

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. :

10-22078
CIV-MORENO

SECURITIES AND EXCHANGE COMMISSION,)

Plaintiff,)

v.)

ESTATE OF KENNETH WAYNE MCLEOD,)
F&S ASSET MANAGEMENT GROUP, INC. and)
FEDERAL EMPLOYEE BENEFITS GROUP, INC.,)

Defendants.)

UNDER SEAL

/TORRES

FILED by _____ D.C.
JUN 24 2010
STEVEN M. LARIMORE
CLERK U. S. DIST. CT.
S. D. of FLA. - MIAMI

**PLAINTIFF'S EMERGENCY MOTION FOR APPOINTMENT
OF RECEIVER AND SUPPORTING MEMORANDUM OF LAW**

Plaintiff Securities and Exchange Commission moves this Court for an Order appointing a Receiver over Defendants F&S Asset Management Group, Inc. ("FSAMG") and Federal Employees Benefit Group, Inc. ("FEBG"), with full and exclusive power, duty, and authority to: administer and manage the business affairs, funds, assets, choses in action and any other property of FSAMG and FEBG; marshal and safeguard all of the assets of FSAMG and FEBG; and take whatever actions are necessary for the protection of investors. The grounds for this Motion are fully set forth in the Memorandum of Law below. As additional support for this motion, the Commission incorporates the factual discussion in its *Ex Parte* Emergency Motion for Asset Freeze and Other Relief and Memorandum of Law in Support ("Asset Freeze Motion").

The Commission's staff has solicited expressions of interest from three potential receivers it believes are well-suited to handle this matter. In particular, because of the potential complexity of the Receivership (among other things, the Receiver will likely have to be involved with the probate court handling the Estate of Kenneth Wayne McLeod, work with the Estate Administrator, and

administer the assets and business of FASMG, a registered investment advisor with \$42 million under management and 1,000 clients) the Commission sought bids from larger firms in South Florida with the resources, experience, and expertise to administer such a Receivership.

The Commission attaches the credentials of the three candidates as Exhibits 1, 2, and 3 to this motion. After considering these candidates, the Commission's staff believes the interests of investors would best be served by appointing Michael I. Goldberg, Esq. to serve as Receiver. Mr. Goldberg, whose credentials are attached as Exhibit 1, is a partner with the law firm of Akerman Senterfitt, which has offices throughout Florida and elsewhere. Mr. Goldberg is located in the firm's Ft. Lauderdale office.

As set forth in what is attached to Exhibit 1 as "Exhibit B", Mr. Goldberg has extensive experience as a Receiver, including work in Commission actions, including *SEC v. Worldwide Entertainment, Inc.*, and *SEC v. Wealth Pools International, Inc.* He has acted as Receiver in multiple Ponzi scheme cases and actions involving thousands of investors who were owed hundreds of millions of dollars. In particular, the *Worldwide* case involved the administration and sale of entertainment venues and events literally all over the world. In addition, Mr. Goldberg has significant experience in securities cases, tracking down assets and, where necessary, undertaking the appropriate actions to recover investor funds from third parties wrongly in possession of them. Furthermore, Mr. Goldberg's firm, which he proposes to hire as his counsel, has significant experience in securities law. In addition to those qualifications, the Commission is recommending Mr. Goldberg and his firm, because they have offices in Jacksonville, where FSAMG and FEBG have their offices and where McLeod resided prior to his death on June 22nd. Akerman Senterfitt can use staff at the Jacksonville office, as needed, to help administer the Receivership.

Mr. Goldberg has agreed to reduce his rate from \$615 to \$375 to act as Receiver, a discount of 39%. Additionally, he has offered significant discounts on rates for other attorneys who likely will work on this matter, and has agreed to cap all partner rates at a maximum of \$375 an hour, associate rates at a maximum of \$285 an hour, and paralegal rates at a maximum of \$135 an hour. See E-mail of June 22, 2010 from Michael Goldberg amending and supplementing his proposal, attached as the last page to Exhibit 1. We believe Mr. Goldberg and his firm are well suited to perform the work required of this Receivership.

Mr. Goldberg has informed the Commission that neither he nor Akerman Senterfitt has a conflict of interest in this matter,¹ and he is ready, willing, and able to serve as Receiver. Indeed, his firm is currently coordinating with the Commission staff on this matter so that, if appointed, they can immediately proceed to discharge the Receiver's duties.

As indicated above, two additional candidates who are also well qualified to serve as Receiver have submitted proposals. Those candidates and/or the law firms at which they are partners have prior experience as either receivers or counsel to receivers in Commission actions. Both also have agreed to discount their rates and are of sufficient size and sophistication to undertake this Receivership. See Exhibits 2 and 3 (applications of Peter Levitt, Esq. of Shutts & Bowen, LLP and Drew M. Dillworth, Esq. of Stearns Weaver Miller—Weissler Alhadeff & ~~_____~~

¹ As discussed in more detail in our emergency motion seeking an asset freeze, McLeod was, in connection with the operation of FSAMG, associated with Lincoln Financial Securities Corp., a registered broker-dealer, until his resignation on April 27, 2010. In his submission, Mr. Goldberg indicates other lawyers at Akerman Senterfitt have represented insurance companies that are affiliates of Lincoln Financial Securities Corp. in insurance disputes. However, the firm has never represented the broker-dealer, and Mr. Goldberg has never been involved in representing the Lincoln affiliates. Furthermore, Lincoln is not named in the Commission's complaint and we are not proposing that it be a Receivership entity. We do not believe the estate will be adverse to Lincoln, but Mr. Goldberg has stated in the event the receivership estate becomes adverse to Lincoln in any way, he will seek the Court's permission to hire special counsel to oversee any claims involving the broker-dealer.

Sitterson, PA. Therefore, if the Court does not appoint Mr. Goldberg, we recommend the Court select Mr. Cohen or Mr. Dillworth.

MEMORANDUM OF LAW

The appointment of a Receiver is a well-established, and often necessary, equitable remedy available to the Commission in civil enforcement proceedings for injunctive relief. *See, e.g., SEC v. First Financial Group of Texas*, 645 F.2d 429, 438-39 (5th Cir. 1981). Appointing a Receiver is particularly appropriate in cases where a defendant, through its management, has defrauded members of the investing public. *Id.* In such cases, without the appointment of a Receiver to maintain the status quo, the corporate assets will be subject to diversion and waste to the detriment of those who were induced to invest in the corporate scheme. *Id. See also SEC v. R.J. Allen & Associates, Inc.*, 386 F. Supp. 866, 878-79 (S.D. Fla. 1974). A Receiver is appropriate to protect the public interest when it is obvious that those in control of an entity who have inflicted serious detriment in the past must be ousted. *SEC v. Bowler*, 427 F.2d 190, 198 (4th Cir. 1970).

Here, as discussed in more detail in the Asset Freeze Motion, investor funds are at risk as a result of the fraudulent Ponzi scheme McLeod perpetrated through FSAMG and FEBG. McLeod was the president, CEO, and chief compliance officer of FSAMG and the president of FEBG and SEBG. From 1988 through June 2010, McLeod raised at least \$34 million from an estimated 149 investors, whom he solicited to invest in a purported FEBG Bond Fund that offered guaranteed, tax-free annual returns of eight to ten percent. In reality, the fund never existed and McLeod never invested his clients' money in government securities. Instead, he operated a Ponzi scheme.

After McLeod's sudden death on June 22, 2010, it is unclear who, if anyone, is in control of FEBG and FSAMG. To prevent the dissipation of investor funds and to ensure an orderly and

equitable distribution of any remaining assets, the appointment of a Receiver is necessary.

CONCLUSION

For the foregoing reasons, the Commission requests that the Court grant its emergency request for the appointment of a Receiver, and appoint Michael Goldberg, Esq., as Receiver over FSAMG and FEBG.

June 24, 2010

Respectfully submitted,

By:



C. Ian Anderson
Senior Trial Counsel
New York Reg. No. 2693067
Direct Dial: (305) 982-6317
E-mail: andersonci@sec.gov

Attorney for Plaintiff
**SECURITIES AND EXCHANGE
COMMISSION**
801 Brickell Avenue, Suite 1800
Miami, Florida 33131
Telephone: (305) 982-6300
Facsimile: (305) 536-4154

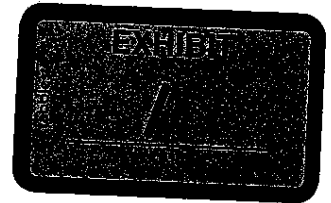


Las Olas Centre II, Suite 1600
350 East Las Olas Boulevard
Fort Lauderdale, Florida 33301-2229

Michael I. Goldberg
954 468 2444
michael.goldberg@akerman.com

Dallas
Denver
Fort Lauderdale
Jacksonville
Las Vegas
Los Angeles
Madison
Miami
New York
Orlando
Tallahassee
Tampa
Tysons Corner
Washington, DC
West Palm Beach

June 22, 2010



VIA E-MAIL

Robert K. Levenson
Ian C. Anderson
Securities and Exchange Commission
801 Brickell Avenue
Suite 800
Miami, Florida 33131

Re: Potential Receivership of

Dear Bob and Ian:

Thank you for inviting me to submit an application to be considered as the potential receiver in the case the United States Securities and Exchange Commission ("SEC") intends to shortly file against Federal Employee Benefits Group, Inc.; Kenneth W. McLeod; State Employee Benefits Group, Inc.; F&S Asset Management Group, Inc.; FEBG Bond Fund; and Survivors Bond Fund (collectively, the "Proposed Defendants"). As you are aware, I am a shareholder at Akerman Senterfitt ("Akerman") and I have run a conflict check in Akerman's conflict checking system for each of the Proposed Defendants. Attached hereto as Exhibit "A" is the completed Conflicts of Interest and Background Information Form you provided me. In short, there are no conflicts with respect to the Proposed Defendants preventing me from serving as receiver.

This will also confirm that I have also run a conflict check for Lincoln Financial Securities Corp. ("Lincoln Securities") and National Association of Federal Postal Employees, Inc.. Akerman represents Lincoln National Life Insurance Company and Lincoln Financial Group which are believed to be affiliates of Lincoln Securities. You have informed me that the SEC does not intend to name Lincoln Securities as a party in its complaint. Accordingly, it is my belief that this is not a conflict. In the event the receivership estate has a claim against Lincoln Securities, I

Robert Levenson, Esq.
June 22, 2010
Page 2

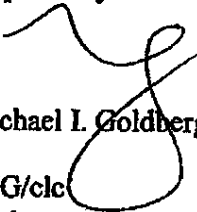
will hire alternative counsel to prosecute any such claim(s). This is the procedure I employ in numerous cases and this procedure has been widely approved by receivership courts.

As you are aware, I have significant experience handling federal equity receiverships. I have in the past or I am presently handling approximately one dozen federal equity receiverships before many of the Judges in the Southern and Middle Districts of Florida. Attached hereto as Exhibit "B" for your review is a copy of my biography which sets forth these receiverships in further detail. Over the years, my group has become extremely efficient in administering receiverships and we routinely set up websites and toll free numbers to communicate with the victims—which is extremely important in these types of cases. I also have experience as a receiver over a broker dealer (Discovery Capital) in a previous SEC case which I believe further qualifies me for this assignment and would make my administration in this case more efficient.

If selected by the Court to serve as receiver, I propose to bill the estate at \$395.00 per hour – a substantial discount from the \$615.00 per hour rate I charge my private clients. If selected, I propose to bill other Akerman professionals at a 15% discount off their standard rate. Of course, I recognize that my fee arrangement is subject to the Court's approval and agree to look solely to the estate's assets for payment.

Finally, you have informed me that you expect a portion of the receivership to be administered in Jacksonville, Florida due to the fact that some of the Proposed Defendants maintain offices there. This confirms that Akerman has a full service office in Jacksonville, Florida, including a significant bankruptcy group that is available to assist me in administering this receivership if I am selected. Once again, thank you for thinking of me and let me know if you need any additional information.

Respectfully Submitted,



Michael I. Goldberg

MIG/clc
Enclosures

CONFLICTS OF INTEREST AND BACKGROUND INFORMATION

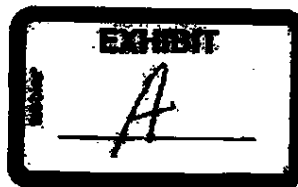
I am providing the Securities and Exchange Commission ("Commission") with the following conflict of interest and background information concerning **Michael I. Goldberg** (the "Proposed Receiver") for the case involving the following entities **Kenneth Wayne McLeod; Federal Employee Benefits Group, Inc.; State Employee Benefits Group, Inc.; F&S Asset Management Group, Inc.; Lincoln Financial Securities Corp.; FEBG Bond Fund; Survivors Bond Fund; Special Bond Fund; or National Association of Federal/Postal Employees, Inc.** I agree to supplement this information if any of the information herein changes, with thirty days of such change. I agree to provide such other Conflict of Interest information as requested by the Commission or its staff, and to take such steps as reasonably requested by the Commission or its staff in order to mitigate any conflicts that the Commission or its staff determine may exist, in their sole discretion.

Except where otherwise noted, for purposes of the information request below, "you" means you as an individual, as well as any spouse or dependents, and separately, any firm, partnership, joint venture, or other business in which you are an officer or director, or in which you have a substantial financial interest.

Except where otherwise noted, this information is requested for any responsive matters existing during the last five years. Also, if during the course of your duties you become aware of responsive information concerning a potential claimant in the matter listed above, you must promptly supplement your response to disclose that information:

1. List all contracts, consulting engagements, employment, service as an officer or director, or other work of any kind you have performed for any defendant/respondent in this matter, or any of its parents, subsidiaries, or other affiliates, or any claimant in this matter. Include any responsive matters existing during the last ten years.

The Proposed Receiver is a shareholder in Akerman Senterfitt ("Akerman"). A diligent search of Akerman's conflict checking system does not reveal any prior relationship with **Kenneth Wayne McLeod; Federal Employee Benefits Group, Inc.; State Employee Benefits Group, Inc.; F&S Asset Management Group, Inc.; FEBG Bond Fund; Survivors Bond Fund; Special Bond Fund; or National Association of Federal/Postal Employees, Inc.** A search of Akerman's conflict system does reveal an attorney-client relationship with **Lincoln National Life Insurance Company, Lincoln Financial Advisors and Lincoln Financial Group** (collectively, the "Lincoln Companies"). It is believed that **Lincoln Financial Securities Corp.** ("Lincoln Securities") is an affiliate of these companies. A search of Akerman's conflict Checking system does not reveal that Akerman has done any work for **Lincoln Securities**. Moreover, the Proposed Receiver has not individually performed any legal work from any of the **Lincoln Companies or Lincoln Securities**. The Proposed Receiver has been informed by the SEC that it does not intend to seek a receivership over **Lincoln Securities**. Therefore, the Proposed Receiver does not believe a conflict exists that would prevent him from serving as receiver in the anticipated



case. Moreover, to the extent it is necessary to pursue claims against Lincoln Securities, the Proposed Receiver would use a firm other than Akerman to prosecute such claims.

2. List any financial interests in or with the defendant/respondent, its parents, subsidiaries, or other affiliates, or any claimant in this matter (e.g., stocks, bonds, options, other debt or equity interests, partnerships, retirement plans). **None**

3. List all other personal or professional relationships or interests in or with the defendant/respondent, its parents, subsidiaries, or other affiliates, or with any of their officers or directors, or any claimant in this matter, not listed above. **None**

4. List all matters in which you have been retained as a Receiver, Distribution Fund Administrator, Distribution Consultant, or as a subcontractor, agent or other service provider, in connection with any civil action or administrative proceeding by the Commission.

I have been appointed Receiver at the request of the SEC in the following cases:

**Securities & Exchange Commission vs. John P. Utsick, et al.
Case No.: 06-20975-CIV-HUCK**

**Securities & Exchange Commission vs. Cyprus Funds, Inc., et al.
Case No.: 99-2360-CIV-UNGARO-BENAGES**

**Securities and Exchange Commission v. A.B. Financing and Investments, Inc. and Anthony W. Blissett, Blissco Properties, Inc. et al.
Case No.: 02-23487-CIV-UNGARO-BENAGES/BROWN**

**Securities and Exchange Commission v. W.L. Ware Enterprises and Investments, Inc., et al.
Case No.: 6:04-CIV-112-ORL-18JGG**

**Securities and Exchange Commission v. Discovery Capital Group, Inc., Erik Walsh and John Abresch
Case No. 02-60363-CIV-HUCK/TURNOFF**

**Securities & Exchange Commission v. University Lab Technologies, Inc., et al.
Case No.: 07-80838-CIV-Middlebrooks**

**Securities & Exchange Commission v. Robert E. Lane, et al.
Case No.: 6:07-cv-1920-ORL-22KRS**

**Securities & Exchange Commission v. Par Three Financial, Inc., et al.
Court Case No: 05-80779-CIV-HURLEY/JOHNSON**

5. List all other prior or existing cases, matters, or proceedings in which the Commission has an interest, in which you have been retained or served as a witness, consultant, or other expert. **None**

6. Identify any disciplinary proceedings, felony criminal indictment or information (or equivalent formal charge) or a misdemeanor criminal information (or equivalent formal charge), civil proceedings or actions against you personally by any Federal, state, local, or foreign entities and the results of those proceedings. Include any responsive matters regardless of when they arose. **None**

7. Identify any actual or potential conflicts of which you are aware, regardless of when they arose, that are not identified or addressed in paragraphs 1 through 5 above, but that may affect the performance of your duties under this appointment. **None**

If you believe any of the information provided in response to these requests is non-public or confidential, you may request confidential treatment by the Commission pursuant to the procedures set forth at 17 C.F.R. § 200.83.

Under penalty of perjury, I declare that I have examined the information given in this statement, and attached hereto, and, to the best of my knowledge and belief, it is true, correct, and complete. I understand that any material misstatements or omissions made by me herein or in any attachments hereto may constitute criminal violations, punishable under 18 U.S.C. § 1001.

By:

Signature

Name:

Michael I Goldberg

Title:

On behalf of:

Receiver

Defendant/Respondent Name, Case No.

Akerman

Michael I. Goldberg



Shareholder

Las Olas Centre II
350 East Las Olas Boulevard
Suite 1600
Ft. Lauderdale, FL 33301-2229

Tel: 954.468.2444
Fax: 954.463.2224

michael.goldberg@akerman.com

Practices

Bankruptcy & Reorganization

Education

J.D., Boston University School of Law, 199; *magna cum laude*

M.B.A., New York University, 1987

B.A., Boston University, 1985; History

Bar Admissions

Florida

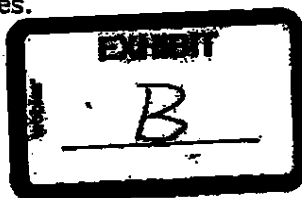
New York

Michael Goldberg has been qualified as an expert witness on Ponzi schemes in several district court cases. He has testified as an expert witness on Ponzi schemes in several cases in the District Court for the Southern District of Florida. Michael has appeared on national news programs such as CNN, CNBC, Fox News, National Public Radio (NPR), and numerous local NBC, ABC, CBS, and Fox affiliates on Ponzi schemes and receiverships. He has also been quoted on Ponzi schemes and receiverships in national publications such as *Bloomberg's*, *Forbes*, *People Magazine*, *The Wall Street Journal*, *The New York Times*, *The Miami Herald*, the *Sun Sentinel*, and numerous other publications.

Representative Experience

Bankruptcy Work and Representative Clients

- Represented Blackfin Yacht Corporation, a large manufacturer of sport fishing boats, in its Chapter 11 filing culminating in a sale of substantially all of its assets.
- Represented Samsung Electronics of America in bankruptcy cases throughout the United States including the Circuit City, Tweeter and Ultimate Electronics cases.



- Represented AutoNation, the largest automobile dealership in the United States, in the ANC Rental bankruptcy in Delaware in connection with large avoidable transfer claims made against AutoNation arising out of its spin-off of Alamo and National Car Rental.
- Represented HIG Capital in connection with its purchase of Supra Telecom pursuant to a buyer sponsored plan of reorganization.
- Represented Parkstone Medical in its Chapter 11 case which culminated in the sale of substantially all of its assets pursuant to Section 363 of the Bankruptcy Code.
- Represented the Chapter 11 Trustee of the Louis J. Pearlman and Transcontinental Records estates. Pearlman, who was the creator and the manager of such musical groups as the Back Street Boys and 'NSYNC, was convicted of running a \$500 million Ponzi scheme victimizing hundreds of investors.
- Represented Republic Services, Inc., a large waste company, in the purchase of a waste transfer station pursuant to Section 363 of the Bankruptcy Code.
- Represented the Trustee of Omni Capital, Ltd., a company engaged in a \$50 million Ponzi scheme. Responsible for litigating dozens of "claw-back" suits to recover fraudulent transfers of profit to investors.
- Co-counsel to Commerzbank of Germany in defending the bank in a multi-million dollar fraudulent transfer claim brought by the Trustee in connection with the Sentinel Funds case. The case involved novel issues of international jurisdiction and banking law.
- Co-counsel to a lending syndicate consisting of 28 banks and hedge funds in defending a \$675 million fraudulent transfer claim brought by the creditors' committee in the TOUSA bankruptcy case.
- Counsel to the Quail West and Tesoro Homeowners Associations in the Ginn bankruptcies. Responsible for protecting the interests of the homeowners in connection with 363 sales of the uncompleted real estate projects to new developers.
- Co-counsel to a steering group of term lenders in the

Fontainebleau Las Vegas case.

- Represented South Motors Corporation and its affiliates, consisting of 17 car dealerships in their Chapter 11 bankruptcies. Approximately seven of the dealerships were sold pursuant to a 363 sale and the remaining dealerships were reorganized pursuant to a plan of reorganization.

Receivership Work

- Receiver, Worldwide Entertainment, Inc.; The Entertainment Group Fund, Inc.; and American Enterprises, Inc. - Appointed Receiver by the United States District Court for the Southern District of Florida over a group of entertainment companies, including the world's second largest independent concert promoter, to operate and liquidate diverse entertainment assets, including venues, shows, movies and other intellectual property, in order to repay approximately 3,750 investors owed more than \$300 million.
- Receiver, University Lab Technologies, Inc. - Appointed Receiver by the United States District Court for the Southern District of Florida over a company engaged in the manufacturing and distribution of natural herbal remedy products which raised money from dozens of investors in violation of federal securities laws.
- Receiver, Berman Mortgage Corporation - Appointed Receiver by the Circuit Court in Miami, Florida over a large mortgage origination business with approximately 650 investors and total mortgages and/or real estate developments valued at more than \$200 million.
- Receiver, MAMC Incorporated - Appointed Receiver by the Circuit Court in Miami, Florida over a business engaged in the servicing of more than \$200 million in mortgages on behalf of approximately 650 lenders.
- Receiver, Service Five Investments, Inc. - Appointed Receiver by the Circuit Court in Miami, Florida over a company engaged in making loans to active military personnel. At the time of Mr. Goldberg's appointment, the company had debts of \$36 million. A plan of distribution was approved by the Eleventh Judicial Circuit Court in Miami, Florida which will

result in creditors receiving an approximate 85% distribution.

- Receiver, Ware Enterprises and Investments, Inc. - Appointed Receiver by the United States District Court for the Middle District of Florida over an investment firm engaged in a \$30 million dollar Ponzi scheme.
- Receiver, Par Three Investments, Inc. - Appointed Receiver by the United States District Court for the Southern District of Florida over a company engaged in a \$10 million Ponzi scheme.
- Receiver, AB Financing & Investments, Inc. - Appointed Receiver by the United States District Court for the Southern District of Florida over a company engaged in a \$80 million Ponzi scheme. Responsible for liquidating six large commercial properties including hotels and office buildings.
- Receiver, The Cyprus Fund and related companies - Appointed Receiver by the United States District Court for the Southern District of Florida over a group of companies operating a \$100 million Ponzi scheme. Responsible for operating corn and soybean farms and liquidating vast real estate holdings throughout Ohio and Florida.
- Receiver, Home Equity Mortgage Corporation - Appointed Receiver by the Circuit Court in Miami, Florida over a company engaged in the business of originating and servicing over \$200 million in mortgages on behalf of approximately 800 investors.
- Receiver, Discovery Capital Group, LTD. - Appointed Receiver by the United States District Court for the Southern District of Florida over a securities brokerage firm accused of defrauding millions of dollars from hundreds of investors throughout the United States and Europe.
- Receiver, Wealth Pools International, Inc. and Recruit for Wealth, Inc. - Appointed as substitute receiver by the United States District Court for the Middle District of Florida in a \$136 million Ponzi scheme case involving 15,000 victims.
- Receiver, Sterling Wentworth Currency Group, Inc. and LaSalle International Clearing Corporation - Appointed receiver at the request of the CFTC by the

United States District Court for the Southern District of Florida in a \$36 million Ponzi scheme involving FOREX trading.

- Counsel to the Receiver of Biscayne Landing, LLC., a 200 acre multi use real estate development.
- Represented the Receiver in Premium Sales, a \$250 million Ponzi scheme.
- Represented the Receiver of Omni Capital Ltd., a \$50 million Ponzi scheme.

Awards & Recognition

- *Chambers USA* 2006-2010, Ranked in Florida for Bankruptcy/Restructuring
- *South Florida Legal Guide* 2004-2010, Listed as a "Top Lawyer" for Bankruptcy and Creditors' Rights
- *South Florida Legal Guide* 2001-2010, Listed as a "Top Bankruptcy Lawyer"
- *Florida Trend's Legal Elite* 2005-2009, Listed for Bankruptcy & Workout
- *The Best Lawyers in America* 2006-2010, Listed in Florida for Bankruptcy and Creditor-Debtor Rights Law
- *Super Lawyers Magazine* 2007-2010, Listed in Florida for Bankruptcy & Creditor/Debtor Rights
- *Super Lawyers Magazine* 2010, Listed in Florida as a "Top 100 Lawyer"
- *BTI* 2007, Listed as a Client Service "All-Star"
- Paul J. Liacos Scholar; G. Joseph Tauro Scholar
- Martindale-Hubbell, AV Rated

Published Work & Lectures

- North American Securities Administrator Association's (NASAA) 25th Annual Public Policy Conference, Speaker, "Overview of Receivership and Ponzi Schemes," Audience Included State and Federal Regulators from the United States and Canada, April 2010
- Turnaround Management Association, Speaker,

"Mopping Up After Madoff," 2009

- Broward County Family Law Bar, Speaker, "Bankruptcy Law Issues for the Family Law Practitioner," December 2005
- Stetson University College of Law and the Florida Bar, Faculty Speaker, "The Ins and Outs of the New Reformed Code-Minefields for the Unwary Special Topics Under Bankruptcy Reform," August 2005
- Stetson University College of Law Seminar, Faculty Speaker, "Previewing the Bankruptcy Reform Act," August 2005
- Turn Around Management Association, Annual South Florida Dinner, Speaker, "Trustees and Receiver's Responsibility for Preserving Computer Evidence in Bankruptcy and Receiverships," 2005
- *Daily Business Review*, Author, "Florida to Remain a Haven for Debtors," March 30, 2005
- *Florida Medical Business*, Author, "Road Map For Dealing With Your PPM When It Careens Towards Bankruptcy"
- *South Florida Business Journal*, Author, "Buying Assets from Bankrupt Businesses," May 2002
- *Daily Business Review*, Author, "When Bankruptcy Looms: Deciding If Patient Can Be Saved Or Read Last Rites," March 23, 1998
- The Florida Bridge The Gap Seminar, Speaker, 1995 and 1996
- As a law clerk, assisted in writing a book on exemptions for PLI and his portion of *Colliers*, dealing with Leverage Buyouts and Fraudulent Transfers; also wrote a thesis receiving the highest honors on this particular issue, in an article entitled "Fraudulent Transfer Laws, Are They In Need Of Repair?"

Court Admissions

- U.S. Bankruptcy Court, Southern District of Florida
- U.S. District Court, District of Colorado
- U.S. District Court, Middle District of Florida
- U.S. District Court, Southern District of Florida

- U.S. District Court, Southern District of California

Professional Memberships & Activities

- The Florida Bar, Member
- Broward County Bar Association, Member
- New York State Bar Association, Member
- Bankruptcy Bar Association of the Southern District of Florida, Member
- American Bar Association, Member
- FBI Citizens Academy Graduate, 2008

Related Professional Experience

- Akerman Senterfitt, Past Board Member
- Akerman Senterfitt, Past Office Managing Shareholder of the Ft. Lauderdale Office
- Akerman Senterfitt, Co-Founding Shareholder of the Ft. Lauderdale Office

Associated News, Events & Publications

News

- Chambers & Partners Recognizes Akerman Senterfitt Attorneys and Practice Groups in 2010 *Chambers USA Guide* (Jun. 11, 2010)
- South Florida Business Journal Honors Akerman Senterfitt Attorneys at 2009 Key Partners Awards (Nov. 18, 2009)
- The 2010 Best Lawyers Ranking Honors 100 Akerman Senterfitt Attorneys (Aug. 26, 2009)
- Akerman Attorneys and Practices Receive Top Tier Rankings by Chambers & Partners USA Legal Guide (Jul. 17, 2008)

From: michael.goldberg@akerman.com [mailto:michael.goldberg@akerman.com]
Sent: Tuesday, June 22, 2010 3:57 PM
To: Levenson, Robert K.
Subject:

Bob,

I respectfully submit the attached rate supplement to my previous application. Once again, thank you for consideration:

1. Shareholder rates will be the lesser of \$375 or their standard rate less 15%;
2. Associate rates will be the lesser of \$285 or their standard rate less 15%;
3. Paralegal rates will be the lesser of \$135 or their standard rate less 15%

Michael I. Goldberg
Akerman Senterfitt
350 East Las Olas Boulevard, Ste. 1600
Fort Lauderdale, Florida 33301
Main: (954)463-2700
Direct:(954)468-2444
Fax:(954)463-2224

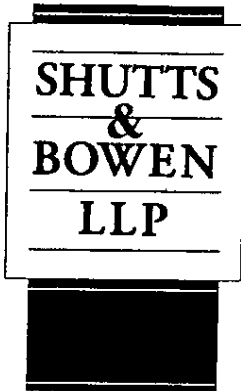
Please note that my email address has changed to Michael.Goldberg@Akerman.com. Please revise your records to reflect this change.

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JONATHAN COHEN
Member Florida & Michigan Bar
(305) 379-9173 Direct Telephone
(305) 347-7873 Direct Facsimile

E-MAIL ADDRESS:
jcohen@shutts-law.com

ATTORNEY-CLIENT PRIVILEGED AND CONFIDENTIAL

June 22, 2010

Robert K. Levenson, Esq.
Regional Trial Counsel
Southeast Regional Office

Via Electronic Mail

C. Ian Anderson, Esq.
Senior Trial Counsel
Division of Enforcement
United States Securities and Exchange Commission
801 Brickell Avenue, Suite 1800
Miami, Florida 33131

Re: Possible Service by Shutts & Bowen LLP as Receiver

Dear Mr. Levenson and Mr. Anderson:

This letter is intended to confirm Shutts & Bowen's strong interest in serving as receiver and counsel for the receiver in connection with the proposed enforcement action by the Securities and Exchange Commission (the "SEC") against the individual and corporate defendants (collectively, the "Defendants") that we discussed yesterday. We very much appreciate the opportunity to potentially assist the SEC with this matter.

~~Shutts & Bowen has cleared any potential conflicts with the Defendants and would be able to serve as receiver and counsel for the receiver if recommended by the SEC and appointed by the Federal District Court for the Southern District of Florida. An overview of the firm, and its qualifications and expertise of potential relevance to the SEC in its evaluation and recommendation of the firm as a receiver and counsel for the receiver, follow.~~

Shutts & Bowen is one of the oldest law firms in Florida, and the oldest in Miami, this year celebrating its 100th year anniversary. It is among the largest, with more than 180 lawyers and offices in Orlando, Miami, Fort Lauderdale, West Palm Beach, Tallahassee, and Amsterdam. The firm specializes in all areas of commercial law, and is able to provide a full range of legal services to its clients, including commercial litigation, bankruptcy and creditors rights, tax, real estate, securities, and general corporate counsel. We have the resources to be able to fully

SHUTTS & BOWEN LLP

Mr. Levenson and Mr. Anderson
June 22, 2010
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service all locations in Florida, including Jacksonville. A detailed brochure describing the firm and its practice areas and expertise is attached to this letter.

As you are also aware, we have prior SEC receivership experience and since 2007 have served as Receiver and counsel for the Receiver in *SEC v. Aquacell Batteries, Inc. and Michael J. Naste, et al.*; U.S. District Court, Middle District of Florida; Case No. 6:07-cv-608-Orl-22DAB. Through this experience we have gained greater familiarity with working with the SEC in these matters and with the typical practical and legal issues that arise in an SEC receivership.

Based on our initial discussion regarding the potential defendants and related entities, we propose that Peter Levitt of our Miami office would serve as receiver and that Jonathan Cohen, along with other attorneys of our Miami office, would serve as counsel for the receiver. Peter Levitt is a senior litigation partner and is a member of our Creditors' Rights & Bankruptcy Practice Group. He has approximately 25 years of bankruptcy and commercial litigation experience in the Southern District of Florida and is well known by the judges in the Southern District. He has previously served, and is presently serving, as counsel to state court appointed receivers and counsel to bankruptcy trustees. He has represented creditors and other interested parties in several SEC and State Insurance Department receiverships. In addition, during the 1990s, Peter was one of the primary Florida-based attorneys for the FSLIC, the FDIC and the RTC, acting in their capacities as receivers for numerous failed lending institutions. A copy of Peter Levitt's biography from our firm Web site is attached hereto.

A copy of my resume is also attached.. In addition to acting as counsel for the Receiver in the current SEC receivership in the Middle District of Florida discussed above, I am also currently participating on the Steering Committee of the Pension Fund of America SEC receivership in the Southern District of Florida where our firm represents the largest creditor. I am also representing investors in the Stanford Financial receivership in Texas. I will be assisted by other attorneys in our Miami office and particularly by other attorneys in our Creditors' Rights practice group who also have significant bankruptcy experience and experience with receiverships. The firm also has significant securities regulatory expertise, including in connection with investment funds and other investment vehicles, which can be drawn upon in this matter on an as needed basis.

Shutts & Bowen ordinarily bills for legal work on an hourly basis. Mr. Levitt's hourly rate is \$400 and my hourly rate is \$440. We believe that these rates are extremely competitive with our peer firms in the Miami market and throughout Florida. We also will utilize the attorney or paralegal with the lowest rate who is qualified to provide a particular service, always under the supervision of myself, Peter Levitt or another suitably qualified partner of the firm. Nevertheless, because we would value the opportunity to be of service to the SEC and the court in this matter, we would be pleased to discount our hourly rates for attorney time by 10% if we are selected as receiver and counsel for the receiver. We will also agree to only bill for actual costs associated with travel time. As you are also aware based upon our work in the Aquacell receivership in the Middle District of Florida, in practice, we have also voluntarily extended

SHUTTS & BOWEN LLP

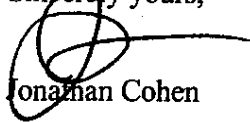
Mr. Levenson and Mr. Anderson
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significant discounts on our fees in order to attempt to maximize the return to the investors in light of the actual assets recovered in the receivership.

I hope the information contained in this letter and the attachments is helpful to you.

Should you have questions or require further information, please do not hesitate to contact me at any time.

Sincerely yours,



Jonathan Cohen

JC/rxw

Attachments

cc: Peter Levitt, Esq.
Bowman Brown, Esq.
Bryan Wells, Esq.

MIADOCs 4450604 1

Partner, Shutts & Bowen LLP
1500 Miami Center
201 S. Biscayne Blvd.
Miami, Florida 33131
Phone 305-379-9173
Fax 305-347-7873
E-mail JCOhen@shutts-law.com

Jonathan Cohen

Education

1979 - 1982 Wayne State Law School Detroit, Michigan
J.D., *magna cum laude*

Class Rank: 2nd in class of 220
Member, Order of the Coif
Editor, Wayne Law Review

Professional experience

1968 - 1972 University of Chicago

A.B. American History, *cum laude*

1982 - 1984 **Judicial Law Clerk** Detroit, Michigan
Judicial Law Clerk to the Honorable Horace W. Gilmore, United
States District Court for the Eastern District of Michigan

1984 - Present **Attorney/Partner, Shutts & Bowen LLP**
Miami, Florida

Securities fraud litigation, representing both private investors and financial institutions. Mr. Cohen has defended New York Stock Exchange public companies in the defense of securities fraud class actions, including recently as co-counsel in the defense of CIBC/Raymond James in the Hamilton Bank securities fraud class action litigation in the Southern District of Florida. Mr. Cohen defended MCI/World Com in a five-week securities fraud trial in the Southern District of Florida and has represented Merrill Lynch, Great Western Financial Securities, MML Investor Services Citicorp Financial Services and Credit Lyonnais in NASD/FINRA arbitration proceedings and is also currently representing several international financial institutions in the defense of securities fraud claims brought by investors. Mr. Cohen has also represented clients in SEC and FINRA enforcement actions.

Mr. Cohen has also represented investors in SEC receiverships, including the representation of the City of Beaumont, Texas in the ESM securities litigation where the City of Beaumont recovered over \$22 million in investment losses and is currently representing the Guatemalan military pension fund in litigation arising from the collapse of Pension Fund of America LLC. In both receiverships, Mr. Cohen served on the receivership Steering Committees. Mr. Cohen is also currently serving as counsel for

the court-appointed receiver in an SEC enforcement action in Orlando, Florida.

Mr. Cohen has also represented a group of investors in securities fraud litigation arising from the Park Bank of Florida failure; represented public companies in connection with internal corporate investigations, primarily involving securities law and health care issues, involving a variety of allegations, including corporate mismanagement, self-dealing, inaccurate financial reporting, health care compliance and criminal law violations.

Commercial litigation, also specializing in the area of intellectual property litigation, including copyright and trademark litigation and providing advice to clients on intellectual property issues. Obtained jury trial award of \$50 million for Fortune 500 corporation in trademark and unfair competition case. Litigated cases involving related issues of unfair competition, misappropriation of trade secrets, non-compete agreements, the seizure of counterfeit goods, as well as defamation claims, including the representation of the President of the Republic of Colombia. Litigation involving significant constitutional issues relating to interstate banking and interstate distribution of wine.

Mr. Cohen has been named as a "Florida Super Lawyer" for securities litigation in 2007 and 2008.

Bar Admissions

Michigan Bar, 1982, Florida Bar 1984, admitted to practice in all federal courts in Florida, United States Court of Appeals for the Eleventh Circuit, United States Supreme Court.

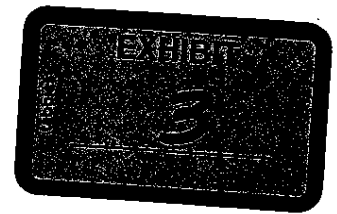
Professional memberships

American Bar Association, Member of Antitrust, Business Law, International Law and Litigation (Securities, Intellectual Property, and Health Law Subcommittees Sections); Miami-Dade County Bar Association.

Personal

Married, two children, wife, Xiao-Mei Zeng, M.D., is practicing obstetrician/ gynecologist in Boca Raton and Boynton Beach, Florida.

STEARNS WEAVER MILLER
WEISSLER ALHADEFF & SITTERSON, P.A.



Drew M. Dillworth
150 West Flagler Street, Suite 2200
Miami, FL 33130
Direct: (305) 789-3598
Fax: (305) 789-2615
Email: ddillworth@stearnsweaver.com

June 21, 2010

VIA ELECTRONIC MAIL

Robert K. Levenson, Esq.
United States Securities and Exchange Commission
801 Brickell Avenue
Suite 1800
Miami, Florida 33131

Re: *F&S Management, Inc.*

Dear Mr. Levenson:

Thank you for the opportunity to provide a proposal to serve as receiver in an action the Securities and Exchange Commission contemplates filing against the above-referenced company and affiliates. Enclosed with this letter is my current biography. Also, I have summarized below my background and relevant experience, proposed rate structure for the matter, and other considerations that you may find relevant in analyzing my ability to serve as the receiver in this matter.

Background and Experience

I am an attorney, licensed to practice law since 1992 (Illinois, 1992; Florida, 1999). Presently, I am a shareholder of Stearns Weaver, an established full-service commercial law firm of approximately one hundred twenty (120) attorneys. For the last eighteen years, I have concentrated my practice in the areas of bankruptcy, insolvency, and related commercial litigation. During that time, I have represented bankruptcy trustees, receivers, secured and unsecured creditors, debtors, and a variety of other interests in state and federal insolvency proceedings, transactions and litigation.

In addition to my law practice, over the past seven years I have served on the private panel of bankruptcy trustees for the United States Bankruptcy Court for the Southern District of Florida. In that regard, I have served as an independent court appointed fiduciary in several thousand chapter 7 and 11 cases for both individuals and businesses. As a bankruptcy trustee, I have liquidated, safeguarded, and disbursed tens of millions of dollars to thousands of creditors holding a wide variety of different claims. Further, in each bankruptcy case in which I have served as trustee and disbursed funds,

Robert K. Levenson, Esq.
Page 2
June 21, 2010

I was responsible for analyzing and prosecuting complex litigation claims and, thereafter, administering claims procedures for the distribution of funds to creditors. In administering these cases, I recognized the importance of making timely distributions to creditors and have consistently strived to effect distributions as early as possible in every case.

Below is a sample of several recent cases where I have either served as a fiduciary or represented a court appointed fiduciary for the benefit of creditors and other stakeholders.

- Bankruptcy trustee in the wind-down and liquidation of \$50-100 million real estate fraud scheme in the case styled *In re Royal West Properties, Inc.*, 09-20334-RAM, United States Bankruptcy Court, Southern District of Florida.
- Bankruptcy trustee in the operation and sale of two 1200 acre luxury golf and country club master plan communities located in Naples and Port St. Lucie, Florida in cases styled *In re Ginn-LA St. Lucie Ltd., LLLP, et al.*, 08-29769-PGH, United States Bankruptcy Court, Southern District of Florida. Operation, sale, and distribution of substantially all of the approximately \$27 million in sale proceeds accomplished in approximately 90 days.
- Bankruptcy trustee in liquidation of two mass tort law firms in cases styled *In re Robles Law Center, P.A.*, 04-16885-RAM, and *In re Louis S. Robles, P.A.*, 04-16886-RAM, United States Bankruptcy Court, Southern District of Florida. Analyzed and resolved substantial complex litigation claims that have provided and will continue to provide millions of dollars of distributions to creditors over the course of the next several years.
- Counsel to court appointed transaction examiner and Plan Administrator in the case styled *In re Pan American Hospital Corporation et al.*, 04-11819-BKC-AJC and 04-11820-BKC-AJC (Jointly Administered), United States Bankruptcy Court, Southern District of Florida. Implemented distribution of sale proceeds totaling approximately \$40 million.
- Counsel to Kenneth A. Welt, the court appointed receiver in the ponzi scheme case styled *Securities and Exchange Commission v. Starcash, Inc. et al.*, 02-80456-CIV-Middlebrooks, United States District Court, Southern District of Florida.

Proposed Hourly Rates

It is my firm's policy to staff every matter with competent professionals at the lowest hourly rate needed for the particular task. Due to the issues involved in this matter, I

Robert K. Levenson, Esq.
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anticipate being significantly involved in all tasks required to efficiently resolve the issues related to this engagement. My firm currently charges \$475 per hour for my time; however, for this matter I will cap my hourly rate at \$375. I will apply a similar percentage reduction to the hourly rates of other members of my firm to the extent that I am required to draw upon their experience. Finally, to the extent that the matter requires the assistance of associates or paralegals, I will cap their rates at \$250 and \$175 per hour, respectively. I submit that these proposed rates compare favorably to rates customarily charged within this judicial district in cases of similar size and nature.

Other Considerations

It is possible that I will need to hire outside professionals in this matter including an accounting firm. To the extent such services are required, I will obtain several proposals to ensure that I receive the most competitive rate structure.

I welcome the opportunity to discuss my qualifications and experience with you in person at your convenience. Please call me at (305) 789-3598.

Thank you for your time and consideration.

Very truly yours,



DREW M. DILLWORTH

Enclosure

@PFDesktop\::ODMA\MHODMA\DMS;ACTIVE;354784;1

STEARNS WEAVER MILLER WEISSLER ALHADEFF & SITTERSON, P.A.



Drew M. Dillworth

Shareholder
Miami
305-789-3598
ddillworth@stearnsweaver.com
[Download vCard](#)

Drew Dillworth is a Shareholder in the Business Restructuring Department and also serves on the Firm's hiring committee and Board of Directors. He represents parties involved in work-outs, debt restructuring, foreclosure, bankruptcy, insolvency, and related commercial litigation matters. In addition to his legal practice, Mr. Dillworth routinely serves as a court appointed fiduciary in bankruptcy proceedings.

Practice Areas

[Business Restructuring](#)

Education

J.D., Valparaiso University,
1992

B.A., Villanova University,
1989

Admissions

Florida, 1999

Illinois, 1992

U.S. Court of Appeals for the
Eleventh Circuit

U.S. District Courts for the
Southern and Middle Districts
of Florida, 1999

Northern District of Illinois,
1996

Northern District Federal Court
of Indiana, 1992

Ratings & Certifications

AV Rated by Martindale-
Hubbell

Representative Experience

- Successful chapter 11 reorganization for clients including: manufacturer of plastic films and vacuum pouch bags, energy company, office building operator, manufacturer of industrial asbestos-removal equipment, and luxury condominium developer
- Operated and sold 144,000 square foot commercial office building as chapter 11 bankruptcy trustee
- Operated and sold two 1200 acre luxury golf and country club master plan communities located in Naples and Port St. Lucie, Florida
- As counsel to the court appointed receiver, successfully located, marshaled, and sold assets in cross-border Ponzi scheme case, providing a substantial return of capital to investors in the scheme
- Operated and sold wholesale pharmacy business generating distributions in excess of 50% of the allowed general unsecured claims
- Counsel to secured lenders in commercial mortgage foreclosure proceedings including failed condominium project, land development, and hotel
- Chapter 7 bankruptcy trustee in liquidation of two mass tort law firms
- Counsel to the court appointed examiner, transaction examiner and plan administrator in chapter 11 proceeding involving Hospital and related medical care facilities. Case concluded with the sale of principal assets for \$36.0 million. Creditors holding allowed general unsecured claims received distributions totaling 30% of the allowed amount of their claims
- Counsel to chapter 7 bankruptcy trustee in the liquidation of assets, prosecution of litigation claims, and reconciliation of approximately \$20.0 million in claims against retail pharmacy.
- Counsel to secured lender in successful defense of multi-million dollar lien priority dispute under Uniform Commercial Code

Recognition

- Mr. Dillworth has received peer recognition for his abilities in the following publications: *Chambers USA: America's Leading Lawyers for Business*; *The Best Lawyers in America*®; *Florida Super Lawyers*; *Florida Super Lawyers Corporate Counsel Edition*; *Florida Trend's Florida Legal Elite*; and *South Florida Guide*

Professional and Community Involvement

- American Bankruptcy Institute
- Bankruptcy Bar for the Southern District of Florida
- Panel of Chapter 7 Bankruptcy Trustees for the Southern District of Florida,
Member