

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

Case No. 8:20-cv-325-T-35NHA

BRIAN DAVISON,
BARRY M. RYBICKI,
EQUIALT LLC,
EQUIALT FUND, LLC
EQUIALT FUND II, LLC,
EQUIALT FUND III, LLC,
EA SIP, LLC,

Defendants,

and

128 E. DAVIS BLVD., LLC;
et al.,

Relief Defendants.

**RECEIVER'S OBJECTION TO APRIL 20, 2026
REPORT AND RECOMMENDATION (DOC. 1406)**

Burton W. Wiand, as Receiver over the assets of the corporate Defendants and all Relief Defendants (the “**Receiver**” and the “**Receivership**” or “**Receivership Estate**”) submits this objection to the Magistrate Judge’s Report and Recommendation issued on April 20, 2026 (Doc 1406) (the “**R&R**”).

I. INTRODUCTION

The Receiver respectfully objects to certain findings and conclusions of the R&R, particularly those recommending the imposition of a fixed deadline of year end for concluding the Receivership. While the Receiver will make every effort to comply with any Order entered by this Court, it is necessary to place on the record the Receiver's disagreement with determinations that, if implemented, risk harm to the Receivership estate and its beneficiaries.

This Receivership has resulted in the distribution of approximately \$160 million to claimants—yielding distributions in excess of 100% of allowed claim amounts. The Receiver has also secured the repayment of 100% of approved claims of general non-victim creditors. The result is exceptionally rare and reflects the Receiver's continued efforts to identify, preserve, and maximize assets for the benefit of victims. The Receiver believes that this Receivership is the most successful receivership administered in the Middle District of Florida to date. Throughout the duration of this Receivership, the Receiver has exercised his court-appointed authority using sound business judgment, with the objective of maximizing recoveries for victims.

The R&R's recommendation to conclude the Receivership on a compressed timeline does not fully account for the remaining work necessary to complete that process. Nor does it reflect the practical constraints associated with asset liquidation, resolution of ongoing disputes with Brian Davison,

regulatory approvals, and the administration of final distributions. The Receiver submits this Objection to respectfully request that any timeline for concluding the Receivership allow sufficient flexibility to complete the remaining work in a manner that continues to serve the best interests of claimants by allowing the opportunity to maximize recoveries and, ultimately, distributions to claimants.

II. LEGAL STANDARD

A district court has broad equitable authority to supervise a receivership and to determine the appropriate manner in which the receivership estate is administered and ultimately wound down. *See SEC v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992) (recognizing the district court’s “broad powers and wide discretion to determine the appropriate relief in an equity receivership”). Consistent with that authority, a court-appointed receiver is afforded substantial discretion to manage the receivership estate and to make decisions in the exercise of sound business judgment. *See SEC v. Hardy*, 803 F.2d 1034, 1037-38 (9th Cir. 1986) (noting that a receiver “has broad powers and wide discretion” in administering the estate); *SEC v. Path Am. LLC*, 2016 WL 3865919, at *3 (W.D. Wash. July 15, 2016) (stating “[i]n the estate administration context, courts are deferential to the business judgment of bankruptcy trustees, receivers, and similar estate custodians”); *see also, e.g.*, 28 U.S.C.A. § 959(b) (“[A] . . . receiver . . . appointed in any cause pending in

any court of the United States . . . shall manage and operate the property in his possession . . . in the same manner that the owner or possessor thereof would be bound to do if in possession thereof.”).

Courts routinely defer to a receiver’s decisions where those decisions are made in good faith and are reasonably calculated to preserve and maximize the value of the receivership estate for the benefit of claimants. *See VC Macon, GA LLC v. Virginia Coll. LLC*, 2019 WL 13557478, at *2 (M.D. Ga. Apr. 5, 2019) (noting that “the Receiver, as an impartial officer of the Court, has the duty to maximize the value of the Receivership Estate for all creditors.”); *Lawsky v. Condor Capital Corp.*, 154 F. Supp. 3d 9, 22 (S.D.N.Y. 2015)(citing *Golden Pac. Bancorp v. F.D.I.C.*, 2002 WL 31875395, at *9)(S.D.N.Y. Dec. 26, 2002))(receiver owed deference under business judgment rule)

Accordingly, in evaluating the recommendations at issue, the Court may consider whether the proposed limitations on the Receivership are consistent with the Receiver’s informed business judgment and the overarching objective of maximizing recoveries for victims.

III. OBJECTIONS

A. **The Imposition of an Arbitrary Termination Date Will Harm the Receivership Estate.**

The R&R recommends that the Receivership be directed to conclude on or before December 31, 2026. The Receiver objects to this determination

because it is not supported by the evidentiary record and fails to account for the complexities inherent in maximizing recoveries. *See* Doc. 1399-1, Receiver's Exhibit 1 Presented at February 11, 2026 Status Conference (the "**Presentation**"). The factual record presented at the hearing demonstrates that additional recoveries remain reasonably achievable. *Id.* The imposition of an arbitrary end date risks prematurely truncating those efforts, to the detriment of claimants.

The Receiver's experience and judgment, developed over the course of administering this Receivership and numerous other receiverships, indicate that continued operations will likely yield additional recoveries. Even incremental gains are meaningful in this context. For example, the Receiver, conservatively estimates based on current comps in the vicinity that the Treasure Island condominium conversion would increase the sale price to approximately \$9.5 million from the current estimated value of \$3.25 million. Considering the estimated conversion costs of \$2.5 million, the total project has the potential to create an additional \$3.75 million for distribution to claimants. Distributing these additional funds may seem relatively insignificant in a Receivership that has already distributed \$160 million. However, this additional \$3.75 million would provide 1,018 claims at least a \$1,000 distribution, 167 of those claims would receive at least a \$5,000 distribution, and several claims would receive more than \$20,000, with the highest amount

of \$53,089.65 going to a family living trust. The above numbers do not take into account the many claimants who have multiple claims. For instance, the claimant holding claims 1151, 1152, and 1153 would receive a combined distribution of \$87,959.18 from an additional \$3.75 million. Similarly, husband and wife claimants holding claims 1492-1499 would receive distributions ranging from \$53.67 to \$14,088.49 for each claim. While a distribution of \$53.67 appears nominal, the aggregate amount of their distributions would be \$23,633.07.

The above only contemplates an additional \$3.75 million recovery should the Receivership be allowed to complete the condominium conversion. During the time needed for the condominium conversion, the Receiver would also be able to maximize recoveries from Commerce Brewery and Bolero Snort Brewery. As shown on page 24 of the Presentation, the Receiver estimates that continuing operations for 18 months could generate as much as \$7.3 million more for distribution to investors as opposed to immediate fire sales or foreclosure actions. Doc. 1399. These additional recoveries would not only benefit claimants directly but would also further defray the administrative expenses of the Receivership.

B. The R&R Understates the Scope of Victim Losses

The Receiver further objects to the R&R's characterization of victim losses. First, the claim amounts referenced do not reflect what claimants reasonably believed they possessed based on the Receivership Entities' books and records. Claimants were led to believe that their investments had grown significantly beyond their principal contributions. The investments were promising interest payments from 8 to 12%. Moreover, claimants who received payments during the course of the scheme reasonably believed those payments were investment returns, not a return of their own principal. As a result, claimants likely spent or invested those purported earnings unaware that each payment will be treated as a return of principal during a receivership claims process. For example, a claimant who "invested" \$400,000 and received \$160,000 in payments would have believed he had earned \$160,000 while still maintaining his \$400,000 principal plus any falsely promised growth. The allowed amount for this claim, however, would be \$240,000. Although this claimant would have received \$256,800 (107% of \$240,000) from the Receivership to date, he would not view himself as being made whole. This amount is far short of the contractual obligations from the Receivership entities to the EquiAlt investor victims. These unmet contractual obligations would routinely be considered as damages suffered by the claimant victims.

Second, the R&R fails to account for the economic reality that claimants have lost the opportunity to earn returns during the pendency of this Receivership. Standard measures of damages in investor cases routinely incorporate the time value of money and/or market-adjusted losses. Those considerations are relevant here and further underscore the importance of maximizing recoveries before terminating the Receivership. They demonstrate that regardless of the fact that claim amounts have been paid—the EquiAlt victims are far from being made whole.

C. The R&R Overstates Risks and Undervalues Continued Administration

The R&R identifies certain risks associated with continued administration, including project-specific uncertainty (such as the Bolero Snort Brewery), external factors like permitting delays and weather events, and prior valuation impacts such as those affecting the Treasure Island Condominiums. The Receiver does not dispute that such risks exist. Rather, the Receiver respectfully submits that these are the types of ordinary, known, and actively managed risks inherent in any effort to maximize value from assets, especially distressed and illiquid assets.

These risks are neither new nor unforeseen. They have been present throughout the Receivership and have been continuously evaluated and managed by the Receiver in the exercise of his business judgment. For

example, these risks were inherent in the St. Petersburg lots project (the “**Lots**”) discussed on page 9 of the Presentation. Doc. 1399-1. The Lots were valued at \$4.5 million at inception. The Receiver obtained the Court’s approval to purchase an adjacent lot for \$1,750,000. As a result of that additional expenditure, the Receiver was able to sell all the Lots for approximately \$20 million and create an additional value to the Receivership of approximately \$13.8 million.

The R&R characterizes the potential for additional recovery as “speculative,” while treating the identified risks as controlling. The risks identified in the R&R do not present an all-or-nothing scenario in which continued administration would result in a loss. Rather, they reflect uncertainty as to the timing and amount of additional recoveries. Those are issues the Receiver deals with in the ordinary course and is best positioned to assess and manage. The Receiver’s continued efforts are aimed at addressing those uncertainties and maximizing recoveries, not disregarding them. In contrast, the consequences of prematurely terminating the Receivership are certain: any remaining additional recovery potential would be abandoned, and claimants would be deprived of additional distributions that could otherwise be realized.

Accordingly, when weighed against the demonstrated track record of the Receivership and the Receiver's informed judgment, the identified risks do not outweigh the benefits of continued administration.

D. The Record Demonstrates That Continued Administration Is Cost-Effective and Has Produced Exceptional Results

The Receiver also objects to any implication that the continued operation of the Receivership imposes undue costs. The Receiver recognizes the Court's concern regarding the costs associated with continued administration of the Receivership. However, those costs must be evaluated in the context of the results achieved and the additional recoveries reasonably anticipated for claimants.

Over the course of this Receivership, the Receiver has recovered and distributed approximately \$160 million to claimants, resulting in claimants receiving more than 100% of their allowed claim amounts. This outcome is exceptionally rare in receivership proceedings. Against that backdrop, the administrative expenses incurred are not indicative of inefficiency or overreach, but rather reflect the substantial efforts required to achieve these results. The work performed by the Receiver and retained professionals has directly generated and preserved value for the estate, not depleted it.

Importantly, the total non-contingent administrative expenses of the Receivership are less than 3.3% of the total assets recovered.¹ See Doc. 1396-1 and Doc. 1399-1 at p 23. The Receiver's compensation, at 0.63% (less than 1%) of the total recovery, is only a small fraction of the total recovery. Moreover, the Receiver does not share in the fees paid to other professionals.² The continuation of targeted recovery efforts is expected to further increase distributions to claimants and, in turn, offset administrative costs.

This is not a circumstance in which administrative expenses are consuming the estate.³ To the contrary, continued administration has consistently produced net-positive results for claimants. In that context, curtailing the Receivership based solely on the existence of ongoing professional fees would risk foregoing meaningful additional recoveries that

¹ This amount includes professional fees through March 31, 2026. Professional fees for the first quarter of 2026 have not yet been submitted to the Court.

² Following the dissolution of Wiand Guerra King P.A. (“WGK”) and ultimately the close of its successor, Guerra & Partners, PA (“G&P”), Wiand P.A. retained two former professionals on a contract basis at rates below their billing rates. Wiand P.A. bears the associated overhead costs for these individuals, which includes insurance, technology and administrative infrastructure, and the risk of non-payment. The Receiver also compensates these professionals for time spent preparing fee applications, work that is not billable to the Receivership under applicable guidelines and can be extensive. Prior to the recent retention of the two individuals by Wiand PA, the Receiver had no interest in the fees charged for legal services by WGK and its successors. Paralegal fees have been paid to Wiand PA, but otherwise the only fees that the Receiver participated in were his own billings as Receiver.

³ The Receiver's Schwab account is estimated to yield over \$250,000 this year.

would otherwise inure to the benefit of victims. The relevant inquiry is not the absolute amount of fees incurred, but whether continued efforts are reasonably likely to generate additional value for the estate. Here, the Receiver asserts that they are.

E. Practical Constraints May Prevent Compliance with the Proposed Deadline

The R&R recommends that the Receivership be fully concluded, including final distributions and reporting, by December 31, 2026. The Receiver has already undertaken efforts to comply with this recommendation should it be adopted. However, due to factors outside the Receiver's control, including the timing of asset sales, tax-related matters (including coordination with the Internal Revenue Service), and the resolution of outstanding claims issues, it may be practically impossible to conclude all aspects of the Receivership by that date. Notwithstanding these challenges, the Receiver will make every effort to comply with any deadline imposed by the Court.

The R&R's recommendation as written leaves ambiguity as to what must be completed by December 31, 2026. While it may be possible for the Receiver to file a motion seeking approval of a final distribution by December 31, 2026, it is highly unlikely, if not impossible, for the distribution itself to be completed by that time. As the Court is aware, even after prior distributions, post-distribution issues can persist for months. For example, the third interim

distribution was mailed on September 17, 2025, and several checks remain outstanding due to issues requiring resolution. For instance, one outstanding distribution will likely require the filing of an interpleader action, which will necessitate prior Court approval before it can be initiated and resolved. Additional issues can reasonably be expected in connection with any final distribution. It is also important to note that it may not be possible to secure closure from the IRS for many months.

Additionally, the Receiver cannot determine the amount available for final distribution until several material matters are resolved. These include: 1) the liquidation of remaining assets, including equity interests in the brewery entities and associated real estate, which will require Court approval and may also require approval from federal and state alcohol regulators; and 2) the resolution of disputed assets, including the Davisons' Merrill Lynch accounts and platinum coins that were never turned over by Brian Davison.

Only after these matters are resolved can the Receiver determine the funds available for distribution, calculate individual claim distribution amounts, and seek Court approval of a final distribution. Following such approval, the Receiver must implement the distribution and address inevitable post-distribution issues, including claimant deaths, custodial complications, and unresolved payments.

While the R&R notes that the Receiver previously estimated that immediate liquidation of the Receivership assets would take at least six months, that estimate did not account for the additional steps required to fully complete the claims process. Accordingly, although the Receiver will work diligently to comply with any deadline imposed by the Court, a requirement to fully complete all aspects of the Receivership by December 31, 2026 may not be practically achievable.

IV. CONCLUSION

The Receiver respectfully requests that the Court reconsider the aspects of the R&R imposing a fixed termination date and instead permit the Receivership to continue under the Receiver's supervision until such time as additional recoveries can be reasonably exhausted and the estate can be wound down in a manner that maximizes value for claimants.

The Receiver submits this Objection to ensure that the record accurately reflects his professional judgment and the factual basis supporting continued administration of this Receivership.

Respectfully submitted,

/s/ Katherine C. Donlon

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 4, 2026, I electronically filed a true and correct copy of the foregoing with the Clerk of the Court through the CM/ECF system, which served counsel of record.

/s/ Katherine C. Donlon
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