

COMES NOW Richard B. Roper, the Court-appointed Receiver in this action, and submits this Motion for Approval of Interim Fee Application and Procedures for Future Compensation of Fees and Expenses and Brief in Support, seeking the Court's approval to pay invoices for interim fees and expenses, incurred between the date of his appointment and July 31, 2009, in the amount of \$646,247.07, to the various companies and firms that have rendered professional services on behalf of the Receivership Estate ("Fee Application"). The tasks and challenges presented by this Receivership have been numerous and, in many instances, complex and time-consuming. To complete his Court-ordered tasks and overcome the challenges with which he is faced, the Receiver put into place a team of professionals from seven firms and companies (the "Professionals"), each of whom have the skills, expertise, and business contacts necessary to assist the Receiver in carrying out his fundamental duty – implementing this Court's orders to seize and control all of the real and personal property assets of the Estate of whatever kind and wherever located in order to liquidate them for the purpose of creating a pool of funds for the future compensation of the victims of Defendants' fraud. Amended Order Appointing Receiver at ¶ 5.

Many of the firms and companies assisting the Receiver have agreed to discount their fees or cap their fees for the benefit of the Estate. Thompson & Knight LLP, the law firm representing the Receiver and providing primary, daily assistance in seizing and liquidating assets of the Estate, as well as analyzing documents and evidence seized from the Defendants, analyzing "claw-back" and third-party litigation matters, and more, has agreed to an aggregate twenty percent (20%) discount of all fees incurred in the course and scope of the firm's still ongoing and extensive work. Furthermore, Thompson & Knight voluntarily waived more than \$20,000 in legal fees incurred to review and analyze investor claims, correspondence, and other

documentation submitted by investors. Additionally, Thompson & Knight has not charged the Estate for attorney time spent preparing this Fee Application, preparing underlying billing statements, or preparing the Receiver's Report filed contemporaneously herewith.

The work of the Professionals is described in detail in the attached invoices, as well as in the Report of the Receiver Dated December 4, 2009 (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

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 \$246,000,000 of investor money (including rollover amounts). This sum *includes* rollover amounts, which means that the actual dollar-for-dollar total sum taken from investors will be less when rollover amounts (money returned to an investor upon CD maturity but reinvested, or "rolled over," into the Defendant entities). The Receiver's accountants are analyzing all pertinent data from which to net out rollover amounts and determine the actual number of investor dollars invested in the scheme. 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.

As a result, the Receiver was immediately placed in charge of Defendants' offices in Raleigh, North Carolina and Napa, California, and over Defendants' assets wherever located. Consequently, the Receiver was required to assume and discharge the legal duties, in numerous jurisdictions, of (1) an employer of Defendants' employees; (2) an operator of an offshore banking institution (albeit a fraudulent one); (3) an owner of real and personal property including, *inter alia*, four residences, five vehicles, an airplane, a valuable wine collection and numerous items of valuable art and jewelry; (4) a tenant; (5) a party to new litigation; and (6) a custodian of more than a decade's worth of ill-kept business records relating to numerous corporate entities, investors, and employees. *See* Report, Exhibit A.

The Receiver has not been authorized by the government in St. Vincent, where Millennium Bank's offices were located, to oversee the Defendants' business dealings, unwind the fraud, or recover assets for creditors and defrauded investors in that location. It is well-known that English law governs in many areas of the world, including the Caribbean Islands, many of which are considered to be tax havens for U.S. Citizens. Due to strict confidentiality laws throughout the Caribbean, including St. Vincent, and the tax incentives offered to those who move money to financial institutions located in these jurisdictions, there has been an increase in the number of Ponzi schemes crossing international lines. This issue poses an obstacle to receivers attempting to recover assets for defrauded investors.

The courts and governmental authorities in the Caribbean, including on the island of St.

Vincent, have laws to appoint their own quasi-receivers. In this case, the government in St. Vincent appointed its own “Joint Provisional Liquidators” (“JPL”), who are employed with international accounting firm KPMG. The Receiver has communicated with the JPLs on numerous occasions in an effort to share and obtain information pertinent to unwinding the Defendants’ fraud and recovering as many assets as possible into the domestic and foreign Estates. However, this Court’s Orders Appointing Receiver have not been recognized by the St. Vincent government, as that body has rested authority for the proper handling and winding down of Defendants’ business and payment of claims to creditors and defrauded investors squarely in the hands of the JPLs.

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 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 Kelty. 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. Deposits were accomplished utilizing remote deposit machines obtained by the Hoegel Defendants and located onsite in Defendants' Napa, California office. Any investor funds delivered by wire transfer were deposited into the same, single UT of S account.

As stated above, investors also submitted checks payable to Sterling and Millennium Bank. Analysis to date shows that there were 2,602 Sterling investments out of a total of 4,224 investments in the Defendant entities and that the 2,602 investments in Sterling were made by 538 Sterling investors. Sterling investments were *not* deposited into the WaMu account ending 9648. Rather, Sterling investors' money was deposited into a WaMu account ending 9656.

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.

The latest count of investors located by Receiver in cooperation with the Commission shows that more than 1,091 investors made a total of 4224 investments broken down as follows:

- Sterling: 2602 CDs;
- Millennium Bank: 97 CDs; and
- UT of S, LLC: 1525 CDs.

Total monies paid by investors to purchase Millennium CDs since 1996 totals over \$246 million (again, this sum includes roll over amounts which have not yet been netted out). However, as stated above, a significant portion of that amount was repaid to investors in

redemption and interest payments in the years prior to the Receivership. A significant amount of investor money, possibly the vast majority of it, was squandered on the Defendants' personal lifestyles and luxuries. 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 and cannot be recovered into the Estate as there are few to no tangible assets remaining after these expenditures that can be liquidated. Accountants with the firm of LSS&M, LLP are analyzing Defendants' banking and business records in order 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. This work will also allow the Receiver to analyze and, in some instances, pursue "claw-back" claims to recover the proceeds of Defendants' fraud from investors who received a return of additional funds beyond the original, principal amounts they paid to purchase a CD (known generally as "net winners").

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 is 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. So far, 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.

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 has 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); 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). 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 tasks undertaken therein, which are described in detail below.

E. THE INITIAL TASK OF THE RECEIVERSHIP WAS TO FIND AND SECURE ESTATE ASSETS AND RECORDS.

The bulk of the initial work performed by the Receiver and his team has been related to (1) locating and securing the assets of the Estate; and (2) locating, collecting, organizing, and analyzing necessary information about assets and liabilities of the Estate, so that the Receiver can take the appropriate steps recover and monetize assets, and to properly address claims and liabilities.

This work is typical of the vast majority of receiverships and necessary in order to determine whether there are sources of funds available to satisfy claims by defrauded investors

and other creditors of the Estate and to maximize the value that may ultimately be distributed to such claimants. The Report describes in significant detail the tasks, challenges and accomplishments associated with the first four months of this Receivership. Without the assistance of the Professionals, whose work is described in their invoices and in the Report, the Receiver would have been unable to carry out the Court's orders in this case.

While employees in the Napa office maintained a series of client databases and hard copy files tracking investor CDs, they are largely incomplete and inaccurate. This fact, combined with limited funds in the Estate, has hampered the identification and tracing of potential assets to be seized from Defendants and investors who received proceeds of the fraud beyond their initial deposit amount. The effort and expense involved in rapidly taking control of Defendants' non-complex yet poorly documented array of businesses and evaluating their assets and liabilities have been substantial.

Furthermore, the Receiver's attorneys have invested significant time communicating with investors, cataloging investor claims and investment information, obtaining banking records for Defendants and Relief Defendants, reviewing Defendants' corporate and financial records, analyzing investor claim forms and correspondence, negotiating with lien-holders regarding their interests in Estate assets, undoing judgments and claims filed against Defendants, and contacting foreign authorities and financial institutions in an effort to obtain information pertaining to Defendants' assets. A complete and detailed discussion of the Receiver's work to date is provided in the Receiver's Report filed contemporaneously with this Fee Application and attached hereto as Exhibit A.

F. THE RECEIVER IS MANAGING THE ESTATE FOR THE BENEFIT OF ALL CLAIMANTS, INCLUDING INVESTORS.

Despite numerous obstacles, the Receiver has made meaningful progress in a short period of time, and that progress would not have been possible without the Professionals' work. Since acquiring physical control of Defendants' domestic offices and operations, the Receiver has invested substantial time and effort to search for, locate, secure, evaluate, and liquidated Estate assets, as more fully discussed in the Report and enumerated in Paragraph D, above.

Additional cash proceeds will be recovered by the Estate in the coming weeks as Lynn and William Wise's personal property including art, vehicles, and jewelry was liquidated on November 18, 2009 (the Receiver simply awaits deposit of the proceeds into the Receivership Estate account), and as the Hoegel' Defendants' residence in American Canyon is sold. The Wise personal property auction netted the Estate approximately \$648 million, but the sale of the American Canyon residence is not expected to provide any meaningful return to the Estate due to existing liens.

The Receiver is considering whether to pursue claw-back claims against third parties, which decision will be driven by (a) the cost to the Estate to do so and the ability of the Estate to pay those costs; and (b) the likely gain, if any, from filing such claims. Among the possible clawback claims are lawsuits against investors who are considered "net winners" under the law; *i.e.* investors who received an amount of money from Defendants in excess of the principal amount of their investment.

Professionals including Defendants' attorneys and accountants have reviewed corporate and financial records seized from Defendants and Relief Defendants and obtained through independent subpoenas issued to the banks where Defendants and Relief Defendants were known or believed to have maintained accounts. Furthermore, the Receiver engaged Kroll, Inc., who

undertook a forensic investigation and search for any assets belonging to Defendants or *possibly* belonging to Defendants in Switzerland, but no assets were identified. A more detailed discussion of the work performed by Kroll is provided in the Receiver's Report attached as Exhibit A.

Ultimately, the Receiver has not located any significant source of funds or assets held by any of the Defendants or Relief Defendants inside or outside of the United States and is now considering filing the above-described "clawback" and other third party claims in an effort to recover *some* value into the Estate for the benefit of the many defrauded investors and unpaid creditors.

G. ADDITIONAL WORK REMAINS TO BE DONE TO INCREASE THE ASSETS AVAILABLE FOR DISTRIBUTION TO INVESTORS.

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 will exceed future costs of administering the Estate, but remains mindful that the recovery of additional value, though the liquidation of assets, pursuit of claims, and other efforts, will not be possible without the expenditure of considerable resources. The Receiver believes that it is highly unlikely that Defendants' investors will be remunerated after costs to maintain and administer the Estate are satisfied, depending on the findings of accountants as to how much money was spent by Defendants before the Receivership commenced

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

an order establishing procedures that will govern future payments of fees and expenses for the Receiver and the Professionals assisting him in the performance of his duties.

II. REQUEST FOR APPROVAL OF FEES THROUGH JULY 31, 2009

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:

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 team of Professionals discussed herein, all of whom were needed to carry out his Court-ordered duties. In particular, the Receiver has retained seven professional entities, described below (the “Professionals”). These Professionals have been working diligently to marshal, preserve, and manage the assets of the Estate.

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:

- 1) Approve the fees and expenses billed by the Receiver and his retained Professionals for work through July 31, 2009 and, in some instances, for all work performed to date (where indicated); and

- 2) Approve the Receiver's proposed procedure for review of applications for future compensation of fees and expenses of the Receiver and the Professionals he retains.

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.¹ *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.

¹ 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).

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.*, 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.

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, to investigate leads, and to 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.

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. 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 through July 31, 2009, or to date where indicated). As noted above, many of these Professionals have agreed to substantial discounts of their customary fees, and the amounts requested reflect those discounts. As a result, the total fees charged by Thompson & Knight LLP have been reduced by 20% in the aggregate, and fees charged by the next largest billing Professional, computer forensics and imaging provider Stroz Friedberg, have been reduced by 20%.

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. Each of the below-discussed Professional firms was selected because they possess special expertise required to fulfill the Court's orders. *See Johnson*, 488 F.2d at 718.

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.

Beginning on the date of his appointment, the Receiver was charged with overseeing a number of complex matters involving the identification, seizure, securing, and liquidation of assets as well as an international search for same. This engagement required much of the Receiver's time and attention in the early weeks of its administration. As the matter has progressed, the Receiver has been able to shift a majority of work to his team of Professionals, including his attorneys, and will continue to do so for the foreseeable future in order to maximize efficiency in this matter while also minimizing costs.

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.

In the first four months of the Receivership, the Receiver assembled a multi-disciplinary team of skilled Professionals and participated personally in closing down and securing the domestic offices, and seizing documents, computers and other equipment, real property, personal property (including an airplane), bank accounts, and more. Orders Appointing Receiver, at ¶¶ 4-

5 (Receiver directed to collect, marshal, and take custody, control, and possession of all assets of, or traceable to, the Receivership Estate).

The Receiver has also delegated tasks appropriately to each Professional, 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 through July 31, 2009 is attached as Exhibit B. The Receiver requests approval of payment to Thompson & Knight for \$52,752.00 in fees for his work.

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.

Thompson and Knight also identified and engaged a variety of specialized Professionals to serve the Receiver's myriad needs including, for example, accountants, property appraisers, real estate agents, investigators, security providers, wine brokers, and forensic analysts. Further,

the firm has undertaken numerous tasks to further the goals of the Receivership 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;
- Taking control of and closing Defendants' offices, marshaling assets and records;
- Imaging and investigating electronic and hard copy data seized from Defendants;
- Obtaining records through subpoenas and other discovery methods;
- 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; and
- Communicating with investors, government agencies, and the media as necessary and warranted.

From the outset of the Receivership, Thompson & Knight provided some of its most in-demand professionals for service on short notice in a variety of locales. *See Johnson*, 488 F.2d at 718 (“Priority work that delays the lawyer’s other legal work is entitled to some premium.”).

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.

Thompson & Knight has also conducted ongoing legal due diligence on many aspects of the Defendant entities' business operations. Based on that assessment, the firm has carried out the Receiver's orders to terminate business relationships that are no longer needed including real estate leases and other contracts. *See id.* at ¶ 5(j) (Receiver directed to "Preserve the Receivership Estate and minimize expenses in furtherance of maximum and timely disbursement thereof to claimants"); *Fifth Avenue Coach Lines*, 364 F. Supp. at 1222 (law firm assisted trustee with all day to day corporate problems).

Thompson & Knight attorneys personally participated in the closure of Defendants' offices in Raleigh, North Carolina and Napa, California, and assisted in securing other valuable real and personal property such as a plane, a wine collection, art, jewelry, and several vehicles.

The firm has responded to challenges to the Receiver's right to seize and sell assets traceable to the fraud and has conducted numerous hearings, including evidentiary hearings, in order to obtain Court authority for a variety of tasks. *See Johnson*, 488 F.2d at 718 (court should

observe attorney's work product, preparation, and ability before the court when assessing professional fees). The firm also had to work to unwind and set aside a prior judgment obtained against Defendants in violation of the Court's Temporary Restraining Order.

A bill for Thompson & Knight's services through July 31, 2009 is attached as Exhibit C. The Receiver requests approval of payment to Thompson & Knight for \$482,952.80 in fees and \$36,297.43 in expenses, for a total payment of \$519,250.22. Many of the costs and expenses incurred by Thompson & Knight LLP go beyond costs incurred by its lawyers. Rather, many of the costs represent funds Thompson & Knight *already* paid to vendors and service providers the firm utilized to carry out the Receiver's immediate responsibilities, including security providers, investigators, real estate agents, and other service providers, which expenses include:

7/30/09	Saravia Towing, Inc.	Storage of seized vehicle	\$900.00
8/3/09	North Raleigh Business Center	Settlement of Lease	\$4,000.00
8/7/09	U.S. Marshal	L. Wise vacating house on 8/8/09 - \$500.00 - 385.60 refunded = 114.40	\$114.40
8/31/09	Toni Benson	Realty and related services pertaining to sale of Wise residence in Raleigh, North Carolina	\$31,618.65 (taken out of the proceeds of the sale of the house)
9/17/09	Brinkman Appraisal Service	Appraisal of American Canyon Property	\$375.00
9/23/09	Risk Resolution and Investigations	Investigative services re Defendant addresses/ locations prior to service of Commission's lawsuit and injunction, coordinated investigation of Hoegel Defendants and Relief Defendants, conducted follow up investigations and interviews of Hoegel Defendants, prepared inventories of assets at various	\$7,721.60

		locations and properties relating to or previously owned by Hoegel Defendants, oversaw recovery of assets from Hoegel Defendants, and coordinated meetings/appraisals of assets located in California.	
10/1/09	Post-Pro	Video of Raleigh Residence	\$328.00
11/17/09	Janet Moss	Realty and related services pertaining to sale of Hoegel residence in American Canyon, California	\$1,521.97 (to be taken out of the proceeds of the sale of the house, along with the previously approved realtor's commission)

3. Stroz Friedberg, LLC.

Stroz Friedberg, LLC (“Stroz”) is a nationally recognized forensic accounting and technology support services company that provides, among other services, forensic investigations and financial and accounting consulting in litigation. Stroz is comprised of former federal and state prosecutors, federal Supervisory Special Agents, senior Senate staffers, technology lawyers, litigators, educators, and consultants hailing from the Department of Justice, the Federal Bureau of Investigation, the Department of Defense, the Federal Trade Commission, the Internal Revenue Service and elsewhere.

Stroz’s services were critical to the Receiver in the early days of the Receivership, during which the company helped the Receiver effectuate the Court’s orders to (1) account for all Estate property that comes in the Receivership; (2) take complete and exclusive control over assets and records; (3) enter and secure premises where assets or records were located; and (4) prevent loss,

damage and injury to the Estate. Orders Appointing Receiver at ¶ 5. Specifically, Stroz provided the following services:

- Stroz preserved the electronic data from Defendants' primary domestic business office Napa, California. In this process, Stroz gathered data from over Defendants' computers and other storage devices and created an electronic repository of over 5 terabytes.
- Stroz performed the same tasks for computers seized from Defendants' Raleigh, North Carolina office.

Stroz's workload peaked at the beginning of this lawsuit. For the sake of preserving very limited funds in the Receivership Estate and in order to be as efficient as possible, the Receiver has refrained from engaging a detailed analysis of data by Stroz. A bill for Stroz's services through July 31, 2009 is attached as Exhibit D. The Receiver requests approval of payment to Stroz for \$52,110.51 in *total* fees and expenses to date as of the filing of this Fee Application. This sum represents a voluntary discount provided by Stoz Friedberg of 20% on all hourly time.

4. LSS&M, LLP

LSS&M, LLP ("LSS&M") is an accounting and insolvency consulting services firm. This firm has been 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 will provide a road map for tracing Estate assets around the world by helping 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, company books and records, including electronic and paper-based evidence. They have determined the total number of investors, total number of CDs, the entities in which investors invested, and the total amount of investor dollars received. They are analyzing the amount of "rollover" investments, the total sum of cash paid back out to investors, and numerous banking records and financial statements, and are preparing

to determine which individual investors qualify as “net winners” and other individuals who may have been complicit in the fraud. LSS&M’s services began in earnest *after* July 31, 2009, when the Estate held sufficient funds to warrant such work. Hence, it has not yet submitted an invoice for payment, though the scope of its work is relevant to the Receiver’s Report and pertinent to the work performed by the Receiver’s other Professionals. The Receiver can state that 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.

5. Kroll, Inc.

The Receiver engaged Kroll, Inc. to conduct an investigation into Defendants’ activities in Switzerland, where it was believed assets would be located. Kroll is a global leader in investigative services. The Receiver asked Kroll’s representatives to search for assets or information pertaining to William Wise, Millennium Bank, UT of S, Philippe Angeloni, United Trust of Switzerland SA, Rhone Inc., and First Assets Management of Geneva SA. Despite Defendants’ purported relationships with Swiss banks and businesses and their own Swiss dealings, Kroll was unable to locate any source of funds or assets in Switzerland traceable to the fraud. Due to a lack of resources in the Estate and the need to conserve funds, the Receiver has refrained from expending additional Estate funds to engage in further international investigations.

The Receiver asks that he be authorized to pay Kroll's outstanding invoice for *all* services rendered *to date* relative to this proceeding, which total \$12,597.34. A bill for these fees is attached hereto as Exhibit E.

6. Nelson Mullins Riley & Scarborough LLP

Nelson Mullins Riley & Scarborough LLP ("Nelson Mullins") is a law firm with offices in Raleigh, North Carolina. Nelson Mullins provided assistance to the Receiver with regard to the closing of Defendants' Raleigh, North Carolina offices, including packaging documents and materials located in the premises and securing access to same.

In addition, Nelson Mullins has acted as a liaison for the Receiver in the North Carolina area and will continue to serve in this limited capacity. A bill for Nelson Mullins's services through July 31, 2009 (it has billed *no* additional time since then) is attached as Exhibit F. The Receiver requests approval of payment to this firm for \$2,325.00 in fees and \$897.00 in expenses, for a total payment of \$3,222.00.

7. Brinkman Appraisal Service

The Receiver utilized services provided by Brinkman Appraisal Service to obtain an appraisal of real property previously owned by the Hoegel Defendants in American Canyon, California, in accordance with 28 U.S.C. § 2001, which required the Receiver to obtain appraisals prior to the sale of any real property. The American Canyon residence is scheduled for sale, with all net proceeds from the sale to be deposited into the Receivership Estate. Hence, the Receiver asks that he be authorized to pay all of Brinkman's fees to date (as of the filing of this Fee Application), which total \$375.00.

8. Mark Golodetz

With the Court's permission, the Receiver utilized the services of Mr. Golodetz to liquidate William Wise's extensive wine collection. Mr. Golodetz was familiar with Defendants'

collection because he worked directly with William Wise in the process of locating, purchasing, and transporting the wines as they were added to the collection. Mr. Golodetz was completely cooperative with and helpful to the Receiver in the process of identifying and locating the various wines held by Wise, either in his individual or corporate capacity, arranged for the auction of the entire stateside wine collection, and also located some additional wines purchased by Mr. Wise which had been purchased, but not yet delivered and incorporated into Wise's collection. Most of the wines have been sold at auction at this time, for a recovery exceeding \$197,000. Mr. Golodetz's fees (from the proposed fee structure already approved by the Court) and expenses associated with this work total \$6,215.00. A bill for these services is attached as Exhibit G. Accordingly, the Receiver asks for authorization to pay all of Golodetz's fees to date.

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 THROUGH JULY 31, 2009, AND TO COVER ANTICIPATED FUTURE COSTS AND EXPENSES ASSOCIATED WITH ADMINISTRATION OF THE ESTATE.

Through the course of his work, the Receiver has had to pay certain costs and fees as they arose in order to advance the goals and obligations of the Receivership. The table in § B(2), above, is a complete list of all vendors and service providers whose fees have already been paid by the Receiver prior to the filing of this Fee Application.

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 \$2,374,385.50 in deposits and this Fee Application requests authority to disburse a total amount of \$646,247.07. The total number of deposits includes the amount recovered from auction of the Wise personalty, expected to be deposited into the Receivership Estate account in mere days. As stated previously, the Estate will receive some additional funds from the ongoing auction of wines and the sale of Hoegel properties.

Admittedly, the funds on deposit in the Estate, especially after the Professionals' fees are paid, do not come close to approaching the many millions of dollars lost by defrauded investors, nor does it account for the funds that remain unaccounted for due to their secreting away by Defendants in unknown and so far undiscovered offshore accounts. Unfortunately, Defendants did not maintain a thorough or accurate accounting system nor did they keep other records indicating, or even suggesting, the source or location of funds or properties. This lack of data, coupled with already extremely limited Estate funds, has prevented the Receiver from engaging in full-scale global asset searches.

III. REQUEST FOR APPROVAL OF PROPOSED PROCEDURE FOR REVIEW OF FUTURE COMPENSATION OF FEES AND EXPENSES

The Receiver further requests the entry of an order authorizing and establishing procedures for compensating and reimbursing himself and Professionals on a monthly basis.² Such an order will enable the Receiver to effectively monitor the fees and expenses incurred on a monthly basis without unnecessarily diverting time and money from the securing of assets and identification of claims to the preparation, filing, and defense of monthly applications to the Court.

The requested procedures require Professionals to present to the Receiver a statement for services rendered and expenses incurred in the prior month. If the Receiver approves the fees and expenses, he shall be authorized to pay the prior month's invoice. These monthly payments would then be subject to the Court's later approval as part of an *interim* fee application process undertaken every four months, through which the Receiver and the professionals would seek approval of the amounts paid pursuant to the monthly statements. If any of the invoiced amounts are disapproved by this Court, such amounts will be disgorged by the recipient within fifteen business days.

The Receiver requests that the review of payment for compensation and reimbursement of fees and expenses incurred by him and the Professionals on a monthly basis be structured as follows:

- (a) Each Professional hired by the Receiver may submit a monthly statement to the Receiver. The Receiver shall have ten business days after the receipt of the monthly statement to review it. At the expiration of this period, the Receiver shall promptly pay all fees and out-of-pocket expenses requested

² Such procedures have been authorized in complex chapter 11 cases in this district. *See, e.g., In re Renaissance Hospital – Grand Prairie, Inc., d/b/a Renaissance Hospital – Grand Prairie*, Case No. 08-43775 (DML) (Bankr. N.D. Tex. Oct. 27, 2008) (Doc. 390); *In re Home Interiors & Gifts, Inc.*, Case No. 08-31961 (BJH) (Bankr. N.D. Tex. June 25, 2008) (Doc. 344).

in such statement, except such fees or expenses as to which an objection shall be served as provided in paragraph (b) below.

- (b) In the event the Receiver shall have an objection to the compensation or reimbursement sought in a particular monthly statement, the Receiver, within ten business days of the receipt of the statement, shall serve upon the Professional whose monthly statement is objected to, a "Notice of Objection to Fee Statement" (the "Objection") with a written statement setting forth the precise nature of the objection and the amount at issue. Thereafter, the Receiver and the Professional whose monthly statement is objected to shall attempt to reach an agreement regarding the payment to be made. If an agreement cannot be reached, payment of the disputed amount will be withheld until the next interim fee application hearing, at which time the Court will consider and dispose of the Objection if payment of the disputed amount is requested. The Receiver shall pay promptly any portion of the fees and expenses requested that are not the subject of an Objection.
- (c) Beginning December 2009 and approximately every four months thereafter, the Receiver and each of the Professionals shall file with the Court and serve on all parties as may be required by the Court, an application for interim Court approval of the compensation and reimbursement of expenses requested for the prior four months. All payments made by the Receiver are provisional and subject to return/disgorgement to the Estate until ordered and confirmed by the Court. Any amounts disapproved by the Court, shall be disgorged within five business days.
- (d) The pendency of an application or a Court order that payment of compensation or reimbursement of expenses was improper as to a particular statement shall not disqualify a Professional from the future payment of compensation or reimbursement of expenses as set forth above.

These proposed procedures will enable the Receiver to closely monitor costs of administration, maintain relatively level cash flow availability, implement efficient cash management procedures, and reduce unnecessary and duplicative costs.

IV. ANTICIPATED FUTURE WORKLOAD FOR RECEIVER AND RETAINED PROFESSIONALS

The work of this Receivership is far from complete; much has been done but much remains to be done. All work yet to be done, or possibly 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 have been substantial. However, the amounts incurred peaked at times when Professionals were engaging in the bulk of their work, that is. forensic imaging of seized computers, review and analysis of corporate records, the seizure, securing, and sale of Estate Assets, and the initial investigation for assets and liquidation of them. 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 Receiver expects a continued reduction in professional fees 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 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;
- Securing and centralizing hard copy files, documents and electronic records from additional entities including Millennium Trust Company (a

separate, non-Defendant entity with whom Defendants worked, is only similarly named to Defendants);

- Liquidating Estate assets, including real estate, private equity investments, aircraft, jewelry, and other assets;
- Recovering Receivership assets from foreign entities, including opposing competing claims to those assets;
- Analyzing and cataloging potential claims against the Estate, including by collecting and processing claims through the Receiver's online procedure;
- Developing and implementing plans to initiate litigation to recover value for the Estate as appropriate;
- 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;
- Working with the Joint Provisional Liquidators appointed in St. Vincent to identify assets and process claims;

This Fee Application seeks approval of professional fees and expenses incurred during the first several months of the Receivership. During that time, the Receiver determined that the funds that *might* be available ultimately for distribution to those with claims against the Defendants will 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 has instructed his team to focus on reducing expenses. This reduction is more easily achieved if the Receiver is not forced to incur material additional expenses in addressing unforeseen events, crises, challenges, and emergencies – the very nature of such things being out of his control.

V. 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 (1) approving of the fees and expenses incurred through July 31, 2009 and (2) approving of the proposed procedures to govern future applications for the payment of fees and expenses.

Respectfully submitted,

THOMPSON & KNIGHT, LLP

/s/ Jessica B. Magee _____

Timothy R. McCormick
State Bar No. 13463500

William L. Banowsky
State Bar No. 01697125

Jessica B. Magee
State Bar No. 24037757

1722 Routh Street
One Arts Plaza, Suite 1500
Dallas, Texas 75201
Tel. (214) 969-1700
Fax (214) 969-1751

CERTIFICATE OF SERVICE

On December 4, 2009, 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/ Jessica B. Magee _____

Jessica B. Magee