

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE: EDWARD H. OKUN) MDL No. 2078
INTERNAL REVENUE SERVICE) Case No. 07-cv-2795-JW
§ 1031 TAX DEFERRED)
EXCHANGE LITIGATION)
_____)

SUMMARY NOTICE OF PENDENCY OF CLASS ACTION AND WAVE I SETTLEMENTS

To: All persons who were customers of 1031 Advance 132 LLC, 1031 Advance, Inc., 1031 TG Oak Harbor, LLC, AEC Exchange Company, LLC, Atlantic Exchange Company, Inc., Atlantic Exchange Company, LLC, Investment Exchange Group, LLC, National Exchange Accommodators LLC, National Exchange Services QI, Ltd., NRC 1031 LLC, Real Estate Exchange Services, Inc., Rutherford Investment, LLC, Security 1031 Services, LLC, Shamrock Holdings Group, LLC, and/or The 1031 Tax Group, LLC, including any subsidiaries or affiliates of any of those entities engaged in business as Qualified Intermediaries pursuant to 26 U.S.C. § 1031 (collectively, the “Exchange Entities”):

YOU ARE HEREBY NOTIFIED, pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the Court, that, in the above-captioned action, certain settlement agreements (collectively, the “Wave I Settlements”) have been preliminarily approved by the Court and a Settlement Class has been certified with respect to the Wave I Settlements. The Wave I Settlements bind the following parties:

1. Settlement Class Members;
2. Gerard A. McHale, Jr. as Chapter 11 Trustee (the “Trustee”) for the estates (the “Estates”) of the 1031 Tax Group, LLC, *et al.* (collectively, the “1031 Debtors”);¹
3. The Defendants referred to as the “Schedule ‘A’ Settling Parties”;² and

¹ Gerard A. McHale, Jr. is the Trustee in the related Bankruptcy proceedings pending in the Southern District of New York with respect to the “1031 Debtors” which are: The 1031 Tax Group, LLC; 1031 Advance 132 LLC; 1031 Advance, Inc.; 1031 TG Oak Harbor LLC; Atlantic Exchange Company, Inc.; Atlantic Exchange Company LLC; Investment Exchange Group, LLC; National Exchange Accommodators, LLC; National Exchange Services QI, Ltd.; NRC 1031, LLC; Real Estate Exchange Services, Inc.; Rutherford Investment LLC; Security 1031 Services, LLC; Shamrock Holdings Group, LLC; and AEC Exchange Company LLC.

4. Wachovia Bank, N.A.

The Schedule "A" Settling Parties and Wachovia Bank, N.A. ("Wachovia") are collectively referred to herein as the "Wave I Settling Defendants." A Settlement Class ("Class") has been certified with respect to the Settlements. The Wave I Settlements will provide \$88,247,500, with the Schedule "A" Settling Parties contributing \$43,247,500 and Wachovia Bank contributing \$45,000,000. The Wave I Settling Defendants have agreed to pay these amounts in exchange for, among other things, a full, final and complete release of all claims from the Class and the Trustee and a Rule 23 Bar Order protecting the Wave I Settling Defendants from any further claims.

A Hearing will be held before United States District Judge James Ware, at the United States District Court for the Northern District of California, United States Courthouse, 280 South First Street, San Jose, CA 95113, at ___ m. on _____ to determine whether the Wave I Settlements should be approved by the Court as fair, reasonable, and adequate.

IF YOU ARE A MEMBER OF THE CLASS DESCRIBED ABOVE, YOUR RIGHTS WILL BE AFFECTED AND YOU MAY BE ENTITLED TO SHARE IN THE SETTLEMENTS.

This summary notice provides a brief description of the Settlements and may address some of your questions. The Wave I Settlement Agreements set forth the settling parties' entire agreement, and are available for your review at www.hbsb.com, under the link for "Class Actions". The Court's Order granting preliminary approval of the Settlements, which is included herewith, sets forth specific deadlines by which you must act and procedures for you to follow should you not wish to participate in the Settlements or if you wish to raise Objections to any of them. You should review all of the documents provided with this summary notice and, if you have any questions that remain unanswered, you should contact counsel for the class at the address listed below for additional information.

1. Why did I get this notice package?

² The Schedule "A" Settling Parties are: (1) the law firm Kluger, Peretz, Kaplan & Berlin, P.L. ("KPKB"); (2) Certain Underwriters at Lloyds of London (the "E&O Carriers"); (3) Continental Casualty Company ("CNA"); (4) Federal Insurance Company ("Federal"); (5) Twin City Fire Insurance Company ("Twin City"); (6) Sellers of Investment Exchange Group, LLC, including but not limited to Daniel McCabe, Shirley McCabe, Andrew McCabe, Chad Greenberg, Peter McCann (collectively the "McCabe Parties"); (7) Sellers of National Exchange Services QI, Ltd., including but not limited to William D. Bennett; (8) Sellers of Atlantic Exchange Co., LLC, including but not limited to J. Patrick Dowdall and William A. Hazel; (9) Sellers of Real Estate Exchange Services, Inc., including but not limited to Marga Shefman and David Shefman (the "Shefmans"); (10) Sellers of 1031 Advance Inc., including but not limited to Janet Dashiell and Steven Allred; and (11) Michael Rosen.

Records indicate that you may be a member of the class described above and may have suffered injury based on the events alleged in the lawsuit.

2. What is this lawsuit about?

Approximately three-hundred thirty (330) similarly situated people located in numerous states across the nation each lost substantial money (combined approximately \$150,000,000) entrusted to certain “qualified intermediaries” (“QIs”) in the business of facilitating like-kind exchanges of real property pursuant to Internal Revenue Code Section 1031 (“1031 exchanges”). Defendant Edward H. Okun (“Okun”) discovered that these so-called QIs or “exchange accommodators” were unregulated businesses holding large sums of cash. Okun, together with a handful of his co-conspirators, formed a criminal enterprise for the specific purpose of purchasing six QIs, specifically the Exchange Entities, to gain access to, convert and misappropriate, for their own personal gain, the 1031 exchange funds deposited with the Exchange Entities. Okun’s criminal enterprise operated from at least August 2005 until late May 2007, misappropriating more than \$1 billion in exchange deposits, and causing over \$150,000,000 in damages to clients unable to complete their 1031 exchanges. During this period, Okun hid his ongoing theft of client trust money by using incoming deposits from new clients to fund the escrows of older clients. Okun’s conspiracy was exposed on May 14, 2007, forcing the Exchange Entities to collapse and seek relief from the Bankruptcy Court under Chapter 11, Title 11 of the United States Code. The Class and the Bankruptcy Trustee each filed litigation against Okun and certain third parties whom they believed to be liable for the lost exchange funds, including the Wave I Settling Defendants.

3. What are the terms of the settlements?

1. The Class/Trustee Agreement

Plaintiffs, for themselves and on behalf of the Class, and the Trustee, on behalf of the Exchange Entities, have separately asserted claims against many of the same third party defendants, including the Wave I Settling Defendants. Despite similarities between the Class and Trustee claims, a difference exists in the way the Class and the Trustee view the legal relationship between a QI and its exchanger clients regarding use of funds deposited with the QI. These differences create the potential for conflict between the Class and Trustee, which if left unresolved could have the effect of draining valuable resources and diverting attention away from the parties’ common objective, namely to maximize recoveries on behalf of the victims whose exchange deposits were stolen.

In recognition of the need to coordinate their efforts, the Trustee, through its counsel, the law firm of Golenbock, Eiseman, Assor, Bell & Peskoe, LLP (“Trustee’s Counsel”), and Plaintiffs, through their counsel, Hollister & Brace, Zelle McDonough & Cohen and Foley Bezek Behle & Curtis (collectively, “Class Counsel”), engaged in

Cohen and Foley Bezek Behle & Curtis (collectively, "Class Counsel"), engaged in negotiations regarding the relevant benefits of jointly pursuing litigation against and settlement negotiations with various defendants. These negotiations led to the execution of a settlement agreement dated January 20, 2009, commonly referred to as the "Class/Trustee Agreement." The purpose of the Class/Trustee Agreement is to resolve disputes and the potential for litigation between the Class and Trustee, to streamline the efficient prosecution of the respective Class and Trustee claims, and to maximize recoveries. Pursuant to the Class/Trustee Agreement, the Class and Trustee, while continuing to exercise independent judgment on each matter, agree, through their respective counsel, to work together in the prosecution of the various claims and causes of action asserted by the Class and Estates, to allocate recoveries between the Class and the Estates, to set a method for distributing efficiently the recoveries, and to set a method for establishing reasonable attorneys' fees.

The full terms of the Class/Trustee Agreement, together with the first, second, third and fourth amendments to the same, are available for your review at www.hbsb.com. You should read the Class/Trustee Agreement in its entirety. The agreement contains other important terms.

2. The Schedule "A" Settlement Agreements

At the time Class Counsel became involved in the litigation, the Trustee, through its counsel, had already completed a considerable amount of work filing actions, conducting discovery, working to prove claims, and negotiating settlements with (i) those persons who sold their qualified intermediary businesses to Okun (and many cases continued on as employees or officers of one or more of the Exchange Entities); (ii) certain attorneys who represented or advised the Exchange Entities; (iii) the insurance carriers that issued the Exchange Entities Commercial Crime insurance coverage; (iv) the insurance carriers that issued the Exchange Entities errors and omissions ("E&O") insurance policies; and (v) certain other parties. There are fifteen (15) parties in total listed on Schedule "A" to the Class/Trustee Agreement (collectively the "Schedule 'A' Parties"). Out of those fifteen (15), twelve (12) settlements were negotiated for the benefit of the victims. These twelve (12) agreements are referred to as the Schedule "A" Settlement Agreements.

In light of the Trustee's efforts, it did not make sense for Class Counsel, on behalf of the Class, to expend additional resources duplicating the Trustee's work against the same parties. The Schedule "A" Settlement Agreements provide a total settlement fund of \$43,247,500. The Class/Trustee Agreement provides that any recovery obtained from the settlement of claims against the Schedule "A" Parties will be allocated to the Estates, unless Class Counsel and Trustee's Counsel agree that a portion of the proceeds should be allocated to the Class to facilitate settlement approval and to pay Class Counsel's fees and costs in processing the settlements and obtaining settlement approval in the Class Action. The Court has determined that this allocation is reasonable in view of the fact that members of the Class, as clients of the Exchange Entities, constitute the vast majority of claims asserted against the Estates, and thus the effect of the allocations are *de*

minimus to the Class. The Class claims constitute in excess of ninety-nine percent (99%) of the general, unsecured creditor body of the Estates.

The following table identifies the Schedule "A" Settling Parties and the corresponding dollar amounts to be paid.

SCHEDULE "A" SETTLEMENTS

Party	Amount
Kluger Peretz Kaplan & Berlin ("KPKB")	\$12,380,000 ³
Underwriters at Lloyd's of London ("Lloyds")	4,600,000
Continental Casualty Company ("CNA")	13,000,000
Federal Insurance Company ("Federal")	7,000,000
Twin City Fire Insurance Company ("Twin City")	3,250,000
Daniel E. McCabe, Shirley L. McCabe, Andrew C. McCabe, Chad J. Greenberg and J. Peter McCann ("McCabe Group")	1,250,000
William D. Bennett ("Bennett")	400,000
William A. Hazel, Patrick Dowdall, James F. Livesey, Charles D. Subrt ("AEC Defendants")	107,500
David B. Shefman and Marga R. Shefman, (the "Shefmans")	10,000
Janet Dashiell ("Dashiell")	75,000
Steven Allred ("Allred")	250,000
Michael J. Rosen ("Rosen")	925,000
Total:	\$ 43,247,500

In exchange for entering into their respective settlement agreements, the Schedule "A" Settling Parties will obtain a full release from the Class and the Trustee and a bar order precluding claims against them arising out of or related to the collapse of the Exchange Entities. The full terms of the Schedule "A" Settlement Agreements are set forth in the written agreements which may be viewed at www.hbsb.com. You should read the Schedule "A" Settlement Agreements in their entirety. They contain other important terms. The Schedule "A" Settlement Agreements will not resolve claims against the other non-settling defendants and litigation will continue against those defendants.

3. The Wachovia Settlement Agreement

The Trustee and Class have asserted claims against Wachovia Bank. Wachovia disputes these claims but, in an effort to avoid the uncertainty and expense of litigation,

³ The maximum amount to be paid by KPKB pursuant to the settlement was \$15,380,000. However, \$3,000,000 of this amount was made contingent upon a fee that KPKB was to earn from certain litigation it had pending. That litigation has since been dismissed. As a consequence, the Trustee and Class do not expect to obtain the \$3,000,000 contingency fee.

Wachovia has agreed to pay the sum of \$45,000,000. The Class/Trustee Agreement provides that any recovery obtained from the settlement of claims against Wachovia will be allocated sixty percent (60%) to the Estates, and forty percent (40%) to the Class. The Court has determined that the allocation is reasonable in view of the fact that the Exchangers constitute the vast majority of claims asserted against the Estates, and thus the effect of the allocation is *de minimus*. The Class claims constitute in excess of ninety-nine percent (99%) of the general, unsecured creditor body of the Estates.

In exchange for entering into the settlement, Wachovia will obtain a full release from the Class and the Trustee and a bar order precluding claims against it arising out of or related to the collapse of the Exchange Entities. The Wachovia Settlement Agreement will not resolve claims against the other non-settling defendants and litigation will continue against those defendants. The full terms of the Wachovia Settlement are set forth in the written agreement which is available for your review at www.hbsb.com. You should read the Wachovia Settlement Agreement in its entirety. It contains other important terms.

4. If I participate in the partial settlements, must I participate in future settlements?

No. In the event that settlements are reached with additional defendants in the future, you will have the opportunity to decide whether to participate in such settlements. Your decision to participate in these settlements shall not preclude you from electing to decline to participate in future settlements, if any, should you choose.

5. If I participate in the partial settlements, how much money will I get?

If the settlements receive final approval and go forward, payments of \$88,247,500 will be made. Pursuant to the terms of the Class/Trustee Agreement, the sum of \$70,247,500 will be allocated to the Trustee on behalf of the creditors of the Estates, and the balance of \$18,000,000 will be allocated to the Class. The \$70,247,500 allocated to the Trustee on behalf of the Estates will have a *de minimis* effect on the distributions made to the Class - whose claims constitute over ninety-nine percent (99%) of the general, unsecured creditor body of the Estates. As to the \$18,000,000 allocated to the Class, the Court will be asked to approve a plan for distribution. It is anticipated that the plan will provide for pro rata distribution of the recovery (minus any Court-approved fees or other expenses) to settlement class members based upon the amount of money that settlement class members deposited with the Exchange Entities which was lost when the Exchange Entities failed.

6. How do I know how much of the partial settlements might be allocated to fees or other expenses?

Any fees or expenses must be approved by the Court. Pursuant to the terms of the Class/Trustee Agreement, Class Counsel has agreed not to seek any fee on the \$70,247,500 allocated to the Trustee on behalf of the Estates. As to the \$18,000,000 allocated to the Class, Class Counsel has agreed it will not seek a fee that results in a payment of an amount which exceeds the lesser of (a) its reasonable hourly fee multiplied by the reasonable hours worked on such claims, multiplied by a factor of 1.7, and (b) 25% of the recovery allocated to the Class. This does not include a deduction for the reasonable fees and costs incurred by Class Counsel which must be approved by the Court. By limiting any fee sought to a percentage of the amount available after payment of expenses and costs, Class Counsel has every incentive to ensure that such expenses are minimized.

7. What should I do if I have questions?

You should contact the counsel appointed by the Court for the class:
Robert L. Brace or Michael P. Denver at the law firm of Hollister & Brace, P.O. Box 630, Santa Barbara, CA 93102 (Tel. 805 963 6711). Do NOT contact the Court.