

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PASCO COUNTY, FLORIDA
CIVIL DIVISION

OFFICE OF THE ATTORNEY
GENERAL, DEPARTMENT OF LEGAL
AFFAIRS, STATE OF FLORIDA,

Plaintiff,

CASE NO.: 51-2010-CA-2912-WS/G

v.

BOTFLY L.L.C., DAVID R. LEWALSKI,
JON J. HAMMILL, and JON J. HAMMILL, P.A.

Defendants.

**FINAL APPLICATION FOR ORDER APPROVING FEES
AND EXPENSES INCURRED FOR LEGAL SERVICES PROVIDED BY
ZIEMER, STAYMAN, WEITZEL & SHOULDERS, LLP**

Michael Moecker, as Receiver in the above-referenced case, by and through his undersigned counsel and pursuant to the Court's Order Appointing Receiver dated April 1, 2010 (the "**Order Appointing Receiver**"), files this application for an order approving the fees and costs incurred by Ziemer, Stayman, Weitzel, Shoulders, LLP ("**Ziemer Stayman**") in the course of its representation of the Receiver and authorizing full payment of Ziemer Stayman's fees and costs.

INTRODUCTION

By order entered on October 10, 2012, the Court authorized the Receiver to employ Ziemer Stayman subject to and in accordance with the terms of the Order Appointing Receiver regarding the employment of legal counsel. The Receiver engaged Ziemer Stayman to serve as local counsel in the United States Bankruptcy Court, Southern District of Indiana, for the purpose of representation of the Receiver in the Chapter 13 bankruptcy case styled *In Re Robert W. Stead, Jr. and Kelly M. Stead*, case no. 12-71356-BHL-13 (the "**Stead Bankruptcy Case**").

The Order Appointing Receiver authorizes the Receiver to pay his legal counsel 80% of the ordinary and reasonable fees and 100% of costs incurred upon receipt of a bill for legal services. Specifically, paragraph 9 of the Order Appointing Receiver authorizes the Receiver to

...employ legal counsel with prior approval by Plaintiff, accountants, investigators and consultants ("Outside Professionals"), including entities of which Receiver is a principal/shareholder, to furnish legal, accounting and other advice to the Receiver for such purposes as may be reasonable and necessary during the period of receivership. The Receiver is authorized to pay from the receivership estate's funds eighty (80%) percent of the ordinary and reasonable fees and one hundred (100%) percent of the costs of such Outside Professionals upon receipt of a bill from the Outside Professional. The remaining 20% of fees shall be withheld (the "holdback") pending final application to the Court for approval of all fees and expenses of such Outside Professional, including the Holdback.

As required by the Order Appointing Receiver, the Receiver moves for the entry of an order: (i) awarding fees to Ziemer Stayman in the full amount of \$26,082.50 and costs in the full amount of \$443.75 for legal services rendered in connection with the Stead Bankruptcy Case and finding them to be necessary and reasonable; and (ii) authorizing the Receiver to pay Ziemer Stayman a total amount of \$26,526.25 for its fees and costs.

SUMMARY OF SERVICES RENDERED AND COSTS INCURRED

All of the services for which compensation is sought in connection with this case were rendered on behalf of the Receivership and in furtherance of the duties of the Receiver, and in discharge of Ziemer Stayman's professional responsibilities. A chart that summarizes the number of hours expended by each Ziemer Stayman lawyer, the applicable hourly rate (reflecting year-end rate increases for services provided by two of the lawyers), and the total dollar amount of the charges incurred for the services is attached hereto as Exhibit A.¹ As set forth on Exhibit A, a

¹ A copy of the invoices submitted to the Receiver that describes the services provided and the fees incurred for the services will be filed separately under seal with a copy provided to the

total of 108 recorded hours have been expended by Ziemer Stayman lawyers in providing the requested professional services.

Ziemer Stayman has expended \$443.75 for actual and necessary costs in connection with the services rendered on behalf of the Receiver. The costs incurred by Ziemer Stayman for which the Receiver seeks court-approval in this application are summarized in Exhibit B also attached hereto.

COMPENSATION REQUESTED AND APPLICABLE LEGAL STANDARDS

For the professional services rendered by Ziemer Stayman in connection with the Stead Bankruptcy Case, the Receiver has incurred a total of \$26,082.50 for legal fees and \$443.75 for costs. Accordingly, the total amount incurred for fees and costs for Ziemer Stayman's services in connection with the Stead Bankruptcy Case is \$26,526.25. The Receiver has made payments to Ziemer Stayman in the total amount of \$19,348.44. Therefore, the amount presently due and owing is \$7,177.81 which includes amounts for legal fees withheld as the Holdback (\$5,216.50).

"A receiver is an officer of the court, and is entitled to reasonable compensation, including a reasonable sum for attorneys s." *Southeast Bank, N.A. v. Ingrassia*, 562 So.2d 718, 721 (Fla. 3d DCA 1990); *see Amos v. Taylor*, 106 Fla. 317, 323 (Fla. 1932). The determination of fees to be awarded is largely within the discretion of the court, however, a court is not at liberty to award anything more or less than for and reasonable compensation for the services rendered. *Id.* In determining reasonable compensation for the services rendered by Ziemer Stayman, the Court should consider the circumstances surrounding the receivership. *See Amos*, 106 Fla. at 322-23.

Office of the Attorney General and to Gabriel Mazzeo, Esq., counsel for the intervening investors.

In obtaining an award, the burden is on the Receiver to show the services and benefits which he has rendered the receivership estate and the amount of compensation to which he is reasonably entitled as well as the propriety and correctness of the expenditures for which he claims reimbursement or approval. *Lewis v. Gramil Corp.*, 94 So. 2d 174, 176 (Fla. 1957). Among the factors to be considered by the Court in determining the reasonableness of compensation are “the nature and extent of the services rendered by the receiver, the responsibility assumed by him, the character and extent of the property committed to his care, the beneficial results of his management, the complexity of his task, the opinions of persons of experience as to the value of the services rendered by the receiver, and proof of any other material factors.” *Id.* at 177.

Time and labor devoted, however, is only one of many pertinent factors. The number of hours expended must be considered in light of (i) the amount of money involved and the results achieved to date, (ii) the novelty and difficulty of the questions presented, (iii) the requisite skill to perform properly the legal services, (iv) the preclusion of other employment, (v) the customary to a private client for the services rendered, (vi) awards in similar cases, (vii) time constraints required by the exigencies of the case, including the frequency and amount of time required to be devoted other than during regular business hours, (viii) the experience, reputation and ability of the attorneys rendering services, and (ix) the nature and length of the professional relationship with the client. *Johnson v. Georgia Highway Express*, 488 F.2d 714, 717-19 (5th Cir. 1974).

Application of the foregoing criteria more than justifies the compensation requested. The legal fees charged by Ziemer Stayman are justified by the amount of the claim asserted by the Receiver asserted in the Stead Bankruptcy Case, and the mediated agreement reflected in the

terms of the confirmed plan (the “**Stead Plan**”) that requires that on or before June 20, 2018, payments be made to the Receivership totaling \$389,500.00 . To date, the Chapter 13 Trustee in the Stead Bankruptcy Case has distributed \$191,534.82 to the Receiver in connection with the Stead Plan.

The services provided by Ziemer Stayman have contributed substantial benefit to the Receivership and its creditors. The rates charged by Ziemer Stayman are customary for attorneys of similar skill and reputation in Indiana. Furthermore, in light of the substantial benefits conferred on the estate as the result of its representation, the total amount charged by Ziemer Stayman for its legal service is more than reasonable and should be approved

CONCLUSION

Under the terms and conditions of the Order Appointing Receiver, the Receiver, among other things, is authorized, empowered, and directed to engage professionals to assist him in carrying out his duties and obligations. In exercising his duties, the Receiver has determined that the services rendered by Ziemer Stayman and the fees and costs incurred for their representation in connection with the Stead Bankruptcy Case were reasonable, necessary, advisable, and in the best interest of the Receivership.

WHEREFORE, the Receiver respectfully requests entry of an order: (i) awarding fees to Ziemer Stayman in the full amount of \$26,082.50 and costs in the full amount of \$443.75 for legal services rendered in connection with the Stead Bankruptcy Case and finding them to be necessary and reasonable; (ii) authorizing the Receiver to pay Ziemer Stayman a total amount of \$26,526.25 for its fees and costs, and (iii) granting such other and further relief as is just and proper.

BUSH, ROSS, P.A.
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of October, 2013, a true and correct copy of the foregoing and the accompanying exhibits was electronically transmitted to the following:

Gregory S. Slemp, Esq.
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Gabriel Mazzeo, Esquire
Gmazzeo11@gmail.com

/s/ Karen Cox
Attorney

**EXHIBIT A TO APPLICATION FOR ORDER
APPROVING FEES AND COSTS OF ZIEMER STAYMAN**

Attorney	Hours Expended	Billing Rate	Amount Billed
Nick J. Cirignano, Esq.	37.25	\$235	\$8,753.75
	65.25	\$245	\$15,986.25
Marco L. DeLucio, Esq.	2.5	\$285	\$712.50
	1.0	\$290	\$290.00
Osman I. Mufti, Esq.	2.00	\$170	\$340.00
Totals	108		\$26,082.50

**EXHIBIT B TO APPLICATION FOR ORDER
APPROVING FEES AND COSTS OF ZIEMER STAYMAN**

Costs:

Postage charges	\$7.36
Court filing fee	\$293.00
Online research charges	\$95.96
Federal Express	\$11.43
Pacer Search	\$36.00
Total Costs	\$443.75