IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, vs. TRAVIS E. CORRELL, individually and doing business as Horizon Establishment; et al. Defendants, and BANNER SHIELD, LLC; et al. Defendants Solely for Purposes of Equitable Relief. _____ SECURITIES AND EXCHANGE COMMISSION, Plaintiff, vs. GLOBAL FINANCE & INVESTMENTS, INC.; et al. Defendants, and USASSET & FUNDING CORP.; et al. Defendants Solely for Purposes of Equitable Relief.	**Lead Case** Case No.**:** 4:05-CV-472 RAS **Consolidated Case** Case No.:4:07-cv-346 RAS **RECEIVER'S BRIEF IN SUPPORT OF MOTION TO APPROVE PLAN FOR CLAIMS ADMINISTRATION AND DISTRIBUTION OF PROCEEDS** **(IN LEAD CASE CORRELL)**

S. Gregory Hays, Receiver, files this Brief in Support of the Motion to Approve Plan for Claims Administration and Distribution of Proceeds showing this Court as follows:

FACTUAL BACKGROUND

The Securities and Exchange Commission ("SEC") filed the above-styled civil enforcement action (the "Enforcement Action") on December 7, 2005, and in an Order dated that date (the "Receivership Order"), S. Gregory Hays was appointed as Receiver for Travis E. Correll, individually and d/b/a Horizon Establishment, Gregory W. Thompson, Harry Robinson "Robbie" Gowdey, individually and d/b/a Atlas and Jericho Productions, Dwight J. Johnson, Neulan D. Midkiff, Travis E. Correll & Company, Inc., The Net Worth Group, Inc., TNT Office Supply, Inc., Joshua Tree Group, LLC, and over certain assets of relief Defendants Banner Shield, LLC, Hospitality Management Group, Inc., Creative Wealth Ventures, LLC, and JTA Enterprises (the "Receiver Defendants"). After the SEC filed suit against Global Finance & Investments, Inc., et. al. in September 2007, the two cases were consolidated for administrative purposes. However, the actual receiverships have been administered separately.

Among the Receiver's responsibilities is the analysis of the liabilities of the Receiver Defendants – including amounts owed to investors in the subject investment offering – and to develop a plan for distributing the available assets of the Receiver Estate to those who are owed money. To this end, the Receiver has developed a claims submission and review process that is designed to: identify investors and other creditors; determine the proper amount of each claim against the Receiver Estate; and, ultimately, make payment to legitimate claimants in a way that is appropriate under the circumstances of this case.

Unfortunately, there will not be assets sufficient to pay the claims of investors and unsecured creditors in full. As the Receiver has reported from the outset of this case, investors'

monies were used for various purposes, and the remaining assets (including recoveries from third-parties) fall far short of the amount required to satisfy all liabilities.

For numerous reasons, it is imperative that this process be done in an orderly, efficient and fair manner. Accordingly, the Receiver has developed a Plan for Claims Administration and Distribution of Proceeds ("the Plan") that will, upon approval by this Court, govern the process and be binding on all interested parties, including investors and other creditors of the Receiver Estate. As more fully set forth below, the Plan is appropriate under the facts and circumstances of this receivership and is consistent with the principles applicable to receiverships, generally. Hence, the Plan should be approved.

The Offering

The fraudulent investment offering that is the subject of this action is described in detail in the Receiver's Second Interim Report filed on December 6, 2006. In sum, Defendant Travis E. Correll ("Correll") d/b/a Horizon Establishment developed a "prime bank" investment offering known as the Bank Deposit Program. At its inception in 2001, Correll raised money directly from individual investors, promising (and paying) returns on the principal invested ranging from 4% to 6% per month. However, there were no investments. Payments to investors were made using the principal amounts raised from other investors. In short, it was a Ponzi scheme.

Over time, the number of investors and the cumulative amount invested grew dramatically. By 2003, most of the money was raised by "facilitators" – i.e., individuals (or entities) that solicited investment in the Bank Deposit Program from individual investors. The facilitators pooled their investors' monies and then transferred those funds to Correll. This facilitator network has added significantly to the complexity of this case. As has been previously reported to the Court, identifying individual investors and accounting for their investments in this offering has

been extremely difficult. Even so, it appears that between 2001 and 2005, more than $80 million was raised from over 1500 individual investors located throughout the United States.

The Facilitators

It appears that there were facilitators located throughout the United States. The size and structure seems to have varied significantly among facilitators and very few, if any, had dealings with each other. Some were quite small, with investors being comprised of "friends and family." Others were quite large, with some facilitators employing "sales agents" to solicit investors and sell this investment. The monthly return paid by Correll/Horizon to facilitators varied, and it appears that there are differences in amounts paid by facilitators to the individuals who invested through them.

In general, it appears that facilitators were paid a significantly higher monthly return than they were paying to individual investors. In addition, it appears that certain facilitators may have actually received more personal profit from the investment offering than did Correll. Based upon the amounts raised and outstanding principal amount owed, the largest facilitators are:

- ATL, Inc., Creative Wealth Holdings, Inc., et al.
- Horizon Central States Region, XY Resources, et al.
- Joshua Tree Group, LLC and Padanaram Trust
- KG Sitton & Company, LLC
- Sterling-Meridian, LLC
- TNT Office Supply

Travis Correll has indicated that he never told any of the facilitators that the investment offering was a Ponzi scheme. Even so, from the Receiver's perspective (as well as that of the

SEC), this does not absolve the facilitators of all responsibility for the investors' losses. At the very least:

- The facilitators were engaged in the sale of an unregistered security in violation of federal and state securities laws.
- The facilitators were not licensed to sell securities.
- It appears that most, if not all, of the facilitators earned substantial "profits" in connection with this investment offering. In truth, all such "profits" were paid from monies obtained from individual investors based upon materially false and misleading representations and omissions regarding the Bank Deposit Program.

In addition, it appears that the facilitators did very little, if any, due diligence before beginning to engage in these activities, and that certain facilitators may have continued to collect money from individual investors after they knew or should have known that there were significant problems with the Bank Deposit Program. Finally, it appears that when Correll/Horizon Establishment began having trouble making monthly payments, certain facilitators began using their own assets to make payments to their investors rather than disclosing the fundamental problems being encountered with the Bank Deposit Program.

How Investors' Money Was Actually Used

Given the length of time that this scheme operated, it is not surprising that much of the money raised from investors was consumed in making payments to facilitators and individual investors. These payments included monthly payments of illusory returns on the investment, as well as occasional refunds of principal to investors.

When it became apparent to Correll that the Bank Deposit Program was nothing more than an insolvent Ponzi scheme, he began to invest aggressively in various other enterprises, many of which turned out to be fraudulent. Some simply failed to pan out. Others were legitimate, though none has proven to be the "home run" investment Correll was hoping for.

Recoveries

The Receiver has taken control of the assets of all of the Receiver Defendants. These included houses, automobiles, cash, various items of personalty and intangible assets (e.g., real estate partnerships, oil and gas leases, etc.). These assets have been liquidated, though some were collateral for mortgages or other secured loans. In addition, the Receiver has recovered money and other assets from third-parties. To date, the total realized from these efforts is approximately $8 million. The most significant asset liquidations and recoveries are as follows:

Frozen Bank Accounts	
Atlas LLC	$300
Dwight Johnson	$1
Dwight Johnson	$3,081
Greg Thompson	$10,082
Harry R. Gowdey	$2,191
Harry R. Gowdey	$28
Harry R. Gowdey	$4,456
Harry R. Gowdey	$28
Horizon Establishments	$153
Horizon Establishments	$332,082
Joshua Tree Group	$2,035,942
Neulan Midkiff	$25,370
Neulan Midkiff	$4,828
TNT	$19,198
Travis Correll & Company	$4,822
Travis E. Correll	$5,652

Sale of Real Property	$972,463

Sale of Personal Property	$188,201

Sale of Business Interests	
Investment in Portland Monthly	$800,000
Investment in Element Payment Systems	$555,000
Investment in Angelic Entertainment	$300,000
Investment in Gin-Bug. Development in Helotes, TX.	$264,000
TNT Office Supply - Business and Receivables (Net)	$117,807
Adire Group - Investment/Loan/Ownership Interest	$5,000
Superior Staffing - Investment/Loan/Ownership Interest	$5,000

Third Party/Misc. Recoveries		
	R.W. Dufresne - Investment Recovery	$620,000
	Stewardship Group LLC. - Return of Invested Funds	$519,000
	Recovery of Charitable Contribution	$488,655
	Tax Refund	$335,684
	Forest Lake Evangelical Lutheran Church - Sale of Equity in Real Property	$235,438
	Sitton Note Collection	$113,500
	Hospitality Management Settlement	$18,000

These liquidation and recovery activities are largely complete; however, the Receiver Team continues to investigate and pursue a limited number of additional third-party claims. The unfortunate reality is that the cost of performing these and other tasks required in the administration of this receivership has been quite high.

SUMMARY OF THE PLAN

The Plan is straightforward. Investors and other creditors have submitted information to the Receiver supporting the amount of their claimed losses. The Receiver Team will review and analyze each of these claims, in conjunction with other available information, in an effort to determine principal amount owed to each investor and creditor. For investors, losses will be calculated on a cash basis – i.e., the loss equals the amount invested by an investor minus the amount paid to the investor. The illusory returns purportedly earned, but not paid to an investor, will not affect this calculation.

Once the review is completed, the Receiver will provide written notice to each investor and creditor regarding the Receiver's determination of the amount of the loss incurred by (or other debt owed to) that investor or creditor. At the same time, the Receiver will identify any other issues that may be important to the actual resolution of the investor's (or creditor's) claim. Any investor or creditor who disagrees with the Receiver's determination will then have the opportunity to dispute the Receiver's decision by filing a written objection with the Receiver.

The Receiver will endeavor to resolve these disputes by agreement. Any that cannot be resolved will be submitted to this Court for adjudication in a summary proceeding.

When all disputes have been resolved (or earlier, if appropriate), the Receiver will make payment to investors and creditors from the funds available for distribution.[1] Each investor and creditor having a claim that is "approved" by this Court, will be paid a pro rata portion of the amount available for distribution. Absent unforeseen issues that require significant expenditures of time and money by the Receiver Team or unexpected claims that have priority, the Receiver estimates that approximately $5 to $6 million will be available for distribution. Based on the claims analysis done to date, the Receiver anticipates that each investor and creditor will receive a payment from the Receiver Estate that equals approximately 8 to 12% of that investor's/creditor's "approved" claim.

ARGUMENT AND CITATION OF AUTHORITY

In overseeing and administering an equitable receivership such as the instant case, this Court's discretion in approving the Plan is given great deference and may be disturbed on appeal only upon the showing of an abuse of discretion. See SEC v. Elliot, 953 F.2d 1560, 1567 (11th Cir. 1992). The Plan proposed by the Receiver is consistent with plans approved in other cases. There are no unusual or difficult issues. Even so, the following aspects of the Plan may be of special interest to the Court and/or investors and creditors:

[1] Professional and other administrative fees, secured creditors and taxing authorities have priority over investors and creditors subject to the claims administration process.

I. It is appropriate to determine the amount of investors' losses on a cash basis, without regard to the unpaid illusory/fictitious returns.

As noted above, the Plan provides that the amount of an investor's loss will be calculated on a "cash-in – cash out" basis – *i.e.*, the amount of principal invested less any returns, referral fees, or other funds received by the investor. Investors' claims will not be increased by any "earned," but unpaid returns. Conversely, any payments actually made to or on behalf of an investor will be credited so as to reduce the amount of cash loss. Not only is this the most efficient method of calculating loss, it is the most fair. When confronted with similar situations and challenges to this method of establishing the loss amount, courts have upheld this method of determining a loss amount as fair and reasonable. See SEC v. Basic Energy & Affiliated Res., Inc., 273 F.3d 657, 660 (6th Cir. 2001); SEC v. Forex Asset Mgmt. LLC, 242 F.3d 325, 331 (5th Cir. 2001) (affirming the trial court's approval of plan that calculated each investor's allowed claim as a percentage of their loss as measured against the losses of all of the unpaid claimants as "fair and equitable"); SEC v. Certain Unknown Purchasers of Common Stock etc., 817 F.2d 1018, 1020 (2nd Cir. 1987) (affirming the district court's approval of a plan based on "actual out-of-pocket losses"); SEC v. Capital Consultants, Inc., 2002 U.S. Dist. LEXIS 27399 (D. Or. Dec. 4, 2002) (upholding a Receiver's calculation of amount for distribution on a money-in/money-out basis and a pro- rata distribution). Hence, the Plan's methodology for determining each investor's loss is appropriate.

II. It is appropriate to treat all of the monies recovered as a "common fund" from which payment to all investors and creditors will be made.

The Receiver's Plan aggregates all available money into a single fund. No effort has been made to trace any specific investor's funds. From the earliest Ponzi scheme cases, courts have made clear that this is almost always the most equitable way to treat investors. As the Supreme Court noted in the original Ponzi case, receiverships involving Ponzi schemes "call

strongly for the principle that equality is equity." Cunningham v. Brown, 265 U.S. 1, 13 (1924); SEC v. Forex Asset Mgmt. LLC, 242 F.3d 325, 331 (5th Cir. 2001) (holding that the district court did not abuse its discretion when it determined that, despite the fact that some of the funds available for distribution were segregated and traceable to one investor, allowing one investor to trace its funds and avoid a pro-rata distribution among all of the investors would be an inequitable remedy). See also, Basic Energy & Affiliated Res., Inc., 273 F.3d at 660-61, 670-71 (upholding the district court's approval of a plan of distribution from a common pool of assets despite the fact that a group of objecting investors could trace invested funds to a segregated account because all investors were victims of the same fraudulent scheme and the common fund approach "fair and equitable").

III. It is appropriate to use summary proceedings to resolve disputes regarding the amount owed to an investor or creditor and other related issues.

The Receiver anticipates that most disputes regarding claims will be resolved without the intervention of the Court. However, in the event disputed claims cannot be resolved by agreement, they will be submitted to the Court for determination. The Plan sets forth procedures for summary proceedings that are intended to be expeditious and cost efficient, while affording objecting investors and creditors with due process. While the process must be fair, it must also be as speedy as possible. In all likelihood, no payments will be made until all disputes are resolved.

The use of summary proceedings to determine appropriate relief is within the jurisdiction of this Court. SEC v. Basic Energy and Affiliated Res., Inc., 273 F.3d 657, 668 (6th Cir. 2001); Elliot, 953 F.2d at 1566. The use of summary proceedings furthers the Receivership's primary purpose to promote the orderly and efficient administration of the estate for the benefit of investors and other creditors. See, e.g., SEC v. Hardy, 803 F.2d 1034, 1037-40 (9th Cir. 1986).

Summary proceedings enable a receiver to avoid the formalities of plenary proceedings that would slow down the resolution of disputes. Id. Moreover, summary proceedings reduce litigation costs, and in turn, preserve a greater amount of the receivership assets for distribution. Id.

The summary proceedings set forth in the Plan provide parties with notice and a meaningful opportunity to be heard, but require an evidentiary hearing only if there are disputed issues of fact. See Elliot, 953 F.2d at 1566-67 (citing Codd v. Velger, 429 U.S. 624 (1977) (*per curiam*); SEC v. Blavin, 760 F.2d 706, 713 (6th Cir. 1985). Such proceedings are appropriate in receiverships and may be used to allow or disallow the claims of investors and creditors. See Hardy, 803 F.2d at 1040.

Summary proceedings are particularly appropriate in this case because there is little likelihood of complex factual disputes in the claims administration process. The Receiver anticipates that disputes over claims, if any, will involve simple fact questions regarding the date that particular investments were made or the net loss of particular investors, and that most of these disputes will be resolved without Court intervention. The summary process set forth in the Plan will permit the Court to adjudicate any such dispute quickly and fairly.

CONCLUSION

The proposed Plan is consistent with the prevailing principles of equity and comports with plans approved in other receiverships. It provides a fair and efficient process for administering claims, resolving disputes and, ultimately, distributing money to investors and other creditors. Accordingly, the Receiver requests that his motion seeking approval of the Plan be approved and that the Plan be adopted as an order of this Court.

This 14th day of November, 2008.

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CERTIFICATE OF SERVICE

I do hereby certify that, November 14, 2008, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following:

Timothy S. McCole
Scott R. Baker

I further certify that, on November 14, 2008, the foregoing has been served to the following non-CM/ECF participants by United States Mail, postage pre-paid:

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