

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
(MIAMI DIVISION)

CASE NO.: 10-22078-CIV-MORENO

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

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

Defendants.

**RECEIVER'S SECOND STATUS REPORT AND
SECOND INTERIM APPLICATION FOR ALLOWANCE
AND PAYMENT OF FEES AND REIMBURSEMENT OF EXPENSES
FOR AKERMAN SENTERFITT FOR OCTOBER 1, 2010 – JUNE 30, 2011,
INCLUDING PAYMENT OF HOLDBACK OF FEES
FROM THE RECEIVER'S FIRST INTERIM FEE APPLICATION**

The Receiver, Michael I. Goldberg (the "Receiver"), by and through his attorneys, files his second status report and second interim application for allowance and payment of fees and reimbursement of expenses incurred by Akerman Senterfitt ("Akerman") for the period of October 1, 2010 – June 30, 2011 (the "Application"), including payment of holdback of a portion of the Receiver's fees from his first interim fee application.

In accordance with the Billing Instructions for Receivers in Civil Actions Commenced by the U.S. Securities and Exchange Commission, the following information is provided:

A. INFORMATION ABOUT APPLICANT AND APPLICATION

1. Name of Applicant: Akerman Senterfitt
2. Role of Applicant: Receiver and Receiver's Counsel
3. Name of Certifying Professional: Michael Goldberg, Esq.
4. Date Receiver was Appointed: June 24, 2010

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- 5. Date of Order Approving Employment: June 24, 2010
- 6. Date Services Commenced: June 24, 2010
- 7. Status of Application: Second Interim
- 8. Dates of Services Covered: October 1, 2010 – June 30, 2011
- 9. Total Receivership Fees Requested for this Period: \$99,114.50
- 10. Total Receivership Expense Reimbursement Requested for this Period: \$4,228.63
- 11. Subtotal of Receivership Fees and Expenses: \$103,343.13
- 12. Total Probate Fees Requested for this Period: \$34,815.50
- 13. Total Probate Expense Reimbursement Requested for this Period: \$279.15
- 14. Subtotal of Probate Fees and Expenses \$35,094.65
- 15. Total Fees and Expenses Award Requested: \$138,437.78

B. HISTORY OF FEES AND EXPENSES

First Interim Fee Application

- 15. Dates covered by first application: June 24, 2010 - September 30, 2010
- 16. Date of first award: December 7, 2010

Amount of fees requested	\$99,336.50
Amount of expenses requested	\$9,592.44
Amount of fees awarded:	\$50,000.00
Amount of expenses awarded	\$9,592.44
Total Amount Awarded	\$59,592.44
Amount of fees actually paid	\$50,000.00
Amount of expense reimbursement actually paid	\$9,592.44
Amount of fees requested which remain unpaid	\$49,336.50
Amount of expenses requested which remain unpaid	\$0.00
Amount of fees denied	\$0.00
Amount of expenses denied	\$0.00

C. RECORDS SUPPORTING FEE APPLICATION

In accordance with the Billing Instructions for Receivers in Civil Actions Commenced by the U.S. Securities and Exchange Commission, the following exhibits are attached:

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- Exhibit 1: Receiver's Certification;
- Exhibit 2: Summary of Professional and Paraprofessional Time by Attorney;
- Exhibit 3: Summary of Professional and Paraprofessional Time By Activity Code Category;
- Exhibit 4: Summary and Breakdown of Requested Reimbursement of Expenses;
- Exhibit 5: Applicant's complete time by Activity Code Category for the time period covered by this application sorted in chronological order for the time period covered by this motion; and.
- Exhibit 6: Standardized Fund Accounting Report.
- Exhibit 7: Proposed Order

D. NARRATIVE

1. Case Background

On June 24, 2010, the United States Securities and Exchange Commission ("SEC") initiated these proceedings (the "Receivership Case") in the United States District Court for the Southern District of Florida (the "Receivership Court"). In its complaint, the SEC alleged that F&S Asset Management Group, Inc. ("FSAMG") and Federal Employee Benefits Group, Inc. ("FEBG" and jointly with FSAMG, the "Receivership Entities"), along with Kenneth Wayne McLeod ("McLeod"), perpetrated a Ponzi scheme by defrauding nearly 300 investors (the "Investors") out of more than \$34 million.

The SEC also sought the appointment of a receiver over the Receivership Entities. On that same date, the Court entered an Order (the "Receivership Order") appointing Michael I. Goldberg, Esq. as receiver over the Receivership Entities. On October 6, 2010, upon the unopposed motion filed by the SEC, the Court entered an Order Granting Unopposed Motion to Stay Proceedings, and Closing Case for Statistical Purposes (D.E. 44).¹

¹ The SEC acknowledged that "in light of the appointment of the Receiver as Curator there is no reason to keep the case on the Court's active trial calendar and requests that this matter be stayed for 120 days to allow the SEC time to {FT788110;3}

On June 22, 2010, after he learned that the SEC was investigating him, McLeod committed suicide. McLeod leaves behind his wife of approximately 8 years and six children from current and previous marriages. On September 22, 2010, the Receiver was appointed Curator of McLeod's intestate estate (the "Probate Case") filed in the Probate Division of the Circuit Court of St. Johns County, Florida, File No. CP 10-375 (the "Probate Court"). The Receiver intends to coordinate the disposition of assets between the Receivership and Probate Cases.

2. The Efforts of the Receiver

Under the terms of the Receivership Order, the Receiver is authorized to investigate the Defendants' financial affairs and to marshal and safeguard the Receivership Entities' assets for the benefit of defrauded investors. Since his appointment, the Receiver has sought to: (1) identify, locate, and secure the Defendants' assets; (2) identify, locate, and secure the Receivership Entities' records; (3) commence liquidation of the Receivership Entities' assets; (4) identify the investors who invested with the Receivership Entities to apprise them of the nature of these proceedings and the fraud which has been perpetrated against them; (5) identify claims and develop legal theories for recovery against parties whose actions may have caused injury to the Receivership Entities and their victims; and (6) assist federal and state authorities in their finalization of their investigation into the Defendants' fraudulent conduct. The Receiver has also established a toll-free investor hotline at 1-800-223-2234 to keep victims informed as to the progress of the Receivership proceedings and created a website at www.febginfo.com to advise investors of developments in the case.

3. Asset Status Report

Since his prior Application, the Receiver has taken possession of additional assets, and reached a global settlement with McLeod's spouse, whereby Mrs. McLeod agreed to turnover

seek authorization to dismiss certain claims against the Defendants and to allow the Receiver to carry out his court-appointed responsibilities."

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McLeod's jewelry, vehicles, residential real property and certain personal property. Mrs. McLeod and the Receiver also resolved their dispute over the proceeds of McLeod's life insurance policies ("Life Insurance Proceeds"). Moreover, the Receiver and his staff have spoken with dozens of investors, interviewed numerous witnesses, and worked closely with federal authorities to help unwind the fraud and trace the Investors' money.

a. Real Estate

The Receiver has identified and located five parcels of real property (the "Properties") owned by the Defendants:

- 1543 Wentworth Ave., St. Johns, FL 32559 ("Primary Residence").
- 1657 Yachtsman Court, Amelia Island, FL 32034 ("Yachtsman Property").
- 2690 Port Industrial Dr., Jacksonville, FL 32226 ("Port Industrial Property").
- 2640 Ocean Cove Dr., Unit 7, Fernandina Beach, FL 32034.
- 2644 Ocean Cove Dr., Unit 8, Fernandina Beach, FL 32034.

Mrs. McLeod has relinquished any interest she may have in the Properties, including the Primary Residence. The Receiver continues to work with the lenders whose liens are secured by mortgages on the Properties to determine whether any equity exists that may be captured for the benefit of the Investors. Thus far, the Receiver has determined that the Primary Residence and the Yachtsman Property have no equity above the amounts of the loans. The Duval County Property Appraiser estimates the value of the Port Industrial Property at \$560,000. Wells Fargo Bank, N.A. f/k/a Wachovia Bank, N.A. holds a recorded mortgage on the Port Industrial Property in the principal sum of \$237,500. Wachovia filed a claim in the Probate Case in the sum of \$202,579.43. In addition to the mortgage, there are outstanding property taxes owed in the amount of \$17,000. The Receiver believes that equity exists in the Port Industrial Property, however, still needs time to obtain a broker's opinion and to complete an environmental and lien analysis before he can determine the actual benefit to the receivership estate.

The Ocean Cove Properties are jointly pledged for one loan in the sum of \$200,000. The Nassau County Property Appraiser's office estimates the just value of the Ocean Cove Properties

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at \$161,500 each. In addition to the mortgage, 2010 property taxes are owed for each unit in the amount of \$3,484.45, totaling \$6,968.90. On February 4, 2011, the Court approved the Receiver's request to enter into an exclusive listing agreement with ERA Fernandina Beach Realty to market and sell the Ocean Cove Properties. Multiple offers have been made to the Receiver, however, the offers were significantly below the Property Appraiser's estimated market value and would offer little, if any, value to the estate after payment of the outstanding mortgage, delinquent taxes and realtors' commissions. The Receiver and the lender are exploring other possible options for the sale of the Ocean Cove Properties which would benefit the receivership estate.

b. Bank and Brokerage Accounts

A significant portion of the Receiver's efforts have been devoted to locating bank and brokerage accounts into which victims' funds have been diverted. To date, the Receiver had not uncovered any bank accounts with available funds, other than the approximate sum of \$1,300 in various accounts at Compass Bank. It appears that McLeod's Ponzi scheme was suffering severe liquidity issues at the time it was discovered. The Receiver was able to recover two FSAMG brokerage accounts at Fidelity in the sum of \$74,805.25 and the accounts have been liquidated. The Receiver will continue to analyze the Receivership Entities' bank records in an effort to locate additional assets which may be used to satisfy investor claims.

c. Personal Property

The Receiver recovered and auctioned several computers, memorabilia, and some used office furniture from FSAMG's offices. The Receiver also liquidated other property of the Receivership Entities' which include, among other things, Georgia Bulldog Football Tickets. These monies, in the amount of \$16,467.75 are also being held in trust. The Receiver recently filed a motion with the Receivership Court seeking authority to retain an auctioneer to sell the personal property acquired from Mrs. McLeod pursuant to the terms of the settlement. The

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auctioneer estimates that the value of the personal property between \$50,000 and \$75,000. The Receiver is in the process of finalizing the appraisals of Mrs. McLeod's jewelry. Pursuant to the settlement with Mrs. McLeod, the receivership estate will only recover the value of Mrs. McLeod's jewelry over the sum of \$200,000.

d. Life Insurance Proceeds

The Receiver claimed an interest in various life insurance policies purchased by McLeod utilizing funds stolen from Investors. After months of negotiation with Mrs. McLeod, the parties settled the Receiver's claim to the Life Insurance Proceeds and the Receiver now holds the sum of \$1,367,348.38 (plus interest) from the Life Insurance Proceeds.

e. Claims Against Third Parties

Numerous victims have contacted the Receiver to discuss potential claims against third parties that may have inadvertently or intentionally assisted McLeod in committing his fraud. Some of these investors have already retained counsel to pursue claims against financial institutions that did business with McLeod or otherwise handled investor monies. These causes of action most likely "belong" to investors and investors are encouraged to communicate with their own counsel in the event they wish to pursue any such claims. The Receiver is cooperating with all counsel representing victims by attempting to supply available documents and information concerning the fraud, the Receivership Entities and their affairs. The Receiver is also exploring whether the Receivership Entities have independent causes of action against these financial institutions. To the extent the Receiver determines that such causes of action exist, he will pursue them for the benefit of the victims. Moreover, the Receiver has been unable to reach a consensual resolution with the government in connection with McLeod's fraud, and is proceeding of finalizing the retention of outside counsel to pursue claims against them. The Receiver, through his counsel, will report on this matter separately as it progresses.

f. Claims Process

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The Receiver has reviewed the claims 133 claims filed in the Probate Case (the "Probate Claims") and has determined that 118 of the Probate Claims, totaling approximately \$31 million, were filed by Investors. The Receiver believes that these claims are more properly claims against the receivership estate and intends to seek authority from the Receivership Court to transfer the Investors' Probate Claims from the Probate Case to the Receivership Case (and reserving the right to object to said claims during the claims review period). Allowing the Receiver to recognize the Investors' Claims as if filed in the Receivership Case will save the Investors time and expense of filing what the Receiver believes will be essentially identical claims in both cases.

4. The Probate Case

The Probate Case has limited assets. As of July 2011, there is approximately \$14,065.97 available for distribution in the Probate Case. Subject to the approval of the Receivership Court and the Probate Court, the Receiver expects that the majority of assets will be distributed through the Receivership Case and will be funded from the Life Insurance Proceeds.

The Receiver believes that some of the proceeds from the sale of McLeod's personal property in the Receivership Estate should be distributed to McLeod's creditors in the Probate Case. To that end, the Receiver proposes to evenly divide the proceeds derived from the sale of McLeod's personal assets between the Probate and Receivership Estates. The assets are currently estimated to range in value from \$50,000 to \$75,000, exclusive of auctioneer's fees and expenses. The Receiver intends to file a motion seeking approval from the court to evenly distribute those sale proceeds. The Receiver believes this treatment is equitable to both the Receivership and Probate Estates as it would be impossible to accurately determine which estate is rightfully entitled to McLeod's personal assets, when the assets were purchased at least in part, with money stolen from Investors. Therefore, when combined with the approximately

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\$14,000 already available for distribution in the Probate Case, it is estimated that between \$39,000 and \$51,000 will be available for distribution in the Probate Case.

The Receiver has incurred attorneys' fees and costs in the Probate Estate for the preparation of the Petition, compliance with probate procedures, review of claims and respond to inquiries. The Receiver has not yet sought payment for his fees and costs. Due to interconnection of the cases, the duplication of claims and the anticipated sharing of the proceeds of the receivership assets, through this Motion, the Receiver also seeks payment of the attorneys' fees and costs incurred in the Probate Estate.

E. REQUEST FOR HOLDBACK

On December 7, 2010, the Court granted the Receiver's First Interim Fee Application, but required the Receiver to holdback \$49,336.50 in fees due to the lack of liquidity in the estate. Since such time, the estate has become sufficiently liquid and can pay the holdback amount. Accordingly, the Receiver also seeks authorization to pay this holdback amount at this time. The SEC supports this request.

F. RECEIVER'S PLANNED COURSE OF ACTION

In the upcoming months, the Receiver intends to continue to: (a) determine the exact amount of money raised by the Defendants from victims; (b) determine the amount of money still due and owing to victims; (c) determine how the Defendants spent or diverted the money raised from victims; (d) trace victims' funds; and (e) explore potential causes of action against third parties that may have inadvertently or intentionally assisted the Defendants in carrying out the Ponzi scheme and (f) and carrying out various administrative duties to liquidate the personal property.

G. FACTORS SUPPORTING FEE APPLICATION

Although this case is a federal court equity receivership and not a bankruptcy proceeding, the Receiver believes there are many similarities between the two and that the Court may

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evaluate the Professionals' applications in light of the factors set forth in *In re First Colonial Corp. of America*, 544 F.2d 1291 (5th Cir. 1977). For the Court's convenience, these factors are discussed below.

1. The Novelty and Difficulty of the Services Rendered

Although, unfortunately, these types of cases are all too common, serving as a receiver in a securities fraud case is not a simple task. At the outset, the Receiver and his staff were faced with the arduous task of understanding the businesses of the Receivership Entities, taking control of the Receivership Entities' books and records and locating and securing physical assets. To properly perform these various duties, the Receiver initially devoted substantial resources to the Receivership including numerous attorneys and para-professionals.

2. The Skill Requisite to Perform the Services Properly

a. Akerman Senterfitt

Michael Goldberg is the Receiver and is primarily responsible for handling the matters described in this Application. Mr. Goldberg is an attorney licensed to practice law in the State of Florida and the State of New York and is a member of the Bar of the United States District Courts for the Southern and Middle Districts of Florida. Mr. Goldberg has been practicing for twenty years and his practice concentrates primarily on litigation within Bankruptcy and District Courts in Florida.

Mr. Goldberg is a Shareholder in the Fort Lauderdale office of Akerman Senterfitt, a firm consisting of approximately 450 attorneys which maintains offices throughout the State of Florida, Washington D.C. and New York. Mr. Goldberg received his law degree, *magna cum laude*, from Boston University. Mr. Goldberg also holds a Masters in Business Administration and Finance from New York University where he studied, among other topics, corporate reorganizations. Mr. Goldberg is AV rated by Martindale Hubbell Attorney Directory.

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Mr. Goldberg currently serves as the Receiver in other U.S. District Court cases, including *Securities and Exchange Commission v. John P. Utsick, et al.*, Case No. 06-20975-CIV-HUCK. He also currently serves as counsel for the Official Committee of General Unsecured Creditors in *In re Rothstein, Rosenfeldt and Adler*, Case No. 09-34791-RBR. Mr. Goldberg has represented receivers in some of the most complicated and infamous Ponzi scheme cases in this jurisdiction.

3. The Preclusion of Other Employment by the Professional Due to the Acceptance of the Case

The Receiver and Akerman attorneys have not been precluded from accepting other employment by virtue of this case.

4. The Customary Fee

The Receiver has voluntarily reduced his billing rate from \$615.00 to \$395.00 and had reduced the rates of his attorneys and para-professionals. As a result, the hourly rates sought by Akerman attorneys and para-professional in connection with this case are well below the rate they charge other clients and lower than the customary hourly rates charged by other experienced professionals and litigators in the Southern District of Florida.

5. Whether the Fee is Fixed or Contingent

The fees are not fixed or contingent. However, no retainer was provided, so the chances of receiving payment is not guaranteed. Therefore, in a sense, the Receiver is employed on a contingency basis.

6. Time Limitations Imposed by the Client or Other Circumstances

The Receiver and his staff initially needed to devote significant time to the Receivership in order to secure offices and, review and organize files and financial information.

7. The Experience, Reputation, and Ability of the Professional, The Undesirability of the Case

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Akerman is one of the largest law firms in the State of Florida, with more than 450 attorneys located throughout the State of Florida. As a large, statewide law firm, Akerman is one of the few law firms in South Florida that would be able to devote the attorney time and resources needed for this case and to, in essence, finance the estate during the initial months. Akerman's attorneys are well known throughout the state and federal courts of the State of Florida. Akerman has a good reputation in the legal profession in the Southern District of Florida in general and in receivership and securities matters in particular. The experience, reputation and Akerman's ability are appropriate matters for consideration in determining the fee to be awarded.

8. The Nature and Length of the Professional Relationship With the Client

The Receiver is a shareholder of Akerman.

9. Awards in Similar Cases

The awards sought in connection with this case are consistent with the fees sought and awarded in similar receivership cases.

10. Benefit to the Estate

As is more fully detailed, *supra*, the efforts to date have conferred a substantial benefit on this estate. Moreover, Akerman has been financing the receivership.

11. Sharing of Compensation

There is no agreement for the sharing of any compensation which may be awarded in connection with this case.

WHEREFORE, the Receiver seeks entry of a Order granting this motion and (1) awarding the Receiver his second interim fees incurred in the Receivership Case of \$99,114.50 and \$4,228.63 in expenses, for a total of \$103,343.13; (2) awarding the Receiver his first interim fees incurred in the Probate Case of \$34,815.50 and \$279.15 in expenses, for a total of \$35,094.65; (3) permitting the Receiver to pay the holdback amount of \$49,336.50 from the First

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Interim Fee Application (for a total payment of \$187,774.28); and (4) for such other relief that is just and proper.

LOCAL RULE CERTIFICATION

Pursuant to Local Rule 7.3, the Receiver hereby certifies that he has conferred with counsel for Plaintiff, Securities and Exchange Commission ("SEC"). The SEC has no objection to the Application and the payment of the holdback amount. A hearing is requested only in the event that someone files an objection thereto.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by U.S.

Mail on this 23rd day of August, 2011, to all counsel on the Service List below.

By: Joan M. Levit
Joan M. Levit, Esquire

Service List: 1:10-cv-22078-FAM

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