

BAYOU FUND UPDATE
September 30, 2005

Background Summary

The Arizona Attorney General's Office seized \$101,000,000 from an account in the name of Majestic Capital Management, signer Karl E. Johnson. Present available information indicates that these funds most likely originated with Bayou investors. If current efforts to trace the funds show that they came from Bayou investors, the Arizona Attorney General's Office will release the funds to the US District Court in New York.

Current Information

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, filed in Arizona Superior Court in and for Maricopa County, is captioned:

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

Case No: CV 2005-008698

(Cross Reference # SW 2005-001633)

The seizure was 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 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).

On September 21, 2005 the Arizona Superior Court struck the pleadings of Bayou Fund LLC. The practical effect of this is to speed the forfeiture of the \$100,000,000 claimed by Bayou. Once forfeited, the funds will be available for distribution to victims. In the likely event that those victims are determined to be Bayou investors, the US District Court in New York is the most efficient vehicle for the distribution of the funds to the Bayou investors, so the forfeited funds will be transferred to that court.

On September 29, 2005 the primary controllers of the Bayou Fund family of funds, Samuel Israel III and Daniel Marino, entered guilty pleas to Bayou-related fraud charges

in the US District Court in New York. It is therefore established that criminal fraud occurred at Bayou.

The Arizona Attorney General has received additional documents relating to the origins of the seized funds. We are now reviewing those documents and seeking additional documentation regarding the origins of the funds. While no alternative sources of the funds have been located, additional information has indicated that the funds were in fact involved in prime bank instrument fraud, and person engaged in that type of fraud frequently move money in deliberately confusing ways to obscure the actual path of international funds transfers. It is therefore still possible that the seized funds are not those belonging to Bayou investors, but in fact belong to other investors/fraud victims unrelated to Bayou. Because of the large amount of money involved, the Arizona Attorney General simply needs to be certain of the origins of the funds before it releases them.

The Arizona Attorney General remains committed to returning the seized funds to their rightful owners, and to the belief that having separate court actions in New York and Arizona would be inefficient and unnecessarily costly to the victims of the fraudulent conduct. The Arizona Attorney General has therefore not pursued the previous request for a receivership in Arizona. This will unify the restitution process in the US District Court in New York.

The entire case file, including the affidavit supporting the seizure, is a public record. You may access the Superior Court case file to get the court's Minute Entries at: <http://www.courtminutes.maricopa.gov/scripts/meeds/qreturn.asp>.

Whether the funds are found to belong to Bayou investors or to other investors not yet known to law enforcement, victims of crime have an absolute right to compensation from forfeited funds under Arizona law. 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, so it has no financial interest in the outcome of the tracing process.

None of the developments since September 2, 2005 change the fact that as a practical matter, the existence and progress of the New York action filed by the United States Attorney for the Southern District of New York in United States District Court numbered 05 CIV. 7722 before Judge McMahon means that there is nothing 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 status as an injured person 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.

In the mean while, for Bayou investors who feel the need to obtain information, the Attorney General's Office has made arrangements for 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