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## Receiver's Suit Merits 'Evil Zombie' Standing, 11th Circ. Told

By **David Minsky**

Law360, Miami (March 5, 2024, 10:44 PM EST) -- A receiver appointed to recover fraudulently transferred assets in the wake of a foreign exchange Ponzi scheme urged the Eleventh Circuit on Tuesday to revive its suit against an alleged operator under "evil zombie" standing, arguing that the wrongdoers no longer control the companies it represents.

Representing receiver Burton W. Wiand before the Eleventh Circuit in Miami, Jared J. Perez of Jared J. Perez PA told a three-judge panel that a lower court wrongly determined that his client doesn't have standing in his lawsuit against David Manoukian and his companies Spotex LLC and ATC Brokers Ltd. over accusations they were involved in a \$78 million commodity pool fraud, proceeds from which were allegedly used to purchase "multimillion-dollar" residential properties.

In 2019, the Commodity Futures Trading Commission requested Wiand be appointed as a receiver, which the court approved, to recover \$22 million on behalf of investors in a separate lawsuit. In 2021, Wiand sued Manoukian, ATC Brokers and Spotex over their alleged participation in the scheme, although the lower court said Wiand lacked standing.

"The district court has no analysis in its order of the receiver's fraudulent transfer claim," Perez said, adding that the Eleventh Circuit found, in the 2014 case of [Wiand v. Lee](#), that a receiver has "evil zombie" standing to sue recipients of fraudulent transfers under the Florida Uniform Fraudulent Transfer Act. The Wiand case cited the 1995 case of [Scholes v. Lehmann](#), in which the Seventh Circuit held that a receiver could claw back fraud proceeds once a wrongdoer has been ousted from control of its "evil zombies" corporations. The Scholes court compared corporations engaged in malfeasance to "evil zombies," to which equal fault should no longer apply once the corporations are "freed" from the wrongdoers in management.

Also in 2019, the CFTC initiated an action against Oasis International Group Ltd., Oasis Management LLC, Satellite Holdings Co., subsidiaries and several individuals that controlled the companies, alleging they were all involved in the Ponzi scheme. Wiand brought a suit against Manoukian, who resided in California, alleging that ATC was the exchange firm for the Ponzi scheme and that Spotex, which was registered in Delaware, created the software that provided the trading platform used in the scheme. Court records show the lawsuit was filed in the U.S. District Court for the Middle District of Florida.

The defendants ultimately filed to have the case against them dismissed, with ATC arguing that the receivership can't extend all the way to California and that the Florida court lacked jurisdiction. Wiand's lawsuit was dismissed with prejudice.

Perez argued Tuesday that Manoukian's ownership in ATC and his California residence is enough to show that the court has personal jurisdiction over him in this case. He added that Manoukian's conduct met the "nerve center control test" to show he used his company to make the fraudulent transfers.

U.S. Circuit Judge William H. Pryor said it's undisputed that ATC Brokers executed transactions using \$22 million in funds that were transferred from Florida into accounts located in London.

"The real dispute is about which transactions are relevant, not what the transactions actually

were," Judge Pryor said.

The lower court order dismissing the case did not address ATC's argument that the plaintiff lacked personal jurisdiction. Representing Manoukian and ATC Brokers, Elliot H. Scherker of Greenberg Traurig LLP told the panel that he believed his side would still win even if the case was remanded based on personal jurisdiction.

"They're arguing for California jurisdiction," Scherker said, adding that the plaintiffs shouldn't prevail on arguments they're not making. "They're not talking about Florida, they're not talking about \$22 million being transferred. None of that appears in their arguments before this court, none of that appeared in their arguments in the district court."

Troy Shelton of Fox Rothschild LLP, representing Spotex, argued that his client "never touched any of the money in the transactions involved in this case."

"It merely provides the software that the receivership entities used to display information," Shelton said.

U.S. Circuit Judges William H. Pryor, Stanley Marcus and Jill A. Pryor sat on the panel for the Eleventh Circuit.

Burton W. Wiand is represented by Jared J. Perez of Jared J. Perez PA.

David Manoukian and ATC Brokers Ltd. are represented by Elliot H. Scherker of Greenberg Traurig LLP.

Spotex LLC is represented by Troy Shelton and Matthew Adams of Fox Rothschild LLP.

The case is Burton Wiand v. ATC Brokers Ltd. et al., case number 22-13658, in the U.S. Court of Appeals for the Eleventh Circuit.

--Editing by Dave Trumbore.