

## Banyon Trustee Sues Insurers to Cover \$70M In Ponzi Losses

By **Gavin Broady**

Law360, New York (August 27, 2012, 9:25 PM ET) -- The trustee for the bankrupt parent company of Banyon Capital LLP, a hedge fund linked to convicted Ponzi schemer Scott W. Rothstein, sued a collection of eight insurers in Florida bankruptcy court on Friday over their attempts to dodge \$70 million in commercial crime insurance coverage.

Robert Furr, Chapter 7 trustee for Banyon 1030-32 LLC, filed an adversary complaint in Banyon's bankruptcy proceeding against the insurers, who say contracts indemnifying the company for losses resulting from Rothstein's theft are void as a result of misrepresentations made during the creation of the policies as to the legitimacy of the Rothstein investments.

Banyon, which filed for bankruptcy in November 2011, was the largest lender to Rothstein's \$1.2 billion Ponzi scheme, in which the former Rothstein Rosenfeldt Adler PA partner and his conspirators were accused of selling settlements for employment and sexual harassment claims in which neither the claims nor plaintiffs ever existed.

"The entire confidential settlement business was a lie, and the Banyon entities were unknowing instrumentalities of Rothstein's massive fraud," Furr said. "At no time prior to October 30, 2009 was any executive, employee, or insurance representative ... of the Banyon entities aware that Rothstein's settlement financing business was a Ponzi scheme."

Furr is seeking payouts from Federal Insurance Co., St. Paul Fire & Marine Insurance Co., [RLI Insurance Co.](#), Columbia Casualty Co., Westchester Fire Insurance Co., Zurich American Insurance Co., Ironshore Indemnity Inc. and National Union Fire Insurance Co. of Pittsburgh, Pa.

Furr said that, should the insurers be let off the hook, he is alternatively seeking damages for negligence and breach of fiduciary duty by Banyon's insurance broker, Harden & Associates.

Between 2005 and 2009, Rothstein perpetrated a scheme in which he told investors and lenders about certain RRA clients who had reached large settlements but needed quick cash, and offered to work out deals with the investors under which they would pay the fake settlements at a steep discount to the plaintiffs then receive the total settlements themselves over time.

Banyon was formed in 2007 by George and Gayla Sue Levin for the purpose of investing in Rothstein's confidential settlement scheme and sunk more than \$971 million into the scam before it collapsed in October 2009, according to the complaint.

The company subsequently submitted a proof of loss seeking coverage for \$191 million, and sought further indemnification for an underlying lawsuit claiming that Banyon was a knowing and essential part of Rothstein's scheme.

In February 2010, Ironshore filed a Florida district court action seeking a declaration that an excess liability policy purchased by Banyon was void because the company omitted key facts when it applied for the policy, and in March the remainder of the insurers in the instant suit — with the exception of National Union — filed a second declaratory judgment action seeking to avoid liability on similar grounds.

The insurers say Banyon’s underwriting submission contained a number of misrepresentations, concealments and omissions of fact, including claims that the company was purchasing legitimate legal settlements and that RRA’s accounts would be subject to independent audits, that void the coverage, according to their complaints.

The insurers also are seeking to void the policies based on misrepresentations made by Harden concerning who had access to the Rothstein settlement trusts. According to the insurers, during the underwriting process Harden represented to them that the signatures of both Banyon and Rothstein were required to remove money from the RRA-controlled trusts.

In his complaint, Furr says no such requirement ever existed, that Banyon never suggested the requirement did exist and that under Florida law Banyon could not legally have authorized transfers out of the trust.

Rothstein pled guilty to the scheme in January 2010 and was sentenced to 50 years in prison. In September 2011, Banyon paid at least \$10 million to exit a suit brought by RRA's bankruptcy trustee, who had originally sought \$830 million from the company.

Representatives for the parties were unavailable for comment Monday.

Counsel information for the defendants was not immediately available.

Banyon is represented by Jason S. Mazer, Meghan C. Moore, Matthew B. Weaver and Ashley B. Hacker of [Ver Ploeg & Lumpkin PA](#) and Russell M. Blain and Scott Stichter of Stichter Reidel Blain & Prosser PA.

The bankruptcy case is in re: Banyon 1030-32 LLC, case number [0:10-bk-33691](#) in the U.S. Bankruptcy Court for the Southern District of Florida.

**--Additional reporting by Carolina Bolado. Editing by Richard McVay.**