courtminutes.maricopa.gov/scripts/meeds/qreturn.asp>.

The purposes of this seizure include thwarting the fraud on financial institutions that was then in progress and returning the funds to their rightful owners. Under Arizona law, victims of crime have an absolute right to compensation from forfeited funds. Therefore, at the completion of the forfeiture action the funds will be distributed to the original investors in amounts determined by the court (generally done on a pro rata basis, based on the amount each particular investor had invested). Under Arizona forfeiture law, the entire proceeds of the seized funds will be distributed to the victims, including accrued interest. The State does not receive any part of the forfeited property. Arizona provides its services to the victims as a public service.

The forfeiture action was opposed by lawyers representing Bayou Fund, L.L.C., ("Bayou") under a claim by Bayou Management, LLC, signed by Mr. Samuel Israel III as Manager on June 23, 2005. Bayou claimed the proceeds of account 2000026084477, an amount of \$100,010,673.68.

The Claim states as follows:

Bayou held property in Citibank under Bayou Management, LLC prior to July 8, 2004. On July 8, it transferred \$120,000,000 to Deutsche Postbank in Saarbrücken, Germany. On October 25, 2004 Bayou transferred 90,585,929 EUR from the Postbank account to Sparkasse. On December 6, 2004 it transferred 90,001,500 EUR from Sparkasse to an ODL Securities account in London, under the name of Samuel Israel III. On April 12, 2005 Israel transferred \$99,191,102 from ODL to Wachovia Corp. In April, 2005, Bayou Management Director Lewis Malouf caused two transfers to Wachovia Bank NA, Hong Kong.

Bayou states that these are the funds that were ultimately seized by the State of Arizona from the Wachovia accounts in the name of Majestic Capital Management, and that it understood that the funds it transferred would be held in a separate account at Wachovia Bank NA Hong Kong in the name of Samuel Israel III or Bayou Fund LLC.

The State of Arizona has not verified the above asserted tracing of the funds it has under seizure back to Bayou. That factual determination is now in progress.

The State has moved for the appointment of a receiver/conservator for the purpose of establishing the actual tracing of the funds, to assure that they are returned to their rightful owners. That request is now on hold pending possible transfer to the United States District Court, as discussed below.

A person who has been injured by the racketeering alleged by the State in a forfeiture action is an "injured person" as defined in Arizona Revised Statutes ("A.R.S.") § 13-4301(3). An injured person is entitled to file a request for compensation pursuant to A.R.S. § 13-4311(I) and (J). If a proper request for compensation from forfeited property is timely filed, after the forfeiture of the property, the court determines the amount of the injured person's economic loss caused by the conduct giving rise to the forfeiture and applies the forfeited property to compensate the loss in the amount found by the court. A.R.S. § 13-4311(N)(3). This victim compensation mechanism is predicated on the forfeiture of the property, because compensation is made from forfeited property. However, there is no practical reason for Bayou investors to be concerned about injured person compensation in Arizona at this time.

The United States Attorney for the Eastern District of New York (Manhattan) has filed a civil action in United States District Court numbered 05 CIV. 7722 before Judge McMahon. That action asserts wire, mail and securities fraud in the operation of the various Bayou funds, basically based on the allegations that Bayou overstated gains, understated losses and claimed gains when it had losses, inducing investors to invest or to keep their money invested with Bayou in reliance on these false representations. That action echoes the conclusion of the Arizona Attorney General's Office that the funds were involved in a prime bank instrument fraud. It also asserts that the money seized by the Arizona Attorney General's Office can be traced to Bayou investors.

The Arizona Attorney General is interested in pursuing the fastest, most efficient and least expensive means by which to get the seized funds into the hands of the original

investors. If the seized funds are truly those of Bayou investors, the Arizona Attorney General's Office has stated that it will release the funds to the New York federal court, for the purpose of consolidating the Bayou issues in one court and to prevent the expense of having Bayou claimants forced to appear in two distant courts.

At the same time, prime bank instrument fraud frequently involves movement of money in deliberately confusing ways to obscure the actual path of international funds transfers. It is therefore possible that the seized funds are not those belonging to Bayou investors, but in fact belong to other investors/fraud victims unrelated to Bayou. The Arizona Attorney General and the Arizona Superior Court must be certain that the seized money belongs to Bayou investors before they release the funds to the United States District Court because if the seized funds belong to other investors, those investors would be deprived of their property by a mistaken delivery to Bayou investors. The U.S. Attorney's Office has assured the Arizona Attorney General's Office that it will produce records relating to this factual question and whatever proof that it has. As soon as the Arizona Attorney General is satisfied of this proof it will present it to the Arizona court and release the property to the New York court.

As a practical matter, the filing of the New York action means that there is little that a Bayou investor needs to do with regard to the Arizona action at this time. If the seized funds are truly Bayou funds, they will be released to the New York court and will therefore not be distributed to victims through the Arizona court, so there is no need to assert ownership in Arizona at this time. If they are not Bayou funds, they will be distributed to the actual non-Bayou victims when those victims are located, so the Bayou investors will have nothing to do with these funds. Any new information will be added to this web site area. For Bayou investors who have the need for telephone contact, the Attorney General's Office has a phone line to assist callers with this situation. Please call Arizona Attorney General's Office of Victim Services, at 602-542-4911 or 1-866-742-4911 and identify yourself as a Bayou Fund investor or as a person representing a Bayou Fund investor.

Sincerely,

Cameron H. Holmes
Chief Counsel
Financial Remedies Section
Arizona Attorney General's Office