

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

<p>SECURITIES AND EXCHANGE COMMISSION,</p> <p>Plaintiff,</p> <p>vs.</p> <p>TRAVIS E. CORRELL, individually and doing business as Horizon Establishment; et al.</p> <p>Defendants,</p> <p>and</p> <p>BANNER SHIELD, LLC; et al.</p> <p>Defendants Solely for Purposes of Equitable Relief.</p> <hr/>	<p>Lead Case</p> <p>Case No.: 4:05-CV-472 RAS</p> <p>RECEIVER'S TWENTY SEVENTH INTERIM APPLICATION FOR PAYMENT OF PROFESSIONAL FEES AND EXPENSES INCURRED IN LEAD CASE CORRELL IN APRIL 2008 AND BRIEF IN SUPPORT</p>
<p>SECURITIES AND EXCHANGE COMMISSION,</p> <p>Plaintiff,</p> <p>vs.</p> <p>GLOBAL FINANCE & INVESTMENTS, INC.; et al.</p> <p>Defendants,</p> <p>and</p> <p>USASSET & FUNDING CORP.; et al.</p> <p>Defendants Solely for Purposes of Equitable Relief.</p>	<p>Consolidated Case</p> <p>Case No.:4:07-cv-346 RAS</p>

**RECEIVER'S TWENTY SEVENTH INTERIM APPLICATION FOR PAYMENT OF
PROFESSIONAL FEES AND EXPENSES INCURRED IN LEAD CASE CORRELL IN
APRIL 2008 AND BRIEF IN SUPPORT**

S. Gregory Hays (“Receiver”) files this Interim Application seeking this Court’s approval to allow and pay the (1) Receiver’s fees and expenses, (2) attorneys’ fees and expenses, and (3) accountants’, financial consultants’, and investigators’ fees and expenses incurred in April 2008. In support, the Receiver shows the Court as follows:

Background

1. Pursuant to the terms of this Court’s December 7, 2005 Order Appointing Receiver (the “Receivership Order”), the Receiver continues to employ the law firms of Troutman Sanders LLP (“Troutman Sanders”) as his general counsel and Quilling Selander Cummiskey & Lownds, P.C. (“QSCL”) as counsel in Texas. The Receiver also continues to employ his own firm, Hays Financial Consulting, LLC (“HFC”), located in Atlanta and Bray & Freeman, L.P. (“Bray & Freeman”), an investigative firm located in Fort Worth, Texas. The Receivership Order directs the Receiver to seek and obtain the approval of this Court prior to making payment of the professional fees and expenses that are the subject of this Application.¹

Application For Fees

2. This Application seeks approval and payment of the fees and reimbursement of expenses for the Receiver, Troutman Sanders, QSCL, HFC and Bray & Freeman (“the Receiver Team”) incurred in April 2008. During the period covered by this Application, the Receiver Team has incurred fees and expenses in connection with these proceedings as follows:

¹ See the Receiver’s First Interim Application for Payment of Professional Fees and Expenses Incurred in December 2005 and Brief in Support for a more detailed rendition of the background in this matter.

April 2008

Receiver: \$2,485.00 (fees)

HFC: \$24,759.00 (fees); \$789.09 (expenses)

Troutman Sanders: \$21,848.19 (fees); \$735.64 (expenses)

QSCL: \$43,767.50 (fees); \$2,023.82 (expenses)

Bray & Freeman: \$11,527.77 (fees)²

3. The various monthly statements attached hereto as Exhibits “A” through “E” contain the following information for April, 2008 regarding the Receiver, Troutman Sanders, HFC, QSCL and Bray & Freeman, 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.³

JOHNSON FACTORS

4. In support of this Application, the Receiver Team respectfully directs 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 stated by the Fifth Circuit Court of Appeals in *Migis v. Pearle Vision, Inc.*:

[t]he calculation of attorney’s fees involves a well-established process. First, the court calculates a “lodestar” fee by multiplying the reasonable number of hours expended on the case by the reasonable hourly rates for the participating lawyers. The court then considers whether the lodestar figure should be adjusted upward or downward depending on the

² Bray & Freeman does not separate its fees and expenses, although the two categories are discernible from its attached billing sheets. The combined total for Bray & Freeman’s fees and expenses is therefore described as “fees.”

³ 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. Complete “non-redacted” versions of the attached exhibits will be provided to the Court only, under separate cover.

circumstances of the case. In making a lodestar adjustment the court should look to twelve factors, known as the *Johnson* factors, after *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974).

135 F.3d 1041, 1047 (5th Cir. 1998) (citations omitted). Those factors, as applied to the services rendered in this case by the Receiver Team, are addressed below.

5. The Time and Labor Required. While this is a single case, it is, from a time and expense perspective, akin to three (or more) significant receiverships. To date, the activities of all professionals involved have focused principally on the receiverships of: (1) Travis Correll and affiliated entities in Atlanta, Georgia; (2) Greg Thompson and affiliated entities and individuals in San Antonio and Dallas, Texas; (3) Neulan D. Midkiff and Joshua Tree Group, LLC in Forest Lake, Minnesota; and (4) Kerry Sitton and related entities. In addition, significant efforts have been devoted to obtaining information from the various Relief Defendants, financial institutions and other third parties who had relationships with the Defendants and Relief Defendants.

Because of the number of people involved, the structure of the Bank Deposit Program, the cumulative amount of investor money involved and the disparate geographic location of people and assets, this case is especially complex. While some Defendants have been somewhat cooperative, others have not. The volume of records and electronic information that has been recovered is quite large, and additional materials continue to be recovered through formal and informal discovery processes. The Receiver is guardedly optimistic that he and the professionals working with him have gained a good understanding of how the Bank Deposit Program operated; however, he continues to discover new facts that 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, this 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 Receiver 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 Receiver Estate.

In sum, the Receiver Team has expended substantial time and labor. The Receiver believes that these efforts, along with the associated expense, are necessary to the effective administration of this receivership and the discharge of his responsibilities under the Receivership Order. (*See Exhibits "A" through "E" for detailed descriptions of the time and labor expended by the professionals.*)

6. 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 unique and complex. As indicated in Paragraph 6, above, there are numerous factors present here that combine to make this case especially complicated. One of the most difficult problems encountered to date is determining the identity of "facilitators" (i.e., sales agents). In light of the Bank Deposit Program's structure, it is not possible to make this determination easily from the various records and other materials in the Receiver's possession.

7. 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. All members of the Receiver Team have considerable experience in such areas.

8. The Preclusion of Other Employment Due to Acceptance of the Case. The members of the Receiver Team have not declined any representation solely because of their services as Receiver and counsel or consultants for the Receiver. However, given the magnitude of effort required, 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.

9. The Customary Fee. The hourly rates sought herein are commensurate with the rates charged by other professionals of similar experience levels in Atlanta, Georgia, Dallas/Ft. Worth, Texas and Coppell, Texas. The Receiver refers the Court to the Receiver's Twenty-Sixth Interim Application, filed May 8, 2008 (Doc. No. 307), for a current detailed listing of all professionals that have performed services on behalf of the receivership and their hourly rates.

10. Whether the Fee is Fixed or Contingent. The fees of the Receiver Team are fixed insofar as they are based upon the fixed hourly rates described above. However, payment of professional fees and expenses is contingent upon there being enough money in the receivership to make such payments. At present, there appears to be sufficient money available in this receivership to fund the activities of the Receiver and the professionals working with him. Pursuant to the terms of the Receivership Order, the payment of professional fees is subject to Court approval.

11. Time Limitations Imposed by the Client or Other Circumstances. Because a significant aspect of this receivership is a search for money and other assets, time is critical.

While the litigation schedule is no different from other complex civil cases, the investigation and the recovery of money and assets are necessarily conducted on an expedited basis.

12. The Amount Involved and the Results Obtained. This case involves a cumulative investment (i.e., including “roll-overs” or re-investments) in excess of \$390 million from more than 1,500 investors. It appears that more than \$150 million was invested and outstanding (i.e., owed to investors) at the time that the Receiver was appointed. During the period covered by this Application, the Receiver and his lawyers undertook the following significant tasks:

- a. Prepared for and participated in a Status Conference, Show Cause Hearing and Motions Hearing before Judge Schell;
- b. Continued preparation to testify as expert witness in criminal trial against one of the fraud facilitators in Minnesota;
- c. Continued negotiations for payment of \$1.3 million note owed by Element Payment Services, Inc. to Horizon Establishment;
- d. Revised, filed and served a complaint against Element Payment Systems;
- e. Continued investigation of entities and individuals affiliated with the Defendants that possibly benefited from the Ponzi scheme (including Randy Carlisle, Earl Martin and Doug Salazar), received and reviewed documents from those individuals and entities, and sought the return of funds;
- f. Closed a settlement with Earl Martin and filed a motion to approve the settlement;
- g. Reviewed and organized accounting, financial and banking records received pursuant to subpoena served upon banks and entities and individuals affiliated with the Defendants;
- h. Fielded telephone calls from, and corresponded with creditors;
- i. Updated investor database with investor claim information;
- j. Continued accounting and funds tracing efforts;
- k. Resolved issues in show cause motions served upon Klint and Tina Hartsoch, and PRR Hearthstone;

- l. Served contempt order on Angelic Entertainment;
- m. Prepared and served show cause motion on Mark Maine; and
- n. Continued to administer assets in the Receivership Estate, including assets from oil and gas leases.

13. The Experience, Reputation and Ability of the Attorneys. The attorneys at Troutman Sanders and QSCL principally responsible for this case specialize exclusively in the practice of civil trial law and have many years of experience in cases involving securities and financial fraud. The practice of those attorneys regularly includes the representation of receivers. These attorneys are recognized and respected in their communities.

14. The Undesirability of the Case. The representation of the Receiver incident to this case has not been undesirable.

15. The Nature and Length of the Professional Relationship with the Client. Troutman Sanders has represented S. Gregory Hays, the Receiver, in other matters. QSCL has no prior relationship with the Receiver or Troutman Sanders.

16. Awards 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, PREMISES CONSIDERED, the Receiver, on behalf of himself and the rest of the Receiver Team, requests that this Court approve all of the fees and expenses that are the subject of this Application and authorize the immediate payment of same.

Respectfully submitted this 26th day of June 2008.

TROUTMAN SANDERS LLP

/s/ J. David Dantzler, Jr.

J. DAVID DANTZLER, JR.

Ga. State Bar No. 205125

Bank of America Plaza, Suite 5200
600 Peachtree Street, N.E.
Atlanta, GA 30308-2216
(404) 885-3000
(404) 962-6799 (facsimile)

MERLE R. ARNOLD III
Texas State Bar No. 24003979

QUILLING, SELANDER, CUMMISKY &
LOWNDS, P.C.

/s/ Clark B. Will
CLARK B. WILL, P.C.
Texas State Bar No. 21502500

Bryan Tower
2001 Bryan Street, Suite 1800
Dallas, Texas 75201
(214) 871-2100
(214) 871-2111 (facsimile)

Attorneys for S. Gregory Hays, Receiver

CERTIFICATE OF CONFERENCE

Pursuant to Local Rule CV-7(i) of the United States District Court for the Eastern District of Texas, the Receiver has, prior to filing the Fee Application, consulted with counsel for all remaining parties to this action in a good faith attempt to resolve the matter without court intervention and no opposition was voiced.

Furthermore, in accordance with his practice in the above-styled case, the Receiver is posting the Fee Application on his website so that any and all investors will have an opportunity to review it and file objections. Accordingly, and out of an abundance of caution, the Receiver states for purposes of this certificate that **this Fee Application is opposed at this time**. If no investor objects to this Fee Application after fifteen (15) days from the date of the filing of this Fee Application, the Receiver will file an amended certificate of conference indicating that it is unopposed.

Additionally, in accordance with Paragraph 17 of the Order Appointing Receiver, the Receiver has, prior to filing this Fee Application, consulted with counsel for the Securities and Exchange Commission regarding the fees and expenses that are the subject of this application.

/s/ Merle R. Arnold III

Merle R. Arnold III

Texas State Bar No. 24003979

CERTIFICATE OF SERVICE

I hereby certify that on June 26, 2008, I electronically filed the foregoing Document with the Clerk of this Court using the CM/ECF system, which will automatically send email notification of such filing to all parties who are CM/ECF participants. I hereby certify that on June 26, 2008, I also served non-CM/ECF participants by depositing a copy in the United States mail with adequate postage thereon and addressed as follows:

Mr. Neulan D. Midkiff/Joshua Tree Group LLC
1319 SE Bay Drive
Forest Lake, Minnesota 55025

Mr. Travis E. Correll
220 26th Street, Apt. 1121
Atlanta, Georgia 30309

Randolph A. Mayer, Esq.
776 Juniper Street
Atlanta, GA 30308-1310

William Charles Bundren, Esq.
5300 Town & Country Blvd.
Suite 110
Frisco, TX 75034

William Mateja, Esq.
Fish & Richardson, PC
1717 Main St., Ste. 5000
Dallas, TX 75201

Murray Wilkening, Esq.
Murray Wilkening, P.C.
7586 W. Jewell Ave., #300
Lakewood, CO 80232

Charles Pellino, Esq.
Pellino Rosen Mowris & Kirkfuff, S.C.
131 Wilson St. # 1201
Madison, WI 53703

Ralph Janvey, Esq.
2100 Ross, # 2600
Dallas, TX 75201

Bruce Heurlin, Esq.
KarpHeurlinWeiss
3060 North Swan Road
Tuscon, AZ 85712-1225

/s/ Merle R. Arnold III
Merle R. Arnold III
Texas State Bar No. 24003979