



Richard B. Roper, the Court-appointed Receiver in this action, submits this Third Motion for Approval of Interim Fee Application and Brief in Support, seeking the Court's approval to pay invoices for interim fees and expenses, incurred between September 1, 2010 and December 31, 2011, in the amount of \$391,680.95, to the firms that have rendered professional services on behalf of the Receivership Estate ("Fee Application"), and in the amount of \$34,290.25 for the Receiver's own work. The tasks and challenges presented by this Receivership have been numerous and, in many instances, complex and time-consuming. The primary work of the Receiver's accountants and counsel, which comprises the bulk of the fees sought in this Application, has revolved around the accounting and analysis necessary to detail how money was spent through the course of the Millennium scheme and prosecuting ancillary litigation to "claw back" funds transferred to perpetuate the Ponzi scheme back into the Receivership Estate. This process has been undertaken with significant obstacles and difficulty, due in no small part to the inaccuracy and ineptitude with which any internal record-keeping was done for the Defendant entities. In addition, the Receiver and his counsel have continued their significant efforts to communicate with investors and consider the hundreds of claims made by the defrauded victims in this matter.

Thompson & Knight LLP, the law firm representing the Receiver and providing primary, daily assistance in seizing and liquidating assets of the Estate, analyzing documents and evidence seized from the Defendants, analyzing the figures and details provided by the forensic accountants, applying knowledge from other evidence to make sense of the accounting itself, analyzing, preparing, and prosecuting "claw-back" and third-party litigation matters, and more, has again provided an aggregate twenty percent (20%) discount to all fees incurred in the course and scope of the firm's still ongoing and extensive work. Furthermore, Thompson & Knight has

demonstrated billing judgment by writing off unproductive, possibly excessive and/or redundant work, as well as by waiving significant fees related to the review and analysis required in the ongoing investor claims process. Additionally, Thompson & Knight has not charged the Estate for attorney time spent preparing any Fee Application, preparing underlying billing statements, or preparing any of the Receiver's Reports filed in this case.

Litzler, Segner, Shaw, & McKenney, LLP (LSS&M) is a forensic accounting firm retained by the Receiver in order to assist with the data entry and analysis necessary to develop a forensic picture of the Defendants' cash flow. LSS&M utilized all of the bank records subpoenaed by Receiver's counsel to create a comprehensive analysis of how and when money was taken into and out of the Defendants' accounts. This work was intended to assist the Receiver in determining exactly how much money was invested in the Millennium scheme, how the money was spent, and whether significant assets may be located in places heretofore unknown to the Receiver or available witnesses. Because the record-keeping of the Defendants was exceedingly poor, the task presented to LSS&M was extremely significant to the Receiver's ability to do his work.

Bingham Greenebaum Doll LLP ("BGD") served as the Receiver's local counsel in the Kentucky bankruptcy court. David Jones, one of the primary brokers working to sell Millennium CD products over the years Wise perpetuated his Ponzi scheme, filed for bankruptcy in Kentucky shortly after the Receiver instituted an ancillary suit against the brokers. BGD assisted the Receiver in the bankruptcy and opposed the discharge of the Receiver's claim. Due in part to the work of BGD, the Kentucky bankruptcy court has stayed its own jurisdiction, if any, over the Receiver's claims against Jones, lifted the automatic bankruptcy stay against Jones, and cleared the way for the Receiver to continue to pursue his claims against Jones in this Court.

The work of these accounting and legal professionals (the “Professionals”) is described in detail in the attached invoices, as well as in the Report of the Receiver Dated April 9, 2012 (the “Report”), which the Receiver submits in support of this application as Exhibit A. The information contained in the invoices and Report demonstrates the necessity for the Professionals’ services and the reasonableness of their fees and expenses in this case.

## I. BACKGROUND

To aid the Court’s consideration of this Motion, the Receiver includes the following background section that is substantially similar to the same section filed with the prior fee application and which provides the necessary context for the description of the work included in this Motion.

On March 26, 2009, the Securities and Exchange Commission (the “Commission”) filed this lawsuit alleging that Defendants engaged in a fraudulent “Ponzi scheme” involving the purported sale of Certificates of Deposit with higher-than-legitimate interest rates, through which Defendants obtained at least \$68 million from hundreds of investors. The Receiver now knows that, since 1996, the Defendants took in more than \$100 million of investor money. This Court found that it was both necessary and appropriate to appoint a receiver, who assumed exclusive jurisdiction over all assets and records of the Defendants and any entities they owned or controlled worldwide. Order Appointing Receiver, Doc. 10 at ¶¶ 1-2 and Amended Order Appointing Receiver, Doc. 46 at ¶¶ 1-2 (collectively, the “Orders Appointing Receiver” or the “Orders”). The Orders Appointing Receiver charged the Receiver with the responsibility of acquiring exclusive control and possession over the Receivership Estate including the tangible and intangible, real and personal property of the Defendants (and property of Relief Defendants traceable to the fraud), and performing all acts necessary to conserve, manage, and preserve the Receivership Estate. Orders Appointing Receiver at ¶ 5.

**A. SUMMARY OF DEFENDANTS' FRAUD.**

The Defendant entities were comprised of Millennium Bank; United Trust of Switzerland S.A.; UT of S, LLC; Millennium Financial Group; Sterling Administration; Sterling Investment Services; and Millennium Aviation. These entities were aligned in a fairly simple infrastructure, and were controlled primarily by Defendant William J. Wise. Wise was the chief architect of the fraud, with the assistance of Defendants Kristi Hoegel and Jacqueline Hoegel. Essentially, Millennium Bank solicited funds from investors, primarily through internet advertising and targeted marketing to individual investors, for the purchase of self-styled "certificates of deposit" promising various guaranteed rates of return, most of which far exceeded the rate of return on a traditional bank certificate of deposit ("CD"). Defendants had two stateside offices, one in Napa, California, and another in Raleigh, North Carolina. The third primary Millennium location was the actual bank itself, located on the island of St. Vincent. All United States offices were closed upon the filing of this lawsuit and the Receiver and his team seized all documents and materials located therein, including computers.

**B. HOW INVESTOR FUNDS WERE RECEIVED AND ROUTED.**

The following description of the Millennium scheme is largely repeated from the Receiver's First Fee Application, filed on December 4, 2009, but is included here for the sake of completeness. The Defendant entities had very little corporate structure. Investors would simply mail in checks for purchase of CDs to the Napa, California location, typically made payable to UT of S, LLC (though some investors did send checks and wires payable to Sterling and Millennium Bank). Investors often negotiated their purchases through telephone conferences with the Hoegel Defendants and/or other Defendant employees including Scott Christopher, David Jones, and Robert Keltly. Investors were most often instructed by these individuals to make checks payable to UT of S, LLC and mail them to Millennium Bank in St. Vincent and the

Grenadines. Once received by Defendants on the island of St. Vincent, these investor checks would simply be re-routed to Defendants' Napa, California office. Once received in California, Defendants' staff would deposit the funds into a single UT of S, LLC bank account ending 9648 and maintained with Washington Mutual/JP Morgan Chase Bank. Any investor funds delivered by wire transfer were deposited into the same, single UT of S account. Sterling investments were deposited into a WaMu account.

**C. MILLENNIUM BANK WAS NOT A TRUE BANK AND INVESTOR MONEY WAS NEVER INVESTED.**

Neither Millennium Bank nor United Trust of Switzerland, S.A. were banks in the traditional sense, nor were they registered securities dealers. Millennium Bank was chartered in St. Vincent, where investors believed their funds were being used for investment purposes. However, *none* of the funds remitted to Millennium Bank, or other Defendant entities, for the purchase of CDs were invested. Rather, a majority of investor funds were diverted to and misappropriated by the various Defendants. While Defendants were constantly diverting investor dollars to themselves, significant portions of these funds were used to carry on their fraudulent scheme in an attempt to create the appearance of a solvent, legitimate investment business. Specifically, funds received from new investors were utilized to pay redemptions and make interest payments to earlier investors under the terms of an investor's CD. As the Commission has alleged, Defendants sold CDs with guaranteed rates of return. Hence, earlier investors who chose to cash out their investments when the term of a CD concluded were paid the full amount of their investment, plus interest, with later investors' money. Likewise, investors who received interest payments from time to time during the term of one or more CDs were not receiving interest, as there were no underlying investments generating any return.

Rather, they too were simply receiving other investors' money in an amount equal to the interest rate Defendants quoted when the investor purchased the altogether fake CD.

In the 2010 Fee Application, the Receiver noted that a significant amount of investor money, possibly the vast majority of it, was squandered on the Defendants' personal lifestyles and luxuries based on the information available at that time. This sort of spending included, for example, money paid for foreign escorts, multi-thousand-dollar meals, international travel, and \$12,000 weekly allowance payments to Mrs. Wise, which could not be recovered into the Estate. Accountants with LSS&M analyzed Defendants' banking and business records (and worked in conjunction with Receiver's counsel) to conclusively determine, among other things, (a) specific amounts of funds used to pay interest and redemptions to investors; and (b) specific amounts of funds diverted to Defendants and *how* those funds were used. The Receiver's counsel at Thompson & Knight then undertook the process of applying knowledge about the various individuals involved to further ascertain exactly how money was spent and should be characterized. The Receiver's Report of November 22, 2010 details at length how money moved through the Defendants' bank accounts at the direction of William Wise. The accounting analysis confirmed what the Receiver suspected at the time of his last Report to this Court—that the Defendants paid some older investors back with interest over time in order to perpetuate the scheme, and then largely squandered the rest of the money on luxurious lifestyles and purchases. When the Receivership was instituted in March 2009, very little of the amount taken in over the previous years remained in the Defendants' accounts.

**D. CONSTITUTION OF THE RECEIVERSHIP ESTATE.**

Because the majority of the funds remitted to Defendants by various investors were simply misappropriated for the personal gain of Defendant William J. Wise and other individual

and Relief Defendants, the Receivership Estate was originally comprised primarily of limited cash seized from Defendants' and Relief Defendants' bank accounts, real property holdings, and personal property assets purchased with proceeds of the fraud. Despite investigation by international asset search professionals, accounting analysis, and a thorough review of Defendants' records, the Receiver has not identified or located any significant, still-existing source of funds maintained by or on behalf of Defendants, with the exception of certain fraudulent transfers discussed in the 2010 and 2011 Receiver's Reports and later in this Fee Application.

Upon his appointment, the Receiver seized a total of \$482,237.45 from bank accounts maintained by Defendants and Relief Defendants, which accounts were identified by the Commission and business records and were placed under the Court's Asset Freeze Order. Likewise, the Estate received deposits of cash from the sale of William Wise's stateside wine collection (\$197,280.07); the sale of William and Lynn Wise's home (\$810,780.93); auction of William and Lynn Wise's personal property (\$647,978.25); the liquidation of the Hoegel Defendants' real and personal property (\$43,569.32); cash seized from the Defendants' personal possession (\$15,000.00); proceeds received after an airplane originally purchased by Defendants was surrendered to a secured lien holder (\$100,000.00); proceeds from the sale of a limousine (\$3,000 to date with additional \$1,000 monthly payments forthcoming); proceeds from an account maintained by Brijesh Chopra at Bank of China (\$11,015.14); funds traceable to the Defendants' fraud and repatriated in the United States by JPLs at KPMG (\$73,985.90); and proceeds from the sale of an Escalade in which Wise had very little equity (\$7,690.31). The cash on deposit in the Receivership Estate's interest-bearing money market account has only been



spent to pay some necessary costs for administration of the Receivership and those amounts approved in this Court's orders granting the Receiver's First and Second Fee Applications.

The Receiver learned that more than \$5,000,000 had been paid out in fictitious interest to domestic investors who also received all of their principal back. The Receiver sent a demand letter to these "net winning" investors, explained that the "interest" they received was really just money belonging to newer investors, and asked that the net winning investors return the amounts they received beyond the principal they originally invested. As detailed in the April 9, 2012 Report, the Receiver has initiated ancillary litigation against these net winning investors to claw back additional fictitious interest. This process has resulted in a return of over \$1,227,883.63 as of the date of this Fee Application, further increasing the current body of the Receivership Estate.

**E. WORK PERFORMED FOR THE BENEFIT OF THE RECEIVERSHIP ESTATE**

The bulk of the work performed by the Receiver and his team prior to the work represented by this application was related to (1) locating and securing the assets of the Estate; (2) locating, collecting, organizing, and analyzing necessary information about assets and liabilities of the Estate so that the Receiver can take the appropriate steps to recover and monetize assets, and to properly address claims and liabilities; (3) communicating with investors, cataloging investor claims and investment information, and analyzing investor claim forms and correspondence; (4) obtaining banking records for Defendants and Relief Defendants, reviewing Defendants' corporate and financial records; (5) negotiating with lien-holders regarding their interests in Estate assets; (6) contacting foreign authorities and financial institutions in an effort to obtain information pertaining to Defendants' assets; (7) preparing an extensive and comprehensive analysis of the manner in which Defendants' funds were expended since the

inception of the scheme; (8) performing those tasks necessary to advance both this enforcement action and other ongoing investigations into the activities of the Defendants; and (9) communicating with and considering the claims of numerous investors.

Most recently, the Receiver has engaged in ancillary litigation with multiple parties, including the net winning investors, to claw back amounts that were transferred to various parties to perpetuate the Ponzi scheme. Because the clawback claims were brought against more than 300 defendants, the prosecution of the ancillary litigation significantly adds to the complexity of the Receiver's task. A complete and detailed discussion of the Receiver's work to date is provided in the Receiver's Report filed on April 9, 2012 and attached hereto as Exhibit A.

**F. ADDITIONAL WORK REMAINING TO INCREASE THE ASSETS AVAILABLE FOR DISTRIBUTION TO INVESTORS AND COMPLETE A CLAIMS PROCESS**

As he has publicly stated several times, the Receiver believes that the total value of the assets of the Estate is likely to be a mere fraction of the millions of dollars that would be needed to pay all anticipated claims against the Estate. Nevertheless, the amount of value yet to be recovered, as discussed above, is expected to exceed the amount now in the Estate's bank account. The Receiver is hopeful that future recoveries, particularly from the ancillary litigation, will exceed future costs of administering the Estate based on the initial response to his demand letter on the first contemplated claw back action and the negotiated settlements of the claims brought against the net winning investors.

Taking all of this into consideration, and pursuant to the Orders Appointing Receiver, the Receiver respectfully requests that this Court approve this third interim Fee Application.

**II. REQUEST FOR APPROVAL OF FEES FROM SEPTEMBER 1, 2010 TO  
DECEMBER 31, 2011**

The Orders Appointing Receiver direct and authorize the Receiver to retain and compensate professionals in connection with the administration of the Receivership Estate:

[T]he Receiver is specifically directed and authorized to perform the following acts and duties:

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Enter into such agreements in connection with the administration of the Receivership Estate, including, but not limited to, the employment of such managers, agents, custodians, consultants, investigators, attorneys, and accountants as Receiver judges necessary to perform the duties set forth in this Order and to compensate them from the Receivership Assets.

Orders Appointing Receiver ¶ 5(h). Accordingly, shortly after his appointment, the Receiver hired the Professionals discussed herein, who were needed to carry out his Court-ordered duties.

The Amended Orders Appointing Receiver direct the Receiver to “[f]ile with this Court requests for approval of reasonable fees to be paid to the Receiver and any person or any entity retained by him and interim and final accountings for any reasonable expenses incurred and paid pursuant to order of this Court.” Orders Appointing Receiver. ¶ 5(m). Accordingly, the Receiver files this Fee Application and requests that the Court approve the fees and expenses billed by the Receiver and his retained Professionals for work performed from September 1, 2010 through December 31, 2011.

**A. BASED UPON THE WELL-SETTLED LAW, THE COURT SHOULD APPROVE THE PAYMENT OF ALL REASONABLE AND NECESSARY PROFESSIONAL FEES AND EXPENSES IN THIS CASE.**

Courts examining a request for fees and expenses incurred by a receiver must determine whether the time spent, services performed, expenses incurred, and hourly rates charged are

reasonable and necessary under the factors set forth by the Fifth Circuit.<sup>1</sup> *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717–19 (5th Cir. 1974); *SEC v. Megafund Corp.*, 3:05-CV-1328-L, 2008 WL 2839998, \*2 (N.D. Tex. June 24, 2008); *SEC v. Megafund Corp.*, 3:05-CV-1328-L, 2006 WL 42367, \*1 (N.D. Tex. Jan. 9, 2006); *SEC v. Funding Res. Group*, 3:98-CV-2689-M, 2003 WL 145411, \*1 (N.D. Tex. Jan. 15, 2003).

This examination of reasonableness and necessity should take into account all of the circumstances surrounding the receivership. See *SEC v. W.L. Moody & Co., Bankers (Unincorporated)*, 374 F. Supp. 465, 480 (S.D. Tex. 1974), *aff'd*, 519 F.2d 1087 (5th Cir. 1975). Because all receiverships are different, a court's analysis of the fees and expenses must be tailored to the particular case. *Id.*; see *SEC v. Tanner*, No. 05-4057, 2007 WL 2013606, \*3 (D. Kan. May 22, 2007). The characteristics cited in the following cases are similar to this Receivership and support an award of the fees and expenses requested herein.

The complexity and difficulty associated with the receivership are highly relevant factors in determining the reasonableness of professional fees. See *SEC v. Fifth Ave. Coach Lines, Inc.*, 364 F. Supp. 1220, 1222 (S.D.N.Y. 1973) (awarding interim fees and expenses to law firm for role in receivership and noting that it involved wide variety of complex legal matters requiring the time, competence, and diverse resources of a law firm of high caliber); *W.L. Moody & Co.*,

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<sup>1</sup> These factors, often referred to as the *Johnson* factors, are: (1) the time and labor required for the litigation; (2) the novelty and complication of the issues; (3) the skill required to properly litigate the issues; (4) whether the attorney was precluded from other employment by the acceptance of this case; (5) the attorney's customary fee; (6) whether the fee is fixed or contingent; (7) whether the client or the circumstances imposed time limitations; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorney; (10) the "undesirability" of the case; (11) the nature and length of the attorney-client relationship; and (12) awards in similar cases. *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974). In applying the *Johnson* factors, "the district court must explain the findings and the reasons upon which the award is based. However, it is not required to address fully each of the 12 factors." *Curtis v. Bill Hanna Ford, Inc.*, 822 F.2d 549, 552 (5th Cir. 1987) (citation omitted).

374 F. Supp. at 484 (“An equitable receivership is by its very nature, a legally complex process.”); *Tanner*, 2007 WL 2013606 at \*3 (the identification of investors and the location of their funds was made “excruciatingly difficult” by lack of assistance from defendants); *Funding Res. Group*, 2003 WL 145411 at \*1 (finding fees and expenses were reasonable in light of difficulties receiver encountered). In the instant case, the Receiver and his team of Professionals have had to conduct their work without meaningful assistance from the Defendants or Relief Defendants and even without significant documentary evidence, as the Defendants maintained inadequate and incomplete accounting records and William Wise disclosed very little detailed information to his employees. Further, the vast number of clawback defendants in the ancillary litigation has added to its complexity, as each defendant’s situation frequently warrants and requires individual attention both to matters of law and fact, as well as efforts at settlement.

The degree of success achieved in solving legal and practical problems should be considered when calculating the fees awarded. See *Fifth Ave. Coach Lines, Inc.*, 364 F. Supp. at 1222; *W.L. Moody & Co.*, 374 F. Supp. at 484–85; *Johnson*, 488 F.2d at 718. In this case, the Receiver and his team of Professionals have worked diligently to wind up Defendants’ businesses, terminate contracts, identify and secure assets, records, and evidence, investigate leads, recover fraudulently transferred assets, communicate with investors, and cooperate with all governmental authorities. This work, while admittedly not resulting in the recovery of significant funds that were frittered away by the Defendants, has allowed the Receiver to determine the scope of the fraud and the status of possible recoveries to the Estate sooner rather than later. Additionally, the Receiver and his counsel and accountants now have determined how Defendants’ funds were spent and have identified several sources of Receivership assets which are now being sought through the ancillary claw back litigation. The early returns of fictitious

interest by net winning investors suggest that the Estate will continue to grow as a result of this pending litigation to claw back monies fraudulently transferred to others in the course of this scheme.

Courts examine the credentials, experience, reputation, and other professional qualities required to carry out the Court's orders when assessing the reasonableness of the rates charged for services to a receivership. *See W.L. Moody & Co.*, 374 F. Supp. at 481 (holding that a court should give "considerable weight" to "a receiver's abilities, as required by the tasks of the receivership"); *Tanner*, 2007 WL 2013606 at \*3 (granting receiver's fee request, despite investors' concerns over amount requested, in part because the court recognized that the receiver and his counsel were experienced in the relevant areas of law); *SEC v. Aquacell Batteries, Inc.*, No. 6:07-cv-608-Orl-22DAB, 2008 WL 276026, \*4 (M.D. Fla. Jan. 31, 2008) ("The Receiver retained well qualified, experienced counsel and such representation does not come cheap.").

When the receivership commands full-time attention and prevents professionals from accepting other engagements, the fee award should reflect it. *See Moody*, 374 F. Supp. at 483-84, 486. Likewise, courts should consider the usual and customary fees charged and the evidence presented to support the application for fees. *See Fifth Ave. Coach Lines, Inc.*, 364 F. Supp. at 1222 (fees awarded in full because based on law firm's usual hourly rate and supported by meticulous records); *see Johnson*, 488 F.2d at 718 (the customary fee for similar work in the community should be considered). In this case, the Receiver and his team of Professionals, including his attorneys, have devoted considerable time to conducting the many tasks required in this case, including conducting legal research, drafting and arguing motions, identifying, securing and liquidating assets, communicating with investors, the media, opposing counsel, the Commission, and government authorities, and more – all at a discounted rate. Additionally, the

Receiver has demonstrated billing judgment by reducing the fees sought by more than \$52,295.20, which amount represents time which may have been duplicative, non-productive, or otherwise in excess of desired fees for the work performed, in the Receiver's judgment. The Receiver has also reduced the total fees incurred in this case by \$38,705.50, which represents all time attributable by any person to work done in support of any Receiver's Report or Fee Application over the relevant time period. Hence, all of the above-described factors weigh in favor of approving the request for fees and expenses in this case.

**B. THE FEES AND EXPENSES ARE REASONABLE AND NECESSARY IN LIGHT OF THE CIRCUMSTANCES OF THIS CASE.**

The Receiver requests approval of fees and expenses for the Professionals identified herein, which have provided the services summarized below, in the amounts noted (which reflect billings for work from September 1, 2010 through December 31, 2011). As noted above, all professionals have agreed to 20% discounts of their customary fees, and the amounts requested reflect those discounts. The time spent, services performed, hourly rates charged, and expenses incurred by the Professionals have been at all times reasonable and necessary, and indeed essential, for the Receiver to perform his Court-ordered duties. Where time spent has been redundant, non-productive, or otherwise excessive in any way, the Receiver has reduced the fees sought by these amounts, shown clearly on the bills provided *in camera*.

**1. THOMPSON & KNIGHT LLP SENIOR PARTNER RICHARD ROPER, RECEIVER**

Thompson & Knight LLP ("Thompson & Knight") is a Dallas-based, international full-service law firm in which Richard Roper, the Court-appointed Receiver herein, is a senior partner. Mr. Roper has been licensed to practice law in Texas since 1982. He is the former United States Attorney for the Northern District of Texas, a position in which he served from 2004 until 2008, when he joined Thompson & Knight. Prior to his appointment as United States

Attorney, Mr. Roper was a career prosecutor, serving as an Assistant United States Attorney between 1987 and 2004 and, previously, as the Assistant District Attorney for Tarrant County District Attorney's Office in Fort Worth, Texas from 1982-1987. Mr. Roper's private practice is concentrated in, among other things, SEC and state securities compliance and enforcement matters. Mr. Roper regularly represents clients on a full range of corporate and securities law issues. Mr. Roper has previously served as counsel for other court-appointed equity receivers. *See W.L. Moody & Co.*, 374 F. Supp. at 481 (receiver's qualification relevant to fee awarded); *Tanner*, 2007 WL 2013606 at \*3; *Aquacell Batteries, Inc.*, 2008 WL 276026 at \*4; *Johnson*, 488 F.2d at 718, 719.

The Receiver has had to discharge his duties with little assistance from the individual Defendants. *See Tanner*, 2007 WL 2013606 at \*3 (receiver's tasks "excruciatingly difficult" without help from defendants); *Moody*, 374 F. Supp. at 471, 480 (defendant impeded receiver's progress and had to be subpoenaed to testify). Indeed, William Wise, the chief architect and operator of the Ponzi scheme, remains at large and has been wholly unwilling to communicate or cooperate with the Receiver, even two years after the first Receiver's Report and Fee Application were filed.

The Receiver delegated tasks appropriately to Professionals, and utilized the information provided by them to develop and execute a plan to maximize the value of a limited-value Receivership Estate while still accomplishing the tasks required of him. *See Fifth Ave. Coach Lines, Inc.*, 364 F. Supp. at 1222; *W.L. Moody & Co.*, 374 F. Supp. at 480; *Mobley*, 2000 WL 1702024 at \*2; *Johnson*, 488 F.2d at 718.

The fees charged by Thompson & Knight for Mr. Roper's work as the Court-appointed Receiver include all compensation being paid for his services during the applicable period. A



bill for those services from September 1, 2010 through December 31, 2011 is attached as Exhibit

B. The Receiver requests approval of payment to Thompson & Knight for \$33,600.00 in fees for his work, and \$690.25 in costs, for a total of \$34,290.25. Complete fee statements for the Receiver's work are being provided to the Court for *in camera* review.

**2. THOMPSON & KNIGHT LLP AS COUNSEL REPRESENTING THE RECEIVER.**

Thompson & Knight LLP is an international law firm headquartered in Dallas with offices throughout the United States and Latin America. Thompson & Knight has provided critical legal expertise and manpower for every aspect of this Receivership. The lawyers working on this case have included senior partners, junior associates, legal assistants, and support staff as warranted by the relevant tasks. *See Johnson*, 488 F.2d at 718-19 (compensation often reflects degree of experience). While ensuring proper and effective representation, the Receiver has only utilized the services of a limited team of lawyers in order to limit fees and ensure a lean and nimble team of Professionals. The Receiver has further reduced fees by placing primary responsibility for ancillary litigation on senior and mid-level associates.

Thompson and Knight has undertaken numerous tasks to further the goals of the Receivership during the period covered by this Fee Application including, but not limited to:

- Making necessary filings to obtain jurisdiction in the various localities around the country where assets of the Defendants were located or believed to be located;
- Obtaining records through subpoenas and other discovery methods;
- Analyzing bank records and accounting information in the context of known relationships and information related to the scheme in order to determine how and where money was spent by Defendants;
- Determining the source of fraudulent transfers and analyzing the benefit of third-party litigation to retrieve monies believed to be Receivership assets for the benefit of the Receivership Estate;

- Representing the Receiver in matters pertaining to the valuation and liquidation of seized assets including conducting extensive legal research, developing procedures for the seizure and sale of assets, drafting and arguing motions, conducting evidentiary hearings, and overseeing the actual monetization and liquidation of assets;
- Communicating with investors, government agencies, and the media as necessary and warranted;
- Undertaking a claims process for investors who have lost money to the Defendants;
- Analyzing investor account information and relevant banking records to determine the legitimacy and appropriate amounts of investor claims;
- Communicating with investors who received fictitious interest in addition to the full return of their principal to secure repayment of the "interest" to the Receivership Estate for distribution in the claims process and administration of the Estate;
- Undertaking legal research, drafting, and the development of evidence relevant to various litigation against third parties in an effort to return additional monies to the Receivership Estate;
- Drafting and filing ancillary litigation against more than 300 individuals and entities intended to claw back funds into the Receivership Estate;
- Negotiating settlements of claw back claims with numerous defendants; and
- Appearing in bankruptcy proceedings to protect the Receiver's interests in the claims brought against claw back defendants.

Thompson & Knight has served as lead trial counsel to the Receiver and has represented the Receiver in all proceedings in this case. Thompson & Knight has also been the Receiver's principal counsel on non-litigation matters. These matters have required expertise in a wide range of legal subject matters, including bankruptcy, marital property rights, labor and employment, securities, landlord-tenant, real estate, banking, trust law, liens, tax law, fiduciary issues, insurance, private equity, and aircraft. *See Fifth Ave. Coach Lines, Inc.*, 364 F. Supp. at 1222 (awarding interim fees and expenses to law firm for role in receivership and noting that it

involved wide variety of complex legal matters requiring the time, competence, and diverse resources of a law firm of high caliber); *W.L. Moody & Co.*, 374 F. Supp. at 484; *Tanner*, 2007 WL 2013606 at \*3; *Funding Res. Group*, 2003 WL 145411 at \*1; *Mobley*, 2000 WL 1702024 at \*2; *Johnson*, 488 F.2d at 718 (attorneys should be rewarded for accepting the challenges of a difficult case).

The firm has also made reports to governmental and regulatory agencies and worked diligently to make seized and subpoenaed records, data, information, and equipment available to them in the course of their ongoing investigations. Further, Thompson & Knight prepared and maintains the Receiver's website and has distributed other communications (most of which required detailed knowledge of legal matters) to various constituents such as investors, claimants, creditors, Defendants, Relief Defendants, lien holders, and others. All such tasks were necessary and essential to the work of the Receiver.

A bill for Thompson & Knight's services from September 1, 2010 through December 31, 2011 is attached as Exhibit C. The complete, unredacted bills have been provided to the Court for *in camera* review. The bills submitted *in camera* reflect deep discounts with regard to work undertaken in order to catalogue, analyze and respond to investor claims, and to maintain a database related to same. Further, the bills submitted *in camera* also demonstrate billing judgment on behalf of the Receiver and his counsel, whereby unproductive, possibly excessive and/or redundant work has been subtracted from the total fees charged and submitted in this Fee Application. The hours expended and identified as unproductive or redundant have been reduced from the total in calculating the final fees for which the Receiver now seeks approval. *SEC v. AmeriFirst Funding, Inc.*, No. 3:07-CV-1188-D, 2008 U.S. Dist. LEXIS 42166, \*7 (N.D. Tex. 2008) (J. Fitzwater); *Saizan v. Delta Concrete Prods. Co.*, 448 F.3d 795, 799 (5<sup>th</sup> Cir. 2006).

Therefore, the Receiver requests approval of payment to Thompson & Knight for \$354,410.30 in fees and \$29,594.97 in expenses, for a total payment of \$384,005.27 for sixteen months' work.

This amount reflects the agreed 20% discount on Thompson & Knight's usual and customary fees, and the fee schedule remains nearly identical to that presented to the Court in the Receiver's first Fee Application.<sup>2</sup> The Thompson & Knight fees were also reduced in an amount of \$52,295.20, which represents amounts billed for potentially duplicative or non-productive time, as well as for certain necessary but costly paralegal time in maintaining databases required for the case. This billing judgment on the part of the Receiver is documented within the bills submitted to the Court for *in camera* review. This reduction reflects an additional discount of 12.85% of the amount billed by Thompson & Knight for work done on behalf of the Receiver.

### 3. LSS&M, LLP

LSS&M, LLP ("LSS&M") is an accounting and insolvency consulting services firm. This firm was engaged by the Receiver to analyze Defendants' corporate and financial records in order to provide forensic accounting and investigative support services to the Receiver. LSS&M's work product helped to determine *where* and *how* investor money was spent and what parties should be pursued through claw-back, fraudulent transfer or disgorgement claims.

LSS&M has reviewed, and continues to analyze as needed, company books and records, including electronic and paper-based evidence. They have determined the total number of investors, total number of fictitious CDs, the entities in which investors invested, and the total amount of investor dollars received. They analyzed the amount of "rollover" investments, the total sum of cash paid back out to investors, and numerous banking records and financial

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<sup>2</sup> Because certain attorneys have left Thompson & Knight during the pendency of this case, other attorneys have, in some cases, been utilized to perform work where necessary. Each new attorney's rates have been discounted by 20% in accordance with the Receiver's agreement in this matter, and every effort has been made to be as cost-efficient as possible in staffing.

statements, and assisted Receiver's counsel to determine which individual investors qualify as "net winners" and other individuals who may have been complicit in the fraud.

The billable rates for LSS&M's work is as follows:

- Partner: \$300-\$395/hour
- Senior Associate: \$210-\$295/hour
- Associate: \$160-\$185/hour
- Paraprofessional: \$35-\$135/hour

LSS&M's bill reflects .6 hours of accountants' work and 17.9 hours of clerical work performed, for total fees of \$2,110.00. The total amount invoiced to the Receiver, which is attached as Exhibit D, is \$2,110.00. This amount is offset by an agreed discount of 20% to professional fees, which brings that total for which the Receiver seeks approval for payment to LSS&M to \$1,688.00.

**4. BINGHAM GREENEBAUM DOLL LLP**

Bingham Greenebaum Doll LLP ("BGD") is a law firm in Kentucky that represented the Receiver as local counsel in the Kentucky bankruptcy litigation. BGD assisted the Receiver in staying the Kentucky bankruptcy court's jurisdiction, if any, over the Receiver's claims against Jones, lifting the automatic bankruptcy stay against Jones, and clearing the way for the Receiver to continue to pursue his claims against Jones in this Court.

Since the Receiver retained BGD in August 2011 until December 2011, BGD has performed work for total fees of \$5,987.68, with expenses of \$162.25. The total amount invoiced to the Receiver, which is attached as Exhibit E, is \$6,142.14.

**5. TOTAL AMOUNTS REQUESTED FOR DISBURSEMENT FROM SEPTEMBER 2010 TO DECEMBER 2011**

Richard Roper, Receiver	\$34,290.25
Thompson & Knight	384,005.27
LSS&M	1,688.00
BDG	6,142.14
<b>TOTAL</b>	<b>\$426,125.66</b>

**C. THE FEES REQUESTED BY THE RECEIVER ARE IN LINE WITH OTHER CASES.**

The fees associated with complex receivership cases often have been substantial percentages of the total assets found. *SEC v. Megafund Corp., et al.*, 2008 WL 2839998 at \*2 (N.D. Tex. 2008); *SEC v. Funding Res. Group*, 2003 WL 145411 at \*1 (N.D. Tex. 2003). Courts have noted that compensation to equitable receivers is analogous to compensation to receivers in bankruptcy. See *SEC v. W.L. Moody & Co., Bankers (Unincorporated)*, 374 F. Supp. 465, 481 (S.D. Tex. 1974), *aff'd*, 519 F.2d 1087 (5th Cir. 1975). The United States Department of Justice has reported that from 1994 to 2000, in Chapter 7 asset cases, 30% – 40% of total estate receipts were disbursed as fees and expenses to trustees and other professionals. This was true *regardless* of the size of the case. *Id.*

**D. THERE ARE SUFFICIENT FUNDS ON DEPOSIT IN THE RECEIVERSHIP ESTATE TO SATISFY THE OUTSTANDING FEES OF THE RECEIVER AND HIS PROFESSIONALS FROM SEPTEMBER 1, 2010 TO DECEMBER 31, 2011, AND TO COVER ANTICIPATED FUTURE COSTS AND EXPENSES ASSOCIATED WITH ADMINISTRATION OF THE ESTATE.**

As of the filing of this Fee Application, the Estate has sufficient funds to pay all of the Professionals' and Receiver's fees as requested herein. Currently, the Estate holds \$2,769,810.56 in deposits and this Fee Application requests authority to disburse a total amount

of \$426,125.66. The total deposits include those amounts obtained from certain net winning investors as the return of fictitious interest, and additional amounts are expected to be recovered from the litigation of fraudulent transfer claims against other net winning investors and third parties who received funds without consideration.

### **III. ANTICIPATED FUTURE WORKLOAD FOR RECEIVER AND RETAINED PROFESSIONALS**

The work of this Receivership is not yet complete; much has been done, but some significant work remains to be done. All additional work to be undertaken, however, will be driven by (a) the costs to the Estate associated with such work; (b) the ability of the Estate to pay for such work; and (c) the likely result to be achieved, and proceeds to be recovered for the Estate, as a result of such work.

The fees and expenses in the early months of this Receivership were substantial. However, those expenses peaked at times when Professionals were engaging in the bulk of their work, such as: forensic imaging of seized computers; review and analysis of corporate records; the seizure, securing, and sale of Estate Assets; and the initial investigation for and litigation to recover such assets. After these initial "peaks," the workload of the Receiver and his Professionals leveled out. This type of reduction is typical in receiverships. *SEC v. Aquacell Batteries, Inc.*, No. 6:07-cv-608-Orl-22DAB, 2008 WL 276026, \*4 (M.D. Fla. Jan. 31, 2008); *SEC v. W.L. Moody & Co., Bankers (Unincorporated)*, 374 F. Supp. 465, 486 (S.D. Tex. 1974), *aff'd*, 519 F.2d 1087 (5th Cir. 1975).

The fees requested in this Application represent the work performed over a sixteen month period. As the Court can see, the Receiver has been mindful of keeping fees expended to a minimum following the significant burst of work at the inception of the Receivership, while ensuring that the goals and needs of the Receivership, investors, and ongoing government

investigations are met. The Receiver still believes that the funds that might be available for ultimate distribution to those with claims against the Defendants will almost certainly be *far less* than anyone may have hoped for or expected. Indeed, investors stand to recover little cash, if any, on their investments. In light of this extremely unfortunate circumstance, the Receiver and his team continue to focus on reducing expenses.

While an increase in fees can be expected for a brief period because of the pending clawback litigation, the Receiver expects that the work will continue at the current, relatively reduced pace while conducting work that is necessary and consistent with his duties. Nevertheless, in addition to the work that still must be performed, the Receiver unquestionably will need to address unforeseen events, crises, and emergencies pursuant to the Court's requirement that the Receiver prevent any irreparable loss, damage, or injury to the Estate. Orders Appointing Receiver at ¶ 5(g). As stated in the Report, the Receiver anticipates that his major activities and priorities will include, or continue to include:

- Continuing to prosecute ancillary litigation to claw back amounts into the Receivership Estate;
- Continuing to search for and secure cash for the Estate from a variety of potential sources, and determining how unaccounted-for funds were dispersed;
- Continuing to reduce costs of administering the Estate;
- Analyzing and cataloging potential claims against the Estate, including by collecting and processing claims through the Receiver's online procedure;
- Responding to claims and litigation initiated by others;
- Assisting, reporting to and responding to governmental and regulatory agencies as appropriate, including inquiries from the Commission, Department of Justice, FBI, U.S. Attorney's Office, and the Internal Revenue Service in connection with their investigations;



- Communicating with this Court, investors, Defendants and Relief Defendants, claimants, other constituents of the Estate, and the public, including through the Receivership website; and
- Developing a plan for distribution of remaining Receivership Estate funds for the benefit of defrauded investors and other claimants.

#### IV. CONCLUSION

The relief requested herein is necessary and appropriate to carry out the most basic provisions of the Orders Appointing Receiver. Accordingly, the Receiver requests that the Court enter an order approving of the fees and expenses incurred from September 1, 2010 to December 31, 2011.

Respectfully submitted,

**THOMPSON & KNIGHT, LLP**

/s/ Jennifer Rudenick Ecklund

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**CERTIFICATE OF SERVICE**

On April 9, 2012, I electronically submitted the foregoing document to the Clerk of the Court for the United States District Court for the Northern District of Texas using the electronic case filing system of the Court. I hereby certify that I have served all counsel and/or pro se parties of record electronically or by other manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Jennifer Rudenick Ecklund  
Jennifer Rudenick Ecklund