

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, 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 THIRTY-FOURTH INTERIM APPLICATION FOR PAYMENT OF PROFESSIONAL FEES AND EXPENSES INCURRED IN LEAD CASE CORRELL IN JANUARY 2009 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 THIRTY-FOURTH INTERIM APPLICATION FOR PAYMENT OF
PROFESSIONAL FEES AND EXPENSES INCURRED IN LEAD CASE CORRELL IN
JANUARY 2009 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 January 2009. 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 January 2009. During the period covered by this Application, the Receiver Team has incurred fees and expenses in connection with these proceedings as follows:

January 2009

Receiver: \$900.00 (fees)

HFC: \$49,288.50 (fees); \$558.28 (expenses)

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.

Troutman Sanders: \$ 4,595.15 (fees); \$19.52 (expenses)

QSCL: \$62,097.00 (fees); \$389.64 (expenses)

Bray & Freeman: \$8,202.85 (fees)²

3. The various monthly statements attached hereto as Exhibits “A” through “E” contain the following information for January 2009 regarding the Receiver, HFC, Troutman Sanders, 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 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).

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 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.

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. During the period covered by this fee application, the following professionals have performed services on behalf of the receivership at the hourly rates listed below:

Receiver

S. Gregory Hays - \$375.00 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 Federal District Courts and State Courts 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. - \$515.00 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.

Thomas B. Bosch - (\$360.00 per hour) and Merle R. Arnold (\$330.00 per hour) are associates at Troutman Sanders. Their practices are focused exclusively on civil

litigation and have experience as attorneys for the receiver in other actions filed by the SEC. Harrilee Cheshire (\$275.00 per hour) is a litigation paralegal with more than 33 years of experience.

QSCL

Clark B. Will - \$350.00 per hour: Mr. Will is a partner at QSCL and has been practicing law in Texas since 1980. Mr. Will has extensive experience, both as a receiver and an attorney, in significant cases filed by the SEC and other governmental agencies.

Michael D. Clark - \$290.00 per hour: Mr. Clark is a partner at QSCL and has been practicing law in Texas since 1997. Mr. Clark has experience as an attorney for the receiver in significant cases filed by the SEC.

Hudson M. Jobe - \$225.00 per hour: Mr. Jobe is a mid-level associate who practices exclusively in bankruptcy matters. He assists the Receiver's counsel with regard to Randall Carlisle's bankruptcy.

HFC

Scott S. Askue - (\$275.00 per hour) is a Managing Director at Hays Financial Consulting, LLC. He has over 11 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.

Robert E. Meehan - CPA – \$250.00 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. He supervises and works in coordination with his associate, Ms. M. Eileen Castle, CPA – \$250.00 per hour – who also has over 25 years tax management experience in a wide variety of industries – to analyze the tax affairs of companies, searching for tax refund opportunities, managing state and federal audits and bringing companies tax filings current to avoid arbitrary assessments by taxing authorities. Both Mr. Meehan and Ms. Castle are Certified Public Accountants holding active certificates in multiple states.

Fred Tulley - (\$150.00 per hour) – is a Sr. Associate at Hays Financial Consulting, LLC. Mr. Tulley is in charge of financial forecasting and cash flow modeling. Prior to joining Hays, he was a modeler in New York City for Deloitte's securitization practice and KPMG's Mergers and Acquisitions group. He has a BBA in Economics from Loyola University New Orleans and a MBA from the University of Oklahoma.

Julie N. Hentosz - (\$110.00 per hour): Ms. Hentosz is an Associate with Hays Financial Consulting, LLC. She has served as business analyst in business valuation, litigation consulting, forensic accounting, and damage analysis. She has assisted in several operational and financial management, accounting, and liquidation services to companies in bankruptcy and receivership. Ms. Hentosz is a Certified Fraud Examiner, a member of

the Association of Certified Fraud Examiners, and has worked with corporate and consumer bankruptcy matters and property management and liquidation.

J. Colt Conner - (\$110.00 per hour): Mr. Conner is an Associate with Hays Financial Consulting, LLC. He has served as business analyst in business valuation, litigation consulting, forensic accounting, and damage analysis. He has negotiated cross border claims in several South and Central American countries, Israel, Seychelles, Spain and France. Mr. Conner has also worked with corporate and consumer bankruptcy matters and property management and liquidation. He is also a Certified Fraud Examiner and a member of the Association of Certified Fraud Examiners.

Kathy A. Malek, (\$170.00 per hour) Ms. Malek serves as a Director for Hays Financial Consulting where she assists failed companies with the termination of their retirement plans and healthcare plans. 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.

Pamela Y. Dennison (\$200.00 per hour) Ms. Dennison serves as a Director at Hays Financial Consulting, LLC. She has served as Chief Restructuring Officer for two troubled companies and has directed the claims administration process for a receivership cases with an investor database in excess of 1000 entities. Ms. Dennison has over 25 years of management experience in a variety of industries in which she oversaw operations during Chapter 11 bankruptcies as well as two separate receiverships.

Richard A. Brock (\$250.00 per hour) Mr.. Brock serves as a Director at Hays Financial Consulting, LLC. Dick focuses on providing financial and operational consulting services to companies facing financial and operational challenges. Dick has 30 years of experience in the accounting/finance areas and in operational/asset management, with a focus in the real estate industry. Dick earned his BA from Franklin University.

Shuwanda Y. Sloane - (\$130.00 per hour): Ms. Sloane serves as Fraud Investigator for Hays Financial Consulting, LLC. In this position, she is responsible for investor communications for companies where Mr. Hays serves as receiver or trustee. Ms. Sloan also serves in the Collections Department and is responsible for collecting outstanding receivables. Ms. Sloane is a Certified Fraud Examiner and a member of the Association of Certified Fraud Examiners.

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 \$80 million from more than 1,500 investors. During the period covered by this Application, the Receiver and his lawyers undertook the following significant tasks:

- (1) Continued efforts to contact potential investors and current claimants, followed up with investors who did not submit claim forms, and analyzed information submitted by claimants;
- (2) Continued to investigate investments made through facilitators and compile information regarding same;
- (3) Responded to inquiries from investors, including written, telephonic and personal communications;
- (4) Prepared and filed motion to continue hearing on motion to show cause why Kent Bush, Larry Caldwell, and One Smart Tool should not be held in contempt for failure to comply with Receivership Orders;
- (5) Continued negotiations and preparation of documents for proposed Sitton consent judgment;

- (6) Prepared for and handled numerous issues related to Carlisle, including mediation and bankruptcy matters;
- (7) Continued negotiations for resolution of Lipan Bank issues.
- (8) Handled and resolved numerous issues related to death of Robbie Gowdy;
- (9) Continued to monitor activity in Sentinel litigation;
- (10) Reviewed, analyzed and reconciled claims filed with the Receiver Estate;
- (11) Prepared information to explain Receiver's calculation of allowed claims in Claim Determination Notices.
- (12) Responded to inquiry and document request from federal agents;
- (13) Continued to monitor accounting issues related to oil and gas properties in the Receiver Estate;
- (14) Analyzed and resolved various tax-related issues involved in Receivership proceeding; and
- (15) Continued handling of issues related to sale of Hearthstone (Idaho) condo timeshare.

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 25th day of March, 2009.

TROUTMAN SANDERS LLP

/s/ J. David Dantzler, Jr.

J. DAVID DANTZLER, JR.

Ga. State Bar No. 205125

MERLE R. ARNOLD III

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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 do hereby certify that on March 25, 2009, I electronically filed the foregoing Document with the Clerk of this Court using the CM/ECF system, which will automatically send notification of such filing to the following:

Timothy S. McCole
Scott R. Baker

I further certify that on March 25, 2009, the foregoing has been served to the following non-CM/ECF participants by depositing a copy in the United States Mail with adequate postage thereon and addressed as follows:

William Clark
JTA Enterprises
16 Beech Place
Denville, NJ 07834

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