

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 05-80186-CIV-RYSKAMP/VITUNAC

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

KL GROUP, LLC, KL FLORIDA, LLC,
KL TRIANGULUM MANAGEMENT, LLC,
SHORELAND TRADING LLC,
KL GROUP FUND, LLC,
KL FINANCIAL GROUP FLORIDA, LLC,
KL FINANCIAL GROUP DB FUND, LLC,
KL FINANCIAL GROUP DC FUND, LLC,
KL FINANCIAL GROUP IR FUND, LLC,
KL TRIANGULUM GROUP FUND, LLC,
WON SOK LEE, JOHN KIM,
and YUNG BAE KIM,

Defendants.

**RECEIVER'S FINAL REPORT AND
AGREED MOTION TO CLOSE RECEIVERSHIP**

Court-Appointed Receiver, Guy A. Lewis,¹ by and through undersigned counsel, hereby submits this Final Report and Motion to Close the Receivership, including a request for payment of professional fees and expenses for the last year² (the "Final

¹ On March 3, 2005, this Court appointed Guy Lewis as Receiver over Defendants KL Group, LLC, KL Florida, LLC, KL Triangulum Management, LLC, Shoreland Trading, LLC, KL Group Fund, LLC, KL Financial Group Florida, LLC, KL Financial Group DB Fund, LLC, KL Financial Group DC Fund, LLC, KL Financial Group IR Fund, LLC and KL Triangulum Group Fund, LLC. On March 16, the Receivership was extended over Skyline Futures Trading, LLC and Skyline Futures Management, LLC. These entities are collectively referred to as the "Receivership Entities."

² The Receiver seeks payment of expenses for the Receiver and his professionals, Lewis Tein, P.L. ("Lewis Tein"), Kozyak, Tropin & Throckmorton, P.A. ("Kozyak Tropin"), and Gerson Preston, Robinson & Company, P.A. ("Gerson Preston") for the period of *December 1, 2007 through November 30, 2008*. Kozyak Tropin and Gerson Preston are submitting their invoices for services rendered during the month of

Lewis Tein PL
ATTORNEYS AT LAW

3059 GRAND AVENUE, SUITE 340, COCONUT GROVE, FLORIDA 33133

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Report”). *The undersigned is authorized to state that the Securities and Exchange Commission agrees to the relief sought herein.*

SUMMARY

Since March of 2005, the Receiver has carried out the responsibilities assigned to him by the Court’s Receivership Order. The Receiver and his attorneys have spent hundreds of hours, assisting federal and state law-enforcement agents in bringing the KL principals to justice, pursuing recovery of assets and funds that were misappropriated or misused by the KL principals, attempting to locate and serve the defendants who fled the jurisdiction, and negotiating settlements with wrongdoers, non-investor claim holders, and in some cases, investors.

Two of the three KL principals are now convicted felons, subject to lengthy terms of federal imprisonment: John Kim is serving 18 years and Yung Kim is serving 6 years. Each has been ordered to pay restitution of \$78 million to the KL investors. Won Lee remains a fugitive, likely hiding in South Korea.

After fully evaluating KL’s remaining assets and potential sources of recovery, the Receiver has determined that the Receivership should be wound down. The Receiver’s attorneys have received confirmation of this legal opinion from his special counsel, the Kozyak Tropin firm. Accordingly, the Receiver files the instant motion to close the Receivership.

November 2007. The Receiver and Lewis Tein submitted their November 2007 invoice in the Receiver’s Fifth Report and Expense Request for August 2006 – November 2007.

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I. FINAL REPORT

1. On March 2, 2005, the Securities and Exchange Commission (“SEC”) initiated Civil Action No. 05-80186 styled *Securities and Exchange Commission v. KL Group LLC, et al.* (the “SEC Proceedings”) and, in connection therewith, sought the appointment of a receiver as to each of the named defendant entities. On March 3, 2005, the Court issued its Order Appointing Receiver in the SEC Proceeding pursuant to which Guy A. Lewis was named Receiver.

2. Immediately thereafter, the SEC and the Receiver undertook collaborative efforts to investigate the breadth and depth of the investment fraud that was the subject of the SEC’s complaint and to identify and recover the proceeds of the fraud.

3. The fruits of this collaborative effort were significant. Within a short time, over \$6,500,000 in assets were located and frozen pursuant to various applications filed by the Receiver. Shortly thereafter, the cash funds were transferred to accounts controlled by the Receiver.

4. The Receiver and the SEC expanded their investigation and recovery efforts. Throughout the pendency of this litigation, the Receiver and his staff, together with the SEC, the FBI, the U.S. Attorney’s Office, and Florida law-enforcement, worked diligently to identify and marshal proceeds from the KL scam and to repatriate those funds to the innocent investors and other legitimate claimants. These efforts led them to recovery efforts in California, Nevada, Chicago, Maryland, New York, and Florida.

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5. The Receiver's efforts resulted in the recovery of approximately \$6,588,442.09 from certain of the defendants, third parties, and the sale of KL assets.³ In the aggregate, the Receiver has to date distributed approximately or \$2,803,071.11, approximately 43% of the recovered KL assets, to KL investors and other individuals and entities having approved claims in the Receivership.⁴ As Exhibit 1 demonstrates, the remaining recovered assets were applied to the operation of the Receivership, including: approximately \$1,100,000 (17%) for carrying costs, rent, and costs to sell; approximately \$1,300,000 (20%) on legal fees; approximately \$853,000 (13%) on Receivership accounting fees; and approximately \$295,000 (4%) on forensic accounting fees. Approximately \$357,000 remains in the Receivership accounts. As this court is aware, corporate bankruptcy receiverships generally have operational costs totaling approximately 30% of all recovered assets; however, it should be noted that those cases do not include the assistance and involvement in SEC fraud investigations as this Receivership required.

6. Pursuant to the Receiver's Motion to Approve Claims Procedure filed on March 7, 2007 ("Distribution Plan") approved by this Court on March 13, 2007, there are no outstanding claims asserted against the Receivership.

7. The Receiver is not aware of any additional assets subject to this Court's Orders in this matter that are available for recovery. Nor is the Receiver aware of any

³ This \$6,588,442.09 is reflective of the gross recoveries obtained by the Receiver.

⁴ This is the amount that was paid to victims of the KL fraud and individuals and entities holding approved claims against those subject to the Receivership Order.

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other claimants who have properly asserted claims that have not been or are not being addressed.

8. The Receiver requests approval by this Court of the proposal for the reasons stated herein.

A. THE KL FRAUD

1. Background.

9. This case involved a so-called “hedge-fund”⁵ fraud perpetrated by the defendants John Bae Kim, Won Sok Lee and Yung Bae Kim, through their various corporate entities (hereinafter referred to as “KL”). The fraud involved investments in putative hedge funds that initially operated in San Francisco, California beginning in 2000, and by 2003, expanded to include West Palm Beach, Florida. While in operation, the defendants defrauded approximately 200 investors out of nearly \$194 million. The fraud involved hundreds of bank accounts that the KL principals used to steal from investors and transfer money domestically and abroad.

10. The Receiver and the SEC identified Defendant John Kim as the chief trader in the funds. He touted himself as a maverick trader, who devised and owned a proprietary day-trading program that enabled hedge funds to earn huge profits on trades far in excess of competitors. As has been discovered, that claim proved to be a complete fiction.

11. Won Lee - - indicted by the U.S. Attorney’s Office but still at large - - was President and Operations Manager and was responsible for the creation and

⁵ A “hedge fund” is a type of mutual fund structured as a private investment partnership, usually limited to high net-worth investors, who meet minimum liquidity and net-worth requirements.

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distribution of quarterly statements sent to KL's investors. The KL bank accounts were controlled by John Kim and Won Lee.

12. Convicted felon Yung Kim (John Kim's brother) was the Chief Financial Officer and was responsible for signing the checks to pay the ongoing expenses, paying employees and transferring money between accounts.

13. The corporate defendants, KL Group, LLC and KL Triangulum Management LLC were limited-liability companies incorporated between 2001 and 2003 in California and Florida, and were established as the hedge fund investment advisors. Won Lee was the principal of all the advisors. Between 1999 and 2003, John Kim and Won Lee organized a group of six hedge funds, under the names of KL Group Fund, LLC (the main fund), KL Financial Group Florida, LLC, KL Financial Group DB Fund, KL Financial Group IR Fund, LLC, KL Financial Group DC Fund, LLC and KL Triangulum Fund Group, LLC (collectively referred to as the "Fund").

14. Corporate defendant, Shoreland Trading, LLC ("Shoreland") was a broker/dealer set up in 2001 and controlled by John Kim, Won Lee and Yung Kim. Shoreland executed trades for the Fund. In other words, Shoreland had to clear the trades with a firm that had access to a particular stock exchange, where the stock traded.

15. The defendants marketed their scheme through investor meetings, on the internet, and by offering memoranda. According to the memoranda for the Fund, investors were required to have a net worth of at least \$1.5 million and were required to be "accredited investors," as defined by the Securities Act of 1933. Investors who did not meet the qualifications were still able to invest by pooling their money in entities that invested in the funds.

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16. The offering material falsely represented that the Fund earned in excess of 100% per year for investors, when it actually suffered substantial losses every quarter. Based on these false claims, investors from Florida and elsewhere provided substantial sums of money to the defendants for investment in the Fund.

17. After the initial investment was made, investors received bogus quarterly statements from the Fund showing profits and losses for that quarter. These statements routinely declared profits to the investors, although in reality, KL was losing millions of dollars in nearly every quarter.

18. The SEC Miami Office began an investigation and shortly thereafter, filed this action to prevent the defendants from absconding further with the investors' funds.

19. On July 20, 2007, KL Group LLC, KL Triangulum Management, LLC and Shoreland Trading, LLC, admitted the entities' role in running the KL Ponzi scheme. The corporations admitted their complicity in overseeing approximately \$194,000,000 in fraudulently obtained proceeds and for the fraud committed by Defendants John Kim, Yung Kim and Won Lee. Specifically, the companies, acting formally through the Receiver, entered guilty pleas to conspiracy to commit mail and wire fraud.

20. On June 29, 2007, Defendant Yung Kim pled guilty to one count of conspiracy to commit mail and wire fraud, and one count of wire fraud. He faced a maximum period of twenty-five (25) years in prison, five years of supervised release, and a fine of \$500,000 and restitution to the victims of the KL fraud.

21. In November 2006, the Receiver learned that John Kim had stolen \$384,000 from the sale of his vacation home in South Korea (a frozen asset), and had

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pawned a Porsche 911 and over \$100,000 of jewelry. Kim originally bought all of these items with KL investors' money. The Receiver then filed a detailed motion for a rule to show cause why John Kim should not be held in contempt of court. On November 27, 2006, Judge Ryskamp entered an order holding John Kim in contempt of court for defying the asset-freeze provisions of the Preliminary and Permanent Injunctions. Judge Ryskamp immediately ordered U.S. Marshals to take Kim into custody. In making his ruling, Judge Ryskamp referred to the several instances of Kim's flagrant disregard of his orders. Judge Ryskamp called it "probably the most flagrant contempt citation I've seen."

22. Won Lee remains a fugitive. The exact whereabouts of Mr. Lee are presently unknown to the Receiver. He is believed to be in South Korea.

23. On July 17, 2008, John Kim, Yung Bae Kim, and the KL Receivership Entities were sentenced. John Kim was sentenced to 220 months imprisonment followed by 36 months of supervised release. On August 4, 2008, the Court entered a Second Amended Judgment against John Kim requiring restitution of \$78,525,567.34. Yung Bae Kim was sentenced to 75 months imprisonment followed by 36 months of supervised release and restitution of \$78,525,567.34. The receiver's counsel spoke at sentencing to advise the Court of the amount of fraud that had been committed against the investors.

B. THE CLAIMS AND REPATRIATION PROCESS

1. Compiling the Investor List.

24. After the SEC filed this action, the Receiver compiled a list of the names and addresses of potential claimants to the proceeds of the KL fraud. Since the Receiver's primary focus was to identify, recover and ultimately distribute the proceeds

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traceable to the KL fraud to the innocent investors, it was imperative that he undertake the compilation of a comprehensive and accurate list of such investors.

25. To do this and to facilitate the rapid dissemination of accurate information, this Court authorized the Receiver to post notices of this proceeding in various publications, such as the *Palm Beach Post*. Additionally, the Receiver created a website for the dissemination of information to potential claimants. Ultimately, many investors contacted the Receiver and his staff and over 150 claims were filed.⁶

26. As the inquiries and information from actual investors began to subside, the Receiver petitioned the Court to impose a Bar Date such that the Receiver could determine the number of potential claims and begin the process of repatriating funds. This Court established a Claims Bar Date of August 21, 2006.

2. Due Diligence Process for Claims Approval.

27. Having received claims that in the aggregate totaled more than \$137,000,000, the Receiver quickly concluded that a procedure was necessary to analyze and evaluate the claims to ensure their validity and accuracy.

28. To conduct a thorough review of each claim and confirm that claimants were entitled to receive a distribution in the amounts claimed, it was necessary for the Receiver and his staff to subpoena bank records from more than a dozen banks. Conducting a forensic review of each claim to verify the funds were sent and received by the various transmitting banks, and accounting for any offsets to claimed amounts was a time-intensive and administratively challenging task.

⁶ The website klfinancialreceiver.com remains active and is indispensable in gathering information from, and providing information to, investors. The website also proved to be a cost-effective mechanism that helped preserve assets and facilitate distributions under the Distribution Plan.

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29. The Receiver faced many issues relating to the processing of these claims and, often times, had to defend the recovered amounts against improper claims. For example, some investors underreported the extent of their compensation or withdrawals made from KL accounts. Other claimants did not retain documents or could not properly document their investment. These and similar issues required the Receiver to engage in protracted efforts to review, adjust and attempt to verify or confirm claims with claimants and through third-party data the Receiver independently obtained. At the same time, the Receiver had to contend with the challenges by some claimants to the authority of this Court, the Receiver, and the SEC in taking the actions necessary to protect these investors, as well as, in some cases, a lack of understanding of (or willingness to confront) the true nature of the KL fraud.

30. After reconciliation and verification of the Claims, the Receiver presented his determinations to this Court and paid those claims consistent with and subject to the Court's approval. The Receiver's recommendations on the allowance of claims are detailed in the numerous reports filed with this Court.

31. During the claims resolution process, the Receiver identified a number of claims that fell outside the specific categories in the Distribution Plan. Where appropriate the Receiver prudently resolved these issues to avoid the costs and attendant risks of litigation. The Receiver's distributions included these settlement amounts. The majority of claims were approved for full or partial payment. The Receiver objected to and sought relief from this Court to deny outright those claims that were unsupportable.

3. All Approved Claims Contemplated In the Distribution Have Been Paid A Pro-Rata Percentage Of Their Full Approved Claim Amount.

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Lewis Tein PL
ATTORNEYS AT LAW

3059 GRAND AVENUE, SUITE 340, COCONUT GROVE, FLORIDA 33133

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32. As of the filing of this Report, all approved claims have received a pro-rata distribution payment of their approved claim amount. These distributions total approximately \$2,803,071.11.

33. There are no outstanding claims, since the Receiver resolved the Kochman claims and the SFM claim.

34. The Receiver further seeks an order from this Court that any claims received by the Receiver after the date of the filing of this Report be denied outright and in their entirety without further action by the Receiver, and that the Receiver be released of any continuing duty or obligation to address these claims in any way.

C. ASSETS RECOVERED AND SETTLEMENTS REACHED

1. Assets Recovered.

35. The Receiver and his attorneys have spent hundreds of hours pursuing the recovery of assets and funds that were misappropriated or misused by officers, directors, and employees of KL.

36. As an example, when the Receiver assumed control of the assets and records of the Company, the Receiver learned that KL funds had been used to purchase or finance three vehicles that remained in the possession of the defendants or their relatives. The vehicles included a late model Mercedes SL 500, an Infinity SUV and an Audi A8. The vehicles required the expenditure of funds to locate, possess, insure, and/or store until the vehicles could be sold. The Receiver was ultimately able to sell these vehicles and recover approximately \$110,635.00.

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37. The auction of the furniture, equipment, and office supplies that were not needed for the day-to-day operations of the KL Receivership, along with household items recovered from John Kim and Won Lee's personal residences yielded \$111,419.17 following payment of the auctioneer's fees and other expenses.⁷

38. The Receiver closed on the sale of Won Lee's former residence which was purchased with funds belonging to KL investors. The Receiver's sale yielded approximately \$1,031,735.00 for the benefit of the KL investors.

39. In addition, the Receiver recovered approximately \$47,793.00 from the sale of jewelry recovered from Won Lee and his fiancée. These items were sold at auction by Christie's Auction House in New York.

40. The Receiver recently closed on the sale of John Kim's former residence which was also purchased and maintained with funds belonging to KL investors. The Receiver's sale yielded approximately \$536,341.89 for the benefit of the KL investors.

41. The Receiver also traced KL funds that were used by John Kim to purchase a membership at the Ritz Carlton Country Club in Jupiter, Florida. The Ritz Carlton refunded to the Receivership \$170,973.61 from the resale of Kim's membership.

42. The Receiver traced a \$100,000 investment made by John Kim to Fore Partners, a third-party real estate investment firm in Palm Beach. Those funds were identified as Receivership funds and have since been recovered by the Receiver.

43. The Receiver also recovered an additional \$112,000 in KL funds from an account held by John Kim at Velocity Futures.

⁷ This amount does not include the proceeds from the estate sale of several pieces of high-end office furniture and various items from John Kim's former home (including bedroom and office furniture) which were remaining following the auction.

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2. Settlements Reached.

44. In March 2007, the Receiver completed his investigation of the role of Ronald S. Kochman, Esq. in relation to KL. As a result of his investigation, the Receiver determined that Kochman received \$487,800 in improper commissions resulting from investments in KL by clients of his probate law practice that Kochman recruited for KL in 2003 and 2004, without disclosing his commissions or his role as a KL principal to his clients, as required by applicable attorney-ethics rules. The Receiver later discovered that Kochman's attorneys had misrepresented Kochman's available assets to the Receiver. As a result, the Receiver required that Kochman immediately remit the entire \$487,800 in ill-gotten gains to the Receivership or face a motion for contempt of Court. Kochman complied and has since cooperated fully with the Receiver.

45. Ronald Kochman, his wife, and children then submitted claims totaling \$3,268,407.17. The Receiver denied Ronald Kochman's joint claim with his wife because of Ronald Kochman's status as an insider. The Receiver carefully scrutinized the individual claim submitted by Debra Kochman and the Kochman's two children. After determining that none of the funds that Debra Kochman and the children had invested in KL were traceable to Ronald Kochman, the Receiver approved pro rata payment of those claims. Ronald Kochman agreed to withdraw his claims.

46. SFM initially sought a direct payment of \$900,000 from the Receivership. After extensive litigation before this Court, the Court ordered SFM to file a supplemental claim like the other investors. After a thorough investigation of the facts and circumstances surrounding SFM's Supplemental Proof of Claim, the Receiver determined that SFM had a valid claim, as an investor, against the KL Receivership entities in the

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amount of \$5,622,033.00, not \$12,300,000.00, which was the amount of SFM's supplemental claim. This Court approved the settlement reached by the Receiver and SFM was paid its pro rata share of the value of its approved claim.

II. REQUEST FOR PAYMENT OF PROFESSIONALS AND THE REMAINING FEES

A. Summary of Receivership Activities since November 2007.

47. Since the filing of his Fifth Report in December 2007, the Receiver and his professionals have successfully accomplished the following:

- Distributed approximately \$2,800,000 to KL investors and other individuals and entities having approved claims in the Receivership.
- Responded to inquiries from KL creditors, investors and their accountants regarding tax issues and proof of claim issues.
 - Responded to and provided documents requested by investors' counsel regarding investments and other documentation.
- Resolved all remaining disputed creditor claims, including the Ronald Kochman claim, the Debra Kochman and children claim, and the SFM claim.
- The Receiver's forensic accountants prepared financial statements that were filed with the Court, analyzed various tax issues in connection with the preparation and filing of tax returns and investor K-1s, and importantly, assisted the Receiver in identifying additional opportunities to generate asset recoveries for investors.
- The Receiver's forensic accountants also assisted the Receiver in reconciling and verifying the proofs of claims submitted by KL's investors and creditors.
- On July 17, 2008, the Receiver, on behalf of KL Group LLC, KL Triangulum Management, LLC and Shoreland Trading, LLC, pursuant to a plea agreement, represented the entities at sentencing.
- Worked closely with the forensic accountants to prepare and file 2007 federal income tax returns and to issue K-1s to KL investors.

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- Worked with various third party professionals, including An Estate of Mine to liquidate KL assets, including KL furniture and office equipment. The Receiver's counsel spent many hours working on these matters to ensure the highest possible recovery from the liquidation of these assets. In the end, a total of \$6,588,442.09 was recovered for investors.
- Cooperated with various requests from the Internal Revenue Service for information about KL and the Receivership in connection with several KL investor tax returns.
- Streamlined KL's operations by closing KL's office in Coral Gables and sending KL's books and records and computer equipment to a secure storage facility.

B. Applicable Analysis.

48. This Court has previously approved the professional fees charged by the Receiver, his counsel Lewis Tein, his special counsel Kozyak Tropin and his forensic accountants Gerson Preston. None of the entities or the Receiver have applied for the payment of their fees or sought reimbursement for their costs related to the Receivership for the past year, since November 2007.

49. The professional services rendered by the Receiver, Lewis Tein, Kozyak Tropin, Gerson Preston and the necessary and reasonable out-of-pocket costs associated with those services, are set forth and described in detail on Exhibits 2, 3, and 4, attached hereto respectively. The attached records convey information for the time period of December 1, 2007 through November 30, 2008 and include: (a) the number of hours worked by each attorney and professional on a particular day; (b) the manner and type of work performed by each attorney and professional; and (c) the discounted billing rate for each person rendering services in this matter. The attached records have been prepared

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based upon the contemporaneous daily time records maintained by the individuals rendering the services.

50. The Receiver has spent a great deal of time on this matter for which he has not billed. Specifically, the Receiver has spent a large number of hours responding to emails and telephone calls from defrauded investors and their counsel, reviewing documents, working with the forensic accountants, and conducting a host of activities necessary for the general administration of the Receivership -- a good portion of which he has neither billed for nor reflected on the invoice for professional services attached.

51. In addition, when appropriate, and in effort to reduce costs, the Receiver has assigned portions of the Receivership's day-to-day operations and other work to other attorneys, paralegals, and document clerks, under the Receivership's direct supervision. The Receiver has found that allocating such work allows him to operate the Receivership more efficiently.

52. Receiver's counsel and special counsel have applied only for reimbursement for those actual and necessary out-of-pocket expenses, such as subpoena charges, photocopy charges, fax charges, delivery charges, and various expenses in connection with this matter. All such expense items would typically be billed by a law firm to its general commercial clients. All in-house costs have been substantially discounted if not written off entirely.

53. Moreover, all time has been billed at a reduced agreed upon rate. Neither the Receiver, nor his counsel has sought to increase their rates since the inception of this Receivership, as they would normally in similar commercial matters.

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54. The attached Exhibits 2, 3 and 4 detail the nature of the professional services rendered and the costs incurred. These recitals, however, constitute only a summary of the time spent and it must be recognized that a mere reading of the time summaries attached hereto cannot completely reflect the full range of services rendered by the Applicants, the complexity of the issues, and the pressures of time and performance which have been placed upon the Applicants in connection with this case.

55. No understanding exists among the Receiver, his counsel, his accountants or any other person or entity for a sharing of the compensation to be awarded herein except between the Receiver and Lewis Tein.

56. In determining fees, a Court must (1) determine the nature and extent of the services rendered; (2) determine the value of the those services; and (3) consider the factors set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974). *See Grant v. George Schumann Tire and Battery Co.*, 908 F.2d 874, 877-78 (11th Cir. 1990) (bankruptcy fee award case addressing the issue of attorney's fees generally before considering specific requirements in the bankruptcy context). The twelve factors set forth in *Johnson*, which involved an award of attorneys' fees under the federal civil rights statutes, as incorporated by the Eleventh Circuit in *Grant*, a bankruptcy case, are as follows: (1) the time and labor required; (2) the novelty and difficulty of the questions presented; (3) the skill required to perform the legal services properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee for similar work in the community; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or by the circumstances; (8) the amount involved and results obtained; (9) the experience, reputation and ability of the attorney; (10) the

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undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases.

57. Time, Nature and Extent of Service, Results Obtained and Related Factors: The forgoing summary description, together with the time records attached hereto detail the time, nature and extent of the professional services rendered by the these parties during the approximate eleven (11) month period covered by this request. The parties believe that the time spent is justified by the nature, complexity and the pressures of the work, as well as the results that have been achieved thus far.

58. Novelty/Difficulty of the Question Presented: This case required a high level of skill due to the nature of the fraudulent scheme, the complexity of the financial transactions involved, the fraudulent records kept by the Defendants, and the quality of the opposition encountered by the parties.

59. The Skill Requisite To Perform the Service Properly: In order to perform the services and obtain the results required, substantial legal skill and experience in the areas of commercial and securities law, litigation and negotiations were required of the Receiver and his counsel. The Receiver is sensitive to the financial considerations arising in receiverships such as this and is making every effort to control costs.

60. Preclusion of Other Employment by the Attorneys Due to the Acceptance of the Case: Although the Receiver and his professionals were not explicitly precluded as a result of this case from accepting other matters, matters in this case were treated by them in an expeditious and professional manner. Also, various matters in this case required the parties to devote considerable time to this case, all to the preclusion of expending time on other active matters.

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61. The Customary Fee: The hourly rates of the parties set forth on the attached exhibits reflect a rate that is generally lower than (in the case of the Receiver) or equal (for the other professionals) to the hourly rates billed by parties to clients in other commercial cases. Also, neither the Receiver, nor his counsel has sought to increase their rates since the inception of this Receivership, as they would normally in similar commercial cases.⁸

62. Whether the Fee is Fixed or Contingent: The compensation of the parties in this matter is subject to the approval of this Court, and parties have received no compensation for the services rendered to date. The above factors should be taken into consideration by the Court and the compensation should reflect the assumption of the risk of non-payment and delay in payment.

63. Time Limitation Imposed by the Client or Other Circumstances: This case has imposed serious time limitations on the parties due to the necessity of rapid resolutions of many issues. Indeed, the preliminary stages of this case required almost *all* of the available time of the Receiver and his professionals.

64. The Experience, Reputation and Ability of the Attorneys: The Receiver and his counsel enjoy a fine reputation and have substantial ability in the fields of receiverships, litigation, commercial law and criminal law. The Receiver is acutely aware of the financial considerations arising in receiverships such as this.

65. The "Undesirability" of the Case: This case is not undesirable, and the parties have been privileged to appear before the Court in this proceeding and to

⁸ In addition, as promised by the Receiver in his original application to the SEC (attached to the SEC's recommendation of a receiver to this Court), the Receiver has already discounted his rates and those of this counsel by 20% - 40%. Further, as described above, as a public service, the Receiver and his counsel routinely do not charge the Receivership for numerous tasks and, as a practice, round their time down.

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represent the interests of defrauded consumers who were victimized by the investment scheme.

66. Nature and Length of Professional Relationship with the Client: The parties have had no relationship with KL or any of its related entities or principals prior to this case.

67. Awards in Similar Cases: The amounts requested by the parties are not unreasonable in terms of awards in cases of similar magnitude and complexity. The compensation requested by the parties comport with the mandate of applicable law, which directs that services be evaluated in light of comparable services performed in other cases in the community. The hourly rates requested by the parties are either lower than or equal to the ordinary and usual hourly rates billed by the parties to their ordinary commercial clients, notwithstanding the risks of non-payment and delayed payment associated with this case.

68. Source of Payment for Amounts Sought Hereunder: The Receiver requests that the amounts for which payment is authorized hereunder be paid from funds presently held, or soon to be received, by the Receiver.

69. The Receiver respectfully requests that the Court allow him to immediately distribute funds to Lewis Tein, Kozyak Tropin and Gerson Preston for the professional services rendered to the Receivership in the following amounts:

C. RECEIVERSHIP FINANCES, FINAL DISTRIBUTION AND TAX RETURNS

1. Receivership's Finances.

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70. A copy of the unaudited cash balance schedule of KL as of September 30, 2008 is attached hereto as Exhibit 1. As reflected on the Schedule, KL has \$357,262.06 in assets. Upon payment of all further operating expenses and professional fees, it is anticipated that KL will have approximately \$142,916.88 in cash, which will represent all of the assets of the Receivership Estate available for operation of the Receivership going forward until the final tax return is issued in March 2009.

2. Final Distribution.

71. The Receiver made his last distribution on June 25, 2008. After that distribution, there remained \$358,502.11 in the Receivership Estate. It is unlikely that there will be any significant assets left for an additional distribution after the tax returns and K-1s are prepared and filed in 2009.

3. Tax Issues.

72. The Receiver's forensic accountants will prepare the 2008 federal income tax returns and issue the Schedule K-1s to the investors. These Schedule K-1s will reflect all the distributions paid during 2008.

73. The 2008 Form 1065 and all Schedule K-1s will be marked as "final" and this will be the last federal income tax filing issued to the KL investors.

D. OTHER RECEIVERSHIP ISSUES

1. Remaining Claims against the Receivership and Assets to Pursue.

74. The Receiver is unaware of any other third-party claims to investor funds.

75. The Receiver is not aware of any additional assets to pursue or liquidate on behalf of the KL investors and other claimants.

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76. The Receiver has taken all reasonable and prudent steps to collect or recover funds in this case and believes that no further recoveries can be made.

3. Receiver's Continued Cooperation With The Government.

77. The Receiver continues to assist the United States Attorney's Office, the Federal Bureau of Investigation and the State of Florida Bureau of Financial Regulation in their investigation of the Receivership entities.

4. Request for a Reserve.

78. Following the discharge of the Receiver and administrative closure of this case, the Receiver is likely to be confronted with unforeseeable issues which will require attention by the Receiver, his counsel and possibly other professionals. To manage and address these issues, the Receiver requests that a reserve of the remaining approximate \$140,000.00 be maintained in the Receiver's account so that funds remain to cover future potential fees, costs, and expense, including, but not limited to, the cost of preparing and filing the final federal income tax returns and issuance of the Schedule K-1s to the KL investors, storage costs of KL's books and records (more than 250 banker boxes), and the cost for the issuance of a final distribution to KL's investors.

79. The Receiver requests that he be able to pay reasonable and necessary professional fees and expenses during this six month period as those fees become due without the need for notice, a hearing or further intervention or action by this Court.

80. The Receiver is aware that, as a result of the last round of distributions, some of these distribution checks have been returned as undeliverable or will not be cashed. With respect to these checks that are either returned or are not cashed, the

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Receiver requests that this Court authorize him to void such checks 90 days after the Receiver's Final Report is approved.

5. Receiver's Website.

81. The Receiver has created and maintained a website to aid in the dissemination of information to KL claimants. The Receiver has maintained the klfinancialreceiver.com domain name since the inception of this matter. The updating and maintenance of this site is an on-going administrative expense that, once the Final Report is approved, will no longer be necessary.

82. The Receiver requests that this Court allow him to cease maintenance and administration of that website no sooner than 180 days after the Court enters its order approving the Final Report and granting the relief requested herein.

III. REQUEST FOR DISCHARGE OF RECEIVER, RELEASE FROM ANY CONTINUING DUTIES, AND REQUEST FOR CLAIMS BAR ORDER

83. As is evident from this Final Report, investigating, litigating and administering to this litigation has been a difficult, time-consuming and complex undertaking. With all assets recovered and claims resolved, it is time to close this matter and discharge the Receiver.

84. The Receiver is not aware of additional assets to pursue on behalf of the investors, the assets recovered have been distributed to the investors in a final distribution, and all claims in the Receivership have been or are being settled or otherwise resolved as provided herein.

85. The Receiver hereby requests that the Court discharge the Receiver from all duties imposed upon him in his capacity as Receiver including, but not limited to,

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those duties in relation to the above-listed Defendants, any and all claimants to funds in this matter, any creditors of any of the Defendants, and any individual or entity with an interest whatsoever to the monies or assets recovered and distributed under the Distribution Plan or otherwise. The Receiver further requests that no claimant, Defendant and/or any individual or entity with an interest whatsoever to the monies or assets recovered and distributed under the Distribution Plan or other bring any claims or causes of action against the Receiver, his counsel, employees, and/or his agents arising, in any way, from the Receiver's discharge of his duties as Receiver.

86. The Receiver respectfully requests that the discharge order foreclose jurisdiction over future unfiled claims, and that the order contain language reflecting the well-established rule that upon final discharge, without reservation of jurisdiction, a receiver is no longer liable in connection with the receivership or the former estate. *See McColgan v. Maier Brewing Co.*, 134 F.2d 385, 387–88 (9th Cir. 1943) (“The effect of the discharge of a receiver and surrender of jurisdiction over the trust, without any reservation as to existing claims, is to release not only the receiver, but, also, the property from further liability.”) (internal quotation marks and citation omitted); *Peters v. Plains Petroleum Co.*, 43 F.2d 49, 49 (10th Cir. 1930) (holding that discharge of a receiver puts an end to his liability). *Cf. McNulta v. Lochridge*, 141 U.S. 327, 332 (1891) (“Actions against the receiver are in law actions against the receivership or the funds in the hands of the receiver, and his contracts, misfeasances, negligences, and liabilities are official, and not personal, and judgments against him as receiver are payable only from the funds in his hands.”).

87. The Receiver requests that he be discharged and this matter be closed.

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Lewis Tein PL
ATTORNEYS AT LAW

3059 GRAND AVENUE, SUITE 340, COCONUT GROVE, FLORIDA 33133

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IV. CONCLUSION AND REQUEST FOR APPROVAL

88. Based on the foregoing, the Receiver therefore respectfully requests that the Court grant him authority to pay the remaining professional fees and expenses charged by the Receiver, Lewis Tein, Kozyak Tropin, and Gerson Preston. The Receiver further requests that this Court grant any and all other requests, at law or equity, requested herein or to which the Receiver has shown himself otherwise entitled.

89. Furthermore, the Receiver requests that the Court enter an order discharging Guy A. Lewis, as Receiver for the named Defendants; discharging Guy A. Lewis from any and all continuing duties; and, barring any claimant, Defendant, any creditors, and/or any individual or entity with an interest whatsoever to the monies or assets recovered and distributed under the Distribution Plan or otherwise from bringing any claim or cause of action against Mr. Lewis, his counsel, employees, designees, and/or his agents arising, in any way, from Mr. Lewis' duties as Receiver, and for such other and further relief as he may show himself to be justly entitled.

For the Court's convenience, the following is a summary of Exhibits 2, 3 and 4 which reflect the compensation and reimbursement of expenses for the Receiver and his professionals:

	<u>Receiver</u>	<u>Counsel</u>	<u>Total Fees by Month</u>
Lewis Tein, P.L.			
December 2007	\$6,090.00	\$12,295.50	\$18,385.50
January 2008	\$3,850.00	\$14,784.00	\$18,634.00
February 2008	\$5,040.00	\$14,735.00	\$19,775.00
March 2008	\$9,485.00	\$9,473.50	\$18,958.50
April 2008	\$4,795.00	\$3,362.00	\$8,157.00
May 2008	\$6,755.00	\$6,404.00	\$13,159.00
June 2008	\$9,450.00	\$7,463.00	\$16,913.00
July 2008	\$5,495.00	\$8,548.10	\$14,043.10

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August 2008	\$1,295.00	\$433.00	\$1,728.00
September 2008	\$525.00	\$1,960.50	\$2,485.50
October 2008	\$1,400.00	\$1,165.50	\$2,565.50
November 2008	\$12,775.00	\$8,467.50	<u>\$21,242.50</u>
			\$156,046.60

Kozyak Tropin & Throckmorton, P.A.			
November 2007		\$9,633.50	\$9,670.50
December 2007		\$848.00	<u>\$848.00</u>
			\$10,518.50

Gerson, Preston, Robinson & Co. P.A.			
November 2007		\$900.00	\$765.00
December 2007		\$1,747.50	\$1,485.38
January 2008		\$15,472.50	\$13,151.63
February 2008		\$10,170.00	\$8,644.50
March 2008		\$12,116.25	\$10,298.82
April 2008		\$3,060.00	\$2,601.00
May 2008		\$3,125.00	\$2,656.25
June 2008		\$9,987.50	\$8,489.38
July 2008		\$3,436.25	\$2,920.82
August 2008		\$142.50	\$121.13
September 2008		\$3,000	<u>\$2,550.00</u>
			\$53,683.91

Total Expenses (12/2007 – 10/2008)	
Lewis Tein, P.L.	\$7,066.36
Kozyak Tropin & Throckmorton, P.A.	\$52.60

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Respectfully submitted,

LEWIS TEIN, P.L.
Counsel for Receiver, Guy A. Lewis

By: /s/ Michael R. Tein
Michael R. Tein
Fla. Bar No.: 993522
tein@lewistein.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 10, 2008, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record on the attached Service List in the manner specified either by transmission of Notice of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/ Michael R. Tein
Michael R. Tein

SERVICE LIST

SCOTT MASEL, ESQ.
JESSICA M. WEINER, ESQ.
Securities and Exchange Commission
801 Brickell Avenue, Suite 1800
Miami, Florida 33131
Telephone: (305) 982-6300
Facsimile: (305) 536-4154
Attorneys for Plaintiff

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VERIFICATION

STATE OF FLORIDA)
) ss
COUNTY OF MIAMI-DADE)

The signatory below states that the factual statements contained in this Application, and the attached Exhibits, are true and correct to the best of his knowledge, information and belief and this Application is well grounded in fact and justified.

/s/ Guy A. Lewis
Guy A. Lewis

Sworn to before me this 10th day of December, 2008, by Guy A. Lewis, who is personally known to me.

/s/ Feilin Chiong
Notary Public, State of Florida at Large

Feilin Chiong, Com. #DD581977, Exp. 09/07/10
(Print Name)