

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE – NASHVILLE DIVISION**

<b>IN RE:</b>	)	
	)	
<b>1Point Solutions, LLC</b>	)	<b>Case No. 06-05400-KL3-11</b>
<b>Barry R. Stokes</b>	)	<b>Case No. 06-05898-KL3-11</b>
	)	<b>Chapter 11</b>
<b>Debtors.</b>	)	<b>Judge Keith M. Lundin</b>
	)	<b>Administratively Consolidated</b>
	)	<b>Under Case No. 06-05400-KL3-11</b>
	)	

**TRUSTEE’S STATUS REPORT**

**UPDATE**

John C. McLemore, Trustee in the administratively consolidated cases of 1Point Solutions, LLC, and Barry R. Stokes, previously filed on January 6, 2011, a report on the status of the cases. This Trustee’s Status Report includes the material in that previous report to help with context and updates information on the period of time from January 1, 2011, through June 30, 2011 (“the present reporting period”).

**INTRODUCTION**

The 1Point Solutions Chapter 11 proceeding is the consolidation of two cases In Re: 1Point Solutions, LLC, and In Re: Barry R. Stokes. They are administered under the 1Point case number 06-05400.

John C. McLemore was appointed Trustee of both estates. He was appointed Trustee for 1Point September 28, 2006, and for Stokes October 16, 2006. An order was entered administratively consolidating the two cases October 13, 2006.

1Point Solutions, LLC, was a third party administrator. It was established to administer for employers 401(k) retirement plans and cafeteria programs such as FSA—Flexible Spending Accounts, HSA—Health Spending Accounts, HRA—Health Reimbursement Arrangements, and DCA—Dependent Care Accounts.

An involuntary petition was filed against 1Point Solutions September 26, 2006, because employers attempting to withdraw programs from 1Point's administration were unable to get their employees' funds.

Barry R. Stokes was the owner and chief executive officer of 1Point Solutions. He filed a voluntary Chapter 11 on October 13, 2006.

During the course of the administration of these cases, Stokes was indicted by the federal grand jury in the Middle District of Tennessee and pleaded guilty to stealing from the plans administered by 1Point Solutions. He was sentenced to 12 years in prison and died in prison in August, 2010.

#### **ADMINISTRATION OF ASSETS**

As the financial investigation of 1Point Solutions and Barry Stokes progressed, it became evident in the first months of the case that everything Stokes owned, both real estate and personal property, had been purchased with funds stolen from 1Point. A summary explanation of some of the asset activity follows.

Residence. The Trustee sold at auction Stokes' home in Dickson, Tennessee, and all its contents. The FBI had searched the home and taken a small gun collection and other items which it felt might be used as evidence. The Trustee eventually recovered those items and sold them.

Office building. The 1Point Solutions office building, a full block in downtown Dickson, Tennessee, was also sold at auction.

Japanese woodblock prints. Stokes had assembled a large collection of Japanese woodblock prints. It was so large he had purchased a residence in Dickson and outfitted it for archival storage of prints. Some prints were found there. Some were in the offices. Some had been secreted away to Texas where they were eventually recovered, and even more were eventually located by the FBI and turned over to the Trustee.

Most of the prints have been sold at auction by a gallery that has expertise in dealing with Japanese art. The sale of the prints is not yet complete because Stokes' collection contained many duplicates. Rather than sell fifty identical prints at one time, Floating World Gallery in Chicago, which was appointed by the Court to liquidate the art, is still feeding the duplicates into auctions periodically to avoid flooding the market with one image.

Using inventories and photographs kept by the collection's curator and Stokes' secretary, the Trustee knows there are approximately 80 Japanese woodblock prints still missing. The Trustee was invited by Stokes' criminal defense counsel on the eve of his sentencing to visit with Stokes in jail for the purpose of determining where the prints were. The defense attorneys wanted to give their client a chance to cooperate fully with the Trustee's recovery effort so they could report to the Court at sentencing that he was helping right his wrongs. Stokes, however, would not disclose the location of the missing prints. Their value is estimated to be about \$80,000.00.

During the present reporting period, \$30,200.21 has been obtained from sale of Japanese woodblock prints.

Storage house. The house that stored the Japanese woodblock prints was sold at public auction.

Jewelry. The Trustee has consigned a jewelry collection to a Nashville jewelry store for liquidation. It has been in the store's inventory for two consecutive Christmases and is not moving. A small amount has been sold. In January 2011, the Trustee will retrieve the remaining items and consign them to an online auction.

During the present reporting period, the Trustee retrieved the jewelry and engaged Bill Colson Auction & Realty of Nashville to sell it at live auction. The sale was conducted April 7, 2011. It brought \$1,705.10.

Real estate in trust. Barry Stokes' mother had a trust to which she deeded real estate for the benefit of her children. One of the heirs is attempting to conclude the trust and liquidate the corpus. The Trustee is joining with that heir. If the trust is wound down, it will probably result in the bankruptcy estate receiving about \$25,000.00.

During the present reporting period, the Trustee continued to investigate the details involved in the trust.

Accounts receivable. 1Point did a poor job of collecting the funding of the cafeteria plans it administered. At the outset of the case, there were more than \$2 million in accounts receivable due to insufficient or uncollected funding of the plans. The accounts were subject to offsets that had to be calculated from 1Point records and compared with client records. The Trustee has completed most of his work on these accounts and has recovered \$1,556,696.41 of these accounts receivable.

During the present reporting period, the Trustee has recovered an additional \$51,074.54 in the accounts receivable.

Office equipment and furniture. The 1Point office equipment and furnishings were sold at auction. A few pieces of furniture and the computer system were retained and moved to a much smaller rented office in Dickson where a downsized staff continued the administration of the estate. That office was closed during the past year. The estate has one remaining employee who works from her home. The Trustee will sell the remaining office furniture at auction. He has most of the computer system in storage in the event it is needed as evidence at trial. The employee has a 1Point computer at her home.

During the present reporting period, the Trustee engaged Bill Colson Auction and Realty of Nashville to sell a few items of furniture and equipment as a result of downsizing. It brought \$1,486.00.

Stokes's wife. The Trustee settled a fraudulent conveyance lawsuit against Darlene Wilson, Stokes wife, for \$15,000.00.

District Court litigation. Based on his investigation of Stokes and 1Point activities, and research into relevant legal issues, the Trustee filed a lawsuit in Bankruptcy Court that was removed to United States District Court for the Middle District of Tennessee against Mid-Atlantic Capital Corporation and Regions Bank, the financial institutions in which 1Point deposited clients' fiduciary funds. Rather than treat the deposits as fiduciary funds, however, Stokes comingled the funds, used them for 1Point's operations, and withdrew funds for his personal use on a regular basis. Approximately \$20 million of clients' fiduciary funds were misappropriated. The lawsuit is the one act that provides the possibility of a recovery for the Estate commensurate with damages caused by Stokes and 1Point. The lawsuit asserted violations of ERISA law and state law that would make the financial institutions liable for the losses suffered by 1Point's clients.

During the same time frame, nineteen of the 401(k) Plan customers of 1Point filed suit against AIGFA, and subsequently also filed suit against Mid-Atlantic Capital Corporation, and a company called SIBI that had ties to Mid-Atlantic, and against Regions Bank. Throughout the litigation, the Trustee and counsel for nineteen Plans worked cooperatively. Following a global mediation in which many creditors participated, settlement with all parties except Regions ensued. The Trustee prepared and presented the settlement for approval by the Bankruptcy Court. The nineteen 401(k) Plans received \$7,449,500.00 from AIGFA, Mid-Atlantic and SIBI, which reduced their claims in the Bankruptcy case proportionately. The Trustee received \$250,000.00 from Mid-Atlantic and \$5,000.00 from SIBI.

Rather than settle, Regions moved to dismiss the lawsuit on the grounds (1) that the Trustee was not an ERISA fiduciary and had no standing; (2) that the bank was not an ERISA fiduciary; and (3) that the state law claims were preempted by ERISA. The U.S. Department of Labor filed an amicus brief in support of the Trustee on the first issue. Ultimately, the District Court ruled in favor of the Trustee on the first issue and in favor of Regions on the second and third issues. The effect was dismissal of the Trustee's lawsuit. The bulk of the similar lawsuit filed by the nineteen 401(k) Plan customers against Regions Bank was likewise dismissed.

The cases are now on appeal in the U.S. Sixth Circuit Court of Appeals. The bank has argued that the District Court was in error on the first issue. Again, the U.S. Department of Labor has filed an amicus brief in support of the Trustee on that issue. The Trustee contends that the District Court was in error on the second and third issues. If the Trustee and the nineteen 401(k) Plan customers are successful in the appeal, the cases likely would be remanded to the District Court for trial. The briefs of the parties have been filed in the Sixth Circuit. The appeal process will take time; the Trustee is not in a position to say how long.

During the present reporting period, there has been no new information to report on this matter.

Other 401(k) Plan customers. Other 401(k) Plan customers have also filed suit against AIGFA in the U.S. District Court for the Middle District of Tennessee. That lawsuit is in the discovery stage. To the extent there is a recovery for those other 401(k) Plans, the recovery will proportionately reduce their claims in the Bankruptcy.

During the present reporting period, the parties have been working productively toward a settlement. On June 28, 2011, the parties filed a Joint Motion for Entry of Agreed Order of Compromise and Dismissal. The Agreed Order was entered on June 29, 2011. The settlement should be finalized in the near future, and at that time the settlement amounts can be made public.

### CONCLUSION

The Trustee has kept this case in Chapter 11 rather than convert it to Chapter 7, because it is apparent that there will be a variety of creditor classes for which distribution can be more appropriately made in a Chapter 11 Plan. The Trustee has not thought it practical to make an interim distribution given (1) the large number of claimants (approximately 881); (2) the large dollar amount of the claims asserted (approximately \$45 million; the Trustee believes that recommendations for allowing claims will be approximately \$13 million); and (3) the uncertainty of the Regions Bank litigation and the ongoing sale of woodblock prints.

The following is a brief summary accounting of the Bankruptcy Estate as of June 30, 2011.

**Receipts:**

Accounts Receivable	1,556,696.41	
Administrative Fees	71,986.19	
Adv. - Darlene Wilson	15,000.00	
Adv. Home & Away; Astraea Foundation	34,793.00	
Amsouth Bank	865,764.68	
Auction Proceeds - Office, Personalty	191,269.90	
Funds at AmSouth - Mastrapasqua	135,924.11	
Insurance Settlement - Storms/Water	183,137.37	
Interest Earned	76,431.30	**
Japanese Woodblock Prints	915,449.57	
Jewelry	2,590.10	
Lexus - AR	9,389.00	
Mid-Atlantic Settlement	250,000.00	
Misc. Refunds	36,431.99	
Office Building	385,000.00	
Recovery of Theft	42,773.74	
Residence	135,600.00	
SIBI Settlement	5,000.00	
Storage House	53,200.00	
TN Democratic Party C&S	45,375.00	
Traceable Customer Funds	154,936.29	
Turnover of Funds - Fifth Third	24,329.70	
Wages	2,284.43	
<b>*Total Receipts</b>	<b>5,193,362.78</b>	

**Disbursements:**

Accounting Fees & Exp.	378,684.90
Auctioneer Fee & Exp.	86,386.90
Bond	62,134.00
Computer - Support/Software	79,940.73
Copy, Mail Out	12,328.71
Customer Refunds	5,768.91
Exemption	10,900.00
Filing Fees	3,778.50
Insurance	30,480.48
Japanese Art Preservation & Sale Expense	275,749.95
John King - Inventory Services, Sales Preparation	15,894.20
Legal Fees & Exp.	1,098,666.05
Mastrapasqua Asset Manage.	135,924.11
Mid-Cumberland Title	1,735.00
Non - Estate Refund	757.00
Office Exp./Misc.	9,764.72
Other Cost of Sale	3,672.50
Other Tax	25,820.32
Payroll/Payroll Tax	479,509.56
Refunds of Traceable Customer Funds	154,936.29
Less Unclaimed Refund Checks	(6,437.38)
Regions Bank - Lien Payoff	290,213.69
Rent/Storage	36,222.00



Security Alarm Service	9,913.55
Storm/Water Damage Repair	166,992.54
Surveyor	3,000.00
UST Qtrly. Fees	35,050.00
Utilities	51,090.44
<b>Total Disbursements</b>	<u>3,458,877.67</u>
<b>Funds on Hand</b>	
<b>6/30/11</b>	<u><u>1,734,485.11</u></u>

\* This does not include the \$7,449,500.00 recovered in District Court for nineteen of the 401(k) Plans, which reduces their claims proportionately.

\*\* Interest is accrued through 6/29/11

Respectfully submitted,

By: /s/ John C. McLemore, Trustee  
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 Fax: (615) 292-9848  
[jmclmore@gmylaw.com](mailto:jmclmore@gmylaw.com)

**CERTIFICATE OF SERVICE**

I hereby certify that on the date noted below, a true and correct copy of the foregoing was mailed either electronically or by U.S. mail, postage prepaid in accordance with the Second Order Establishing Notice Procedures entered December 18, 2007.

This 1<sup>st</sup> day of July, 2011.

By: /s/ John C. McLemore, Trustee  
 John C. McLemore, Trustee

LIMITED MAILING MATRIX  
11/9/07 *Addresses revised 5/5/11*  
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UNSECURED TRADE CREDITORS WHOSE CLAIMS  
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HENRY W. OLIVER BUILDING  
535 SMITHFIELD STREET  
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CREDITORS WHICH ARE 401(k) PLANS, WHOSE CLAIMS  
ARE BELIEVED TO EXCEED \$75,000.00, OR HAVE FILED  
A POC EXCEEDING \$75,000:

HAMILTON-RYKER GROUP, LLC  
947 E. MAIN  
P.O. BOX 1068  
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NATIONAL CONTACT MARKETING RETIREMENT PLAN  
C/O LARRY STILLIONS  
NATIONAL CONTACT MARKETING, INC.  
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