

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

ALBERT E. PARISH, JR., PARISH
ECONOMICS, LLC, and
SUMMERVILLE HARD ASSETS, LLC,

Defendants.

CIVIL ACTION NO.
2:07-cv-00919-DCN

**THIRD APPLICATION OF THE RECEIVER
FOR AUTHORITY TO PAY
PROFESSIONAL FEES AND REIMBURSE COSTS**

S. Gregory Hays, the court appointed Receiver for Albert E. Parish Jr., Parish Economics, LLC (“Parish Economics”), Parish Enterprises, LLC (“Parish Enterprises”) and Summerville Hard Assets, LLC (“Summerville Assets”) (collectively “Receivership Estate” or “Receivership Entities”), files this Third application for authority to pay professional fees for services rendered and to reimburse costs advanced on behalf of the Receiver, and respectfully shows the following:

BACKGROUND

1.

The Receiver was appointed by this Court in Orders entered on April 5, 2007, and April 12, 2007 (“The Receivership Orders”).

2.

Included in the Receiver’s powers is the authority to “employ such employees, accountants, consultants, attorneys and other professionals, including employees of his own professional firm, as are necessary and proper for the administration of the Receiver Estate and the performance of his duties as set forth herein.” (April 5 Order, § XX; April 12 Order, § XIX.) The Receivership Orders provide that “[a]ll costs incurred by the Receiver shall be paid from the Receivership Estate.” Id.

3.

The Receiver has retained the financial consulting firm of Hays Financial Consulting, LLC (“HFC”) as his accountants and financial consultants.

4.

The Receiver has retained the law firms of Troutman Sanders LLP (“Troutman Sanders”) and David Popowski (“Popowski”) as counsel for the Receiver.

5.

The Receiver filed his First Interim Report (the "First Report") on April 12, 2007 and filed the Second Interim Report (the "Second Report") on May 30, 2007. The activities undertaken by the Receiver, his counsel and his accountants and consultants through May 30, 2007 are described in the First Report and Second Report. As indicated in these reports, this is a complicated case, which has required and continues to require significant effort by the Receiver and those working with him. The professionals working on this case are well aware of the time and expense being incurred and endeavor at all times to work in an efficient and productive manner.

6.

The Receiver, his financial consultants and any counsel or accountants are entitled to reasonable compensation for the performance of their duties from the assets held by or in the possession or control of the Receiver Estate, in the amount(s) commensurate with their duties and obligations, plus actual out-of-pocket expenses incurred by them.

APPLICATION FOR FEES

7.

This application seeks approval and payment of the fees and reimbursement of expenses for the Receiver, Troutman Sanders, Popowski, and HFC, for the time

period from June 1, 2007 through June 30, 2007.

8.

The Receiver and all professionals working with him in this case have maintained detailed time records and created monthly statements, redacted versions of which are attached hereto as Exhibits “A” through “D” and contain the following information for the time period of June 1, 2007 through June 30, 2007, regarding the Receiver, HFC, Troutman Sanders, and Popowski, respectively: (a) the number of hours worked by each professional on a particular day; (b) the manner and type of work performed by each professional; and (c) the monetary value assigned to each task performed by each professional.¹ Because these statements provide substantial amounts of information protected from disclosure by the attorney-client privilege and the attorney work product doctrine, the unredacted copies will not be provided to other parties or counsel in this case. The detailed billing statements will be hand-delivered to the Court for in-camera inspection.

While the Receiver’s and HFC’s statements are more clear on certain points than those of Troutman Sanders (due to differences in time-keeping and billing systems), it should be noted that:

¹ In submitting these detailed statements, the Receiver does not intend to and should not be construed to waive, limit or otherwise modify any rights that he may have with respect to the attorney-client privilege, the attorney work product doctrine or any other applicable privilege.

- The Troutman Sanders billing rates indicated in the statements are “net” of a 5% discount.
- With the discounted rate, the average hourly billing rate for Troutman Sanders was \$263.13.
- Travel time has not been billed (unless otherwise billable work was performed in transit).
- The Receiver and HFC have discounted their fees a total of 10% as a result of the labor intensive nature of collecting and securing assets.
- The Receiver, his lead counsel, Mr. Dantzler, along with other professionals, have devoted significant time to this case that was not recorded (or billed). For example, professionals often capped their recorded time at something significantly less than what they actually worked. Mr. Dantzler, in particular, never billed more than 8 hours for any given day even though he frequently worked longer than that.

9.

During the period covered by this Application, the Receiver has incurred the following fees and expenses in connection with these proceedings:

Receiver:

Fees (net after a 10% discount)	\$20,315.74
Expenses	+ <u>\$658.91</u>
Total	\$20,974.65

HFC:	
Fees (net after 10% Discount)	\$ 99,333.00
Expenses	+ <u>\$9,955.28</u>
Total	\$109,288.28

Troutman Sanders:	
Fees (net after 5% Discount)	\$82,201.75 ²
Expenses	+ <u>\$4,408.49</u>
Total	\$86,610.24

Popowski:	
Fees	\$3,892.00
Expenses	+ <u>\$0.00</u>
Total	\$3,892.00

JOHNSON FACTORS³

10.

In support of this Application, the Receiver, HFC, Troutman Sanders and Popowski respectfully direct this Court's attention to those factors generally considered by courts in awarding compensation to attorneys for services performed in connection with the administration of a receivership estate. As recognized by this Court, courts frequently consider the twelve (12) factors set forth in Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974), to determine the reasonableness of fee requests:

² Time entries have been reduced by the amount of time professionals spent on matters related to Parish Enterprises LLC, d/b/a AJ Davis. These amounts will be paid from the proceeds of the liquidation of AJ Davis as approved by Court Order dated July 10, 2007.

³ Although the Receiver does not believe that it is necessary for the Court to analyze the "Johnson Factors" in ruling on the Receiver's application for fees and expenses, the Receiver does find these factors to be helpful in demonstrating to the Court the full breadth of activity that the Receiver and those employed by him have undertaken.

(1) the time and labor expended; (2) the novelty and difficulty of the questions raised; (3) the skill required to properly perform the legal services rendered; (4) the attorney's opportunity costs in pressing the instant litigation; (5) the customary fee for like work; (6) the attorney's expectations at the outset of the litigation; (7) the time limitations imposed by the client or circumstances; (8) the amount in controversy and the results obtained; (9) the experience, reputation and ability of the attorney; (10) the undesirability of the case within the legal community in which the suit arose; (11) the nature and length of the professional relationship between attorney and client; and (12) attorneys' fees awards in similar cases.

Liberty Mut. Ins. Co. v. Employee Res. Mgmt., Inc., 176 F. Supp. 2d 510, 532 (D. S. C. 2001)(J. David C. Norton). The Johnson factors, as applied to the services rendered in this case by the Receiver, HFC, Troutman Sanders and Popowski are addressed below.

11.

The Time and Labor Required. While this is a single case, it is, from a time and expense perspective, akin to several significant cases. While the activities of all the professionals involved have been focused principally on the Defendants (all of whom are in the Receivership), substantial efforts have been devoted to obtaining information from the various financial institutions and other third parties who had relationships with the Defendants.

This case has proven to be especially complex for many reasons including the following:

- The condition of the records, if any, regarding: (1) the history of the

investment pools and the period of time during which they operated, (2) the receipts from and disbursements to individual investors, (3) trading activities in the commodities and securities accounts, (4) the acquisition, disposition, and maintenance of the “hard assets,” or (5) Defendants’ activities regarding non-traditional investments;

- the number of investors;
- the cumulative amount of investor money involved;
- the large number of business ventures and professional relationships in which Parish was involved;
- the very large number of tangible and intangible assets that have been identified and analyzed as part of the Receiver Estate and the significant number that remain;
- the complexity and difficulty of the disposition of the varied and numerous tangible and intangible assets;
- the lack of any systematic method of storing or physically maintaining the hard assets;
- the diverse nature of the assets in the Receiver Estate;
- the difficulty in determining the value of many of the assets in the Receiver Estate;
- Albert Parish’s psychological condition and care continue to make it

difficult to obtain information from him, directly or indirectly through his counsel; and,

- Third-parties, including investors and other creditors, have raised myriad issues that have required significant time and effort to address and resolve.

The volume of information that has already been gathered and reviewed is quite large, and the Receiver continues to receive additional information to review. The Receiver believes that he and the professionals working with him have gained a general understanding of how the investment pools operated (or failed to operate); however, new facts are continually discovered, which require further investigation.

The Receiver and the professionals working with him endeavor to commit time and money to tasks based upon a “cost/benefit” analysis; however, in the context of litigation, generally, and the administration of receiverships, more specifically, an accurate up front “cost/benefit” analysis is not always possible. All professionals involved in this case are well aware that the expense associated with their activities is substantial. They are also mindful of the fact that they are being paid from funds that are assets of the Receivership Estate (which includes investor monies). The Receiver and other professionals have made, and will continue to make, a concerted effort to be good stewards of the assets of the Receivership Estate.

In sum, substantial time and labor have been expended by the Receiver, HFC, Troutman Sanders and Popowski. The Receiver believes that these efforts, along with the associated expense, are necessary to the effective administration of the Receivership Estate and to the discharge of his responsibilities under the Receivership Order.

12.

The Novelty and Difficulty of the Questions. Many of the activities undertaken by the professionals involve factual and legal questions that are novel and complex. By its very nature, a receivership is both unique and complicated. As indicated above, there are numerous factors present here that combine to make this case especially difficult. For example, the Receiver, his staff, and counsel have dealt with numerous issues associated with the hard assets included in the Receiver Estate, in order to collect, value, preserve, and maximize asset sale value where possible. The Receiver, his staff, and counsel continue to address issues associated with the hard assets. Additionally, the creditors and some investors have been very active in this case, raising a variety of issues that are often complicated.

13.

The Skill Requisite to Perform the Service. The Receiver believes that the services performed in this case have required professionals who are experienced in

dealing with the issues that arise in the course of receiverships, including: specialized knowledge of the substantive and procedural law applicable to receiverships; formal and informal processes for obtaining, assimilating and analyzing information; electronic data recovery, preservation and analysis; forensic financial analysis and funds tracing; asset administration and liquidation; and obtaining information from and communicating with investors. In addition, this receivership has required specialized knowledge regarding various legal issues related to the rights and obligations of the Defendants, as well as creditors, investors and other third-parties who had a relationship or otherwise dealt with any of the Defendants. The Receiver, HFC, Troutman Sanders and Popowski have considerable experience in such areas.

14.

The Preclusion of Other Employment Due to Acceptance of the Case. The Receiver, HFC, Troutman Sanders and Popowski have not declined any representation solely because of their services as Receiver and counsel or consultants for the Receiver. Given the magnitude of effort required to properly administer the Receivership, however, the individual professionals working on this case have obviously been precluded from working on other matters during the time that they have been engaged in activities on behalf of the Receiver.

The Customary Fee. The hourly rates sought herein are commensurate with the rates charged by other professionals of similar experience levels in Atlanta, Georgia and Charleston, South Carolina. During the course of these proceedings, the following professionals have performed services on behalf of the receivership. (The customary hourly rates of the Atlanta professionals have all been discounted)

Receiver

S. Gregory Hays, CTP, CIRA - \$325.00 per hour. Mr. Hays has more than 25 years of experience, including 15 years in managing receivership and bankruptcy cases including extensive forensic accounting and financial investigations. He has been appointed as receiver in District Court and State Court and has been appointed Chapter 11 bankruptcy trustee in over a dozen cases. Mr. Hays serves on the Chapter 7 trustee panel in the Northern District of Georgia and is a Certified Turnaround Professional and a Certified Insolvency & Restructuring Advisor.

Troutman Sanders

J. David Dantzler, Jr. (\$475.00 per hour) Mr. Dantzler, lead counsel to the Receiver, is a partner at Troutman Sanders and has been practicing law since 1981. A substantial portion of his practice is focused on securities and financial fraud. Since 1995, he has served as lead counsel for receivers appointed in significant cases filed by the SEC, CFTC and FTC.

David F. Golden (\$400 per hour) Mr. Golden is a partner at Troutman Sanders and has been practicing law since 1984. Mr. Golden has substantial experience dealing with trusts and state and federal taxation of corporations, partnerships, individuals, tax exempt entities and industrial development bonds.

Merle R. Arnold III (\$300 per hour), Jennifer Duncan (\$275 per hour) and Benjamin Chastain (\$225 per hour), are associates at Troutman Sanders. Messrs. Arnold and Chastain's practices focus exclusively on civil litigation. Ms. Duncan's practice focuses on real estate.

Harrilee Cheshire (\$210 per hour) Ms. Cheshire is a paralegal with 32 years of experience with civil litigation.

Additional staff at Troutman Sanders has worked on this receivership and other receiverships with rates of ranging from \$75.00 to \$120.00 per hour.

David Popowski

David Popowski (\$280.00 per hour) Mr. Popowski has been practicing law since 1975. Mr. Popowski's practice focuses on general civil litigation in all South Carolina State Courts and all federal courts. Mr. Popowski also has experience with administrative, business, transportation, maritime/admiralty, commercial leasing, and personal injury law.

HFC

J. Wesley Pennington, CPA/ABV, CFE, CIRA, CTP – \$325.00 per hour. Mr. Pennington has 25 years of combined public accounting, industry and consulting experience. He serves as a Managing Director for Hays Financial Consulting, LLC. He has qualified as an expert witness and case consultant in economic damages, insolvency, business appraisal and liability matters in Federal, State, and Bankruptcy Courts and the U.S. Court of Claims. Mr. Pennington is a Certified Public Accountant, is accredited in Business Valuation by the AICPA ("CPA/ABV"), Certified Fraud Examiner, Certified Insolvency and Restructuring Advisor, and Certified Turnaround Professional.

Scott S. Askue, CIRA – \$210.00 per hour. Mr. Askue is a Managing Director at Hays Financial Consulting, LLC. He provides financial analysis, avoidance action analysis, claims analysis, asset research, and data conversion management. He has over 8 years experience investigating complex receiverships involving the SEC, the CFTC and

the FTC. He also has significant experience in bankruptcy cases, financial and fraud investigations and restructurings. Mr. Askue is a Certified Insolvency and Restructuring Advisor.

Mark C. King, CTP, CCE – \$210.00 per hour. Mr. King is a Director with Hays Financial Consulting, LLC. He has over 22 years of operational and financial management experience, including over 10 years experience investigating complex receiverships involving the SEC, CFTC and the FTC. Mr. King manages the firm's forensic data recovery and analysis practice, and has substantial experience in bankruptcy cases, turnarounds of distressed companies, financial and fraud investigations and restructurings. Mr. King is a Certified Turnaround Professional and a Certification Forensic Computer Examiner.

Linda K. Baldwin, CPA, CFE, CIRA – \$210.00 per hour. Ms. Baldwin has over 18 years experience directing companies in a vast range of industries through debtor-in-possession operations and turnaround restructuring. She serves as the Director of Financial Reporting with Hays Financial Consulting, LLC. She is responsible for conducting forensic investigations of accounting records, reconstructing records that are incomplete or unavailable, reporting suspicious and potentially fraudulent accounting practices, preparing financial reports and funds tracing analyses. In addition, Ms. Baldwin has over eight years experience working directly for major insurance carriers and insurance brokers. Ms. Baldwin is a Certified Public Accountant with active certificates in multiple states, a Certified Fraud Examiner and a Certified Insolvency and Restructuring Advisor.

Richard F. Hunter, CFE – \$180.00 per hour. Mr. Hunter is the Director of Asset Recovery & Disposition at Hays Financial Consulting, LLC. He has over 25 years experience in analysis and recovery of assets in both the commercial and consumer credit industries. He also has four years experience in bankruptcy cases and financial fraud investigation in receiverships. Mr. Hunter is a Certified Fraud Examiner.

Kathy A. Malek, PHR – \$160.00 per hour. Ms. Malek serves as the Director of Human Resources for Hays Financial Consulting where

she assists failed companies with the termination of their retirement plans and healthcare plans. Ms. Malek also manages Department of Labor disputes, curing delinquent labor reporting, Workers Compensation issues and eliminating unsupported governmental assessments. She has over 17 years experience in the Human Resource field as well as numerous years of experience with accounting administration and claims analysis in bankruptcy cases and receiverships. Ms. Malek is certified as a Professional in Human Resources.

Shuwanda Y. Sloane, CFE – \$100.00 per hour. Ms. Sloane is a Fraud Investigator for Hays Financial Consulting, LLC. She is responsible for obtaining and organizing documents evidencing the elements of fraud, obtaining banking records from financial institutions and other records subpoenaed, tracing funds in fraud cases, creating databases documenting investor losses and other case related data, and coordinating communications with companies. Ms. Sloane is a Certified Fraud Examiner.

Robert E. Meehan, CPA – \$235.00 per hour. Mr. Meehan is the Director of Taxes for Hays Financial Consulting, LLC. Mr. Meehan has over 40 years of experience as an acknowledged leader in the field of taxation. Mr. Meehan is a Certified Public Accountant holding active certificates in multiple states.

Ms. M. Eileen Castle, CPA – \$235.00 per hour. Ms. Castle also has over 25 years tax management experience in a wide variety of industries – to analyze the tax affairs of bankrupt companies, searching for tax refund opportunities, managing state and federal audits and bringing companies tax filings current to avoid arbitrary assessments by taxing authorities. Ms. Castle is a Certified Public Accountant holding active certificates in multiple states.

James R. Begnaud, CPA – \$210.00 per hour. Mr. Begnaud is a Director with Hays Financial Consulting, LLC. He has over 25 years experience in operational management, financial accounting and analysis, and risk management as well as significant background directing companies through Debtor-in-Possession operations implementing plans of reorganization, wind-down, sale of operations,

and ultimate liquidation. Mr. Begnaud is a Certified Public Accountant.

Additional staff at Hays Financial Consulting, LLC has worked on this receivership and other receiverships with rates from \$60.00 to \$130.00 per hour.

16.

Whether the Fee is Fixed or Contingent. The fees of the Receiver, HFC, Troutman Sanders and Popowski are fixed insofar as they are based upon the fixed hourly rates described above. Payment of professional fees and expenses is, however, contingent upon there being enough money in the Receivership Estate to make such payments. At present, there appears to be money available in the Receivership Estate to fund the activities of the Receiver and the professionals working with him. The Receivership Order provides that the payment of professional fees is subject to Court approval.

17.

Time Limitations Imposed by the Client or Other Circumstances. Because a significant aspect of this receivership involves a search for money and other assets, as well as management and administration of a problematic real estate portfolio, time is critical. While the litigation schedule is no different than other complex civil cases, the efforts to recover and analyze information related to money and assets are necessarily conducted on an expedited basis.

Though a substantial amount of ground work in this receivership has been

accomplished, substantial efforts are still required to marshal the assets of the Receivership Estate, to liquidate those assets where necessary, and to fully investigate and pursue potential claims against third parties. The Receiver expects that the amount of time and effort required going forward will, on a monthly basis, continue to be less than the time spent in the early stages of this case.

18.

The Amount Involved and the Results Obtained. This case involves an investment offering that raised in excess of \$112,500,000 from approximately 600-650 individual investors. During the period covered by this Application the Receiver and the professionals working with him dealt with the below matters, many of which were described more fully in the First Report and the Second Report:

- a. Continued analysis of over 17 of Parish's computers and laptops, books and records. Review of the information from these sources is still in process;
- b. Continued data preservation and forensic recovery activities to make certain that all relevant data is located and preserved;
- c. Continued organization, review and supplementation of Parish's incomplete real estate files;
- d. Continued the process of taking control of, managing, and addressing legal and other issues related to seven pieces of real property in Charleston, South Carolina, Summerville, South Carolina, Edisto Island, South Carolina, and Highlands, North Carolina, together with time share interests in properties located in New York, New York, and Florida. Issues related to these

properties include rental, preparation for possible disposition of the properties, and exploration of possible avenues for disposition;

- e. Continued efforts to identify, recover, secure, catalog, and arrange for the sale of more than 4500 “hard asset” items, including paintings, animated art, watches, jewelry, pens, guitars, and other objects d’art;
- f. Maintained around-the-clock surveillance to safeguard Receiver Estate assets;
- g. Maintained insurance coverage on assets of the Receiver Estate.
- h. Continued to recover, organize and analyze the finance, accounting, and banking records of the Receiver Estate;
- i. Maintained regular communications with investors, through the Receiver’s website, a telephone hotline, and correspondence;
- j. Continued efforts to locate and recover funds from bank accounts, note payments, brokerage accounts and other sources;
- k. Continued to identify additional persons and entities in possession of assets that may be subject to the Court’s freeze order;
- l. Followed up on the over 100 document subpoenas or freeze letters sent to financial institutions and other third-parties. Prepared and served additional subpoenas to persons and entities identified as potentially being in possession of assets that may be subject to the Court’s freeze order;
- m. Continued investigation of potential claims against third parties;
- n. Revised Investor Claim Form and a non-Investor Claim Form. Reviewed and analyzed claims forms submitted to the Receiver;
- o. Continued analysis of tax issues;
- p. Continued efforts to obtain control over the personal property of Parish and other Receivership Entities;

- q. Continued forensic analysis of the relevant financial transactions and the construction of a funds tracing database for the purpose of determining the various sources and uses of monies under Defendants' control during the course of the offerings that form the basis of this action;
- r. Interviewed Parish and various other individuals, including Parish's wife and other family members;
- s. Prepared for auction and disposition of numerous hard assets; and
- t. Researched and formulated plan for disposition of life insurance policies.

19.

The Experience, Reputation and Ability of the Attorneys. The attorneys at Troutman Sanders principally responsible for this case specialize exclusively in the practice of civil litigation and have many years of experience in cases involving securities and financial fraud. The practice of these attorneys regularly includes the representation of receivers. The attorneys from Troutman Sanders as well as David Popowski are recognized and respected by their peers and others in their community. Likewise, the Receiver and the professionals at HFC are respected by their peers for their work in receiverships, bankruptcies, turn-arounds and similar financial restructuring work.

20.

The Undesirability of the Case. While difficult and challenging, the representation has not been undesirable.

21.

The Nature and Length of the Professional Relationship with the Client.

Troutman Sanders has represented S. Gregory Hays, the Receiver, in other matters for a number of years.

22.

Award in Similar Cases. Based on their collective experience, the Receiver and the professionals working with him believe that the fees requested in this case are consistent with fees awarded in similar cases in this District and elsewhere.

WHEREFORE, S. Gregory Hays, Receiver, respectfully requests that the Court review and approve the fees for professional services rendered and costs advanced by the Receiver; Hays Financial Consulting, LLC; Troutman Sanders LLP and Popowski from June 1, 2007 through June 30, 2007, and authorize payment of such approved fees and expenses as requested herein. A proposed Order granting the relief requested is attached as Exhibit "E" hereto.

This 12th day of September, 2007.

By: /s/ David Popowski
David Popowski
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CERTIFICATE OF SERVICE

This is to certify that on September 12th, 2007, the foregoing *Third Application Of Receiver For Authority To Pay Professional Fees And To Reimburse Costs* was filed with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to all attorneys of record.

By: /s/ Merle R. Arnold III
TROUTMAN SANDERS LLP
Merle R. Arnold, III
(admitted pro hac vice)
Ga. State Bar No. 023503