

COMES NOW Richard B. Roper, III (“Receiver”), and files this Unopposed Motion to Approve Procedures to Sell Sports Memorabilia Collection and Brief in Support, and respectfully shows the following:

I.
FACTUAL BACKGROUND

1. On March 27, 2009, the United States Securities and Exchange Commission (“SEC”) initiated this lawsuit and, in connection therewith, requested the appointment of a Receiver. On the same day, the Court issued an Order Appointing Receiver, naming Richard B. Roper, III Receiver for the above-named Defendants and Relief Defendants. The Order Appointing Receiver was amended on June 22, 2009 to clarify the extent of the Receiver’s rights and authority, including the right to seize and sell real and personal property purchased with the proceeds of Defendants’ fraud.

2. After his appointment as Receiver and pursuant to the responsibilities with which he is charged, the Receiver took control and possession of certain real and personal property owned by the Defendants and Relief Defendants, including a sports memorabilia collection (the “Sports Collection”), which is personal property that constitutes a Receivership Asset within the meaning of this Court’s March 27, 2009 Order Appointing Receiver. The Sports Collection is the result of over 50 years of collection by Daryl “Chris” Hoegel, a Relief Defendant in this case. The Sports Collection includes, but is not limited to, hundreds of newspaper clippings, over fifty autographed baseballs, other autographed media, and sports related artwork and prints.

3. As part of his duties, and pursuant to 28 U.S.C. § 2004 and 28 U.S.C. § 2001, the Receiver requests that he be allowed to market and sell the sports memorabilia collection as outlined below. **Relief Defendant Daryl “Chris” Hoegel does not object to the Receiver’s seizure of the Sports Collection or to the Receiver’s proposed procedures for liquidating**

the Sports Collection. Additionally, Relief Defendant Daryl “Chris” Hoegel does not object to the Receiver retaining all proceeds from sale(s) of the Sports Collection for the benefit of the Receivership Estate.

II.
ARGUMENT AND AUTHORITY

4. It is well-settled that the primary goal of a receivership is to provide a conduit through which assets can be held, liquidated and distributed to the particular beneficiaries of the receivership. *See, e.g., SEC v. Safety Finance Service, Inc.* 674 F.2d 369, 371 (5th Cir. 1982). In this case, the beneficiaries of the Receivership are the numerous investors and creditors of Millennium Bank and other named Defendants who the SEC claims orchestrated and operated a Ponzi scheme that divested investors of millions of dollars.

5. As stated above, the Receiver seized a valuable and extensive sports memorabilia collection. The Sports Collection has not been appraised and needs to be collected and inventoried to properly assess its value. However, based on the size and diversity of the Sports Collection, experts whom the Receiver has previously consulted indicate that such an inventory prior to sale would be costly and inefficient as it would have to be duplicated later for the actual sale.

6. In addition to the Sports Collection, various other items of personal property from the Defendants and Relief Defendants located in California have value and could result in a return of value to the Receivership Estate.

7. District courts have broad powers and wide discretion to determine the appropriate relief in an equity receivership, including liquidation of receivership assets. *See SEC v. Safety Finance Service, Inc.* 674 F.2d 369, 371 (5th Cir. 1982) (holding that the court

overseeing the receivership is given “wide discretionary power” in light of “the concern for orderly administration”).

8. To assist courts in this purpose, 28 U.S.C. § 2004 governs the sale of personal property, stating:

Any personalty sold under any order or decree of any court of the United States shall be sold in accordance with section 2001 of this title [28 USCS § 2001], unless the court orders otherwise.

9. 28 U.S.C. § 2001 governs the procedure for conducting sales of real property. As it pertains to public (rather than private) sales, 28 U.S.C. § 2001(a) states:

(a) Any realty or interest therein sold under any order or decree of any court of the United States shall be sold as a whole or in separate parcels at public sale at the courthouse of the county, parish, or city in which the greater part of the property is located, or upon the premises or some parcel thereof located therein, as the court directs. Such sale shall be upon such terms and conditions as the court directs. Property in the possession of a receiver or receivers appointed by one or more district courts shall be sold at public sale in the district wherein any such receiver was first appointed, at the courthouse of the county, parish, or city situated therein in which the greater part of the property in such district is located, or on the premises or some parcel thereof located in such county, parish, or city, as such court directs, unless the court orders the sale of the property or one or more parcels thereof in one or more ancillary districts.

10. As the statute pertains to private sales, 28 U.S.C. § 2001(b) provides, in relevant part:

After a hearing, of which notice to all interested parties shall be given by publication or otherwise as the court directs, the court may order the sale of such realty or interest or any part thereof at private sale for cash or other consideration and upon such terms and conditions as the court approves, if it finds that the best interests of the estate will be conserved thereby.

11. When structuring the sale of personal property, the Court has discretion under the relevant statutes to establish procedures or approve proposed procedures that are well-tailored to suit the needs and circumstances of a particular case. 28 U.S.C. § 2004.

12. Given that the Sports Collection is extensive and uncategorized, the Receiver believes it would be most prudent to involve a professional in the auction business to inventory and catalog the collection and secure the most value for the collection to be liquidated by the Receiver.

13. Receiver proposes hiring Harvey Clars Estate Auction Gallery to inventory and market the Sports Collection and other personal property for sale. Harvey Clars Estate Auction Gallery has been in the auction business for over thirty years. It is one of the largest auction houses in the Western United States and works with buyers and sellers throughout the United States and worldwide. Harvey Clars Auction Gallery conducts monthly two-day estate auctions of 1500-2000 lots at its North Oakland location, with an average of three to five thousand people attending the auctions and previews either in person or through electronic mediums. Harvey Clars Auction Gallery currently has another sports memorabilia auction planned for September 2009.

14. Mr. Redge Martin is the President of the Gallery, as well as one of the main auctioneers and appraisers. He has a Bachelor's Degree from Cornell University and a Masters Degree in Business Administration from the University of California, Berkeley.

15. As stated, the Sports Collection at issue has not been appraised or inventoried. If confirmed as a consultant, Mr. Martin will undertake the packing and transportation of the Sports Collection. He will proceed expeditiously to market and list the Sports Collection for sale

through the Harvey Clars Estate Auction House. If confirmed, Mr. Martin plans to sell the Sports Collection at the August 2009 auction held by the Gallery, or as soon thereafter as practicable.

17. While sales of real estate are ordinarily subjected to a bid process under 28 U.S.C. § 2001, the market for a personal property sports memorabilia collection of questionable worth is particularly limited in the current economy. Therefore, in order to maximize the value available to the Receivership Estate, the Receiver requests that the Court permit Mr. Martin to entertain any offer made for purchase of any item in the Sports Collection, so long as in Mr. Martin's expert opinion and discretion he believes the offer to be bona fide and reasonable under the circumstances.

18. Mr. Martin regularly retains proceeds on a consignment basis from the final sales price as follows: (a) 10% of individual auction items selling at \$7,001 and above; (b) 15% of individual auction items selling at \$3,501 thru \$7,000; (c) 20% of individual auction items selling at \$1,001 thru \$3,500; (d) 25% of individual auction items selling at \$101 thru \$1,000; (e) 39% of individual auction items selling at any amount through \$100; and (f) Insurance: 1.5% of the final bid price of each item sold or the appraised value of any unsold items that are returned to consignor.

19. The Receiver proposes to hire Mr. Martin on a consignment basis and pay Mr. Martin's fees from the proceeds of the liquidation of the Sports Collection, with all remaining funds to be deposited into the Receivership Estate's account for the benefit of creditors of the Estate, including investors.

20. Allowing the Receiver to market and liquidate the sports memorabilia collection seized from the Defendants via the services of Harvey Clars Estate Auction Gallery will most expeditiously further the goals of the Receivership. *SEC v. Wencke (Wencke II)*, 783 F.2d 829,

837 n.9 (9th Cir. 1986). Furthermore, this process will allow the Receiver to focus on other important tasks while the collection is liquidated. And, as stated above, Relief Defendant Daryl "Chris" Hoegel does not object to the Receiver's seizure of the Sports Collection or to the Receiver's proposed procedures for liquidating the Sports Collection. Additionally, Relief Defendant Daryl "Chris" Hoegel does not object to the Receiver retaining all proceeds from sale(s) of the Sports Collection for the benefit of the Receivership Estate.

WHEREFORE PREMISES CONSIDERED, the Receiver prays that, upon final hearing and consideration of this Motion, the Court authorize him to sell the Sports Collection described herein through the services to be provided by Mr. Martin at Harvey Clars Estate Auction Gallery. The Receiver also prays that the Court approve the procedures described herein for the sale of the sports memorabilia collection and disposition of proceeds from same, and for such other and further relief, general or special, at law or in equity, to which he may show himself justly entitled.

Respectfully submitted,

THOMPSON & KNIGHT, LLP

/s/ Jessica B. Magee

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CERTIFICATE OF CONFERENCE

A conference was held on August ____, 2009 with counsel for all parties who have appeared before this Court and are affected by the filing of this Motion or the relief it requests and, after discussing the merits of this Motion, and the Securities and Exchange Commission and the Hoegels are NOT OPPOSED to the Motion or the relief.

/s/ Jessica B. Magee
Jessica B. Magee

CERTIFICATE OF SERVICE

On August 19, 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