

**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, files this semi-annual report on the status of the cases. This Trustee’s Status Report includes the material in the previous report filed July 1, 2011, to help with context and updates information on the period of time from July 1, 2011, through December 31, 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, \$1,861.15 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 consigned a jewelry collection to a Nashville jewelry store for liquidation. It was in the store's inventory for two consecutive Christmases and did not move. A small amount has been sold. The Trustee retrieved the remaining items and sold them at auction, which 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 two children. The Trust owns a one half interest in a parcel of land in Maury County, TN. The Trustee has been approached by the co-owner of the land and asked to use his powers pursuant to 11 U.S.C. 363(h) to liquidate the land and divide the proceeds among the owners. The Trustee has agreed to pursue this matter. It appears Barry Stokes had rights to one half of the corpus of the trust. It is estimated that the subject real estate could bring \$100,000.00. If that is the case, the share of Barry Stokes would be one half of the trust's one half interest, or approximately \$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. The Trustee is still working on a few remaining accounts.

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. The estate has one remaining employee who works from her home. The Trustee sold the remaining office furniture at auction for \$1,486.00. 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.

Stokes' 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. Oral argument has been set in the Sixth Circuit for March 1, 2012.

Other 401(k) Plan customers. Fourteen other 401(k) Plan customers also filed suit against AIGFA in the U.S. District Court for the Middle District of Tennessee. Again, the Trustee worked cooperatively with counsel in that case.

An Agreed Order settling that case was entered on June 29, 2011. The settlement was finalized during this reporting Period. Pursuant to the settlement, the fourteen 401(k) Plan customers received a total of \$850,000.00. Their recovery for those other 401(k) Plans will proportionately reduce their claims in the Bankruptcy.

**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 \$12 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 December 19, 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	76,797.16
Japanese Woodblock Prints	917,310.72
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>	<u>5,195,589.79</u>

**Disbursements:**

Accounting Fees & Exp.	381,096.90
Auctioneer Fee & Exp.	86,386.90
Bond	75,634.00
Computer - Support/Software	81,440.73
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	276,152.15
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.	10,132.30
Other Cost of Sale	3,672.50
Other Tax	25,820.32
Payroll/Payroll Tax	489,187.61
Refunds of Traceable Customer Funds	154,936.29
Less Unclaimed Refund Checks	(6,437.38)
Regions Bank - Lien Payoff	290,213.69
Rent/Storage	36,672.00
Security Alarm Service	9,913.55
Storm/Water Damage Repair	166,992.54
Surveyor	3,000.00
UST Qtrly. Fees	37,000.00
Utilities	51,090.44
<b>Total Disbursements</b>	<u>3,489,137.50</u>
<b>Funds on Hand</b>	
<b>12/19/2011</b>	<u><u>1,706,452.29</u></u>

\* This does not include the \$7,449,500.00 recovered in District Court for nineteen of the 401(k) Plans, or the \$850,000.00 recovered in District Court by fourteen other 401(k) Plans. The recoveries will reduce the Plans' claims proportionately.

Respectfully submitted,

By: /s/ John C. McLemore, Trustee  
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**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 27<sup>th</sup> day of December, 2011.

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

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11/9/07 *Addresses revised 9/12/11*  
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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:**

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