

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.

**INTERIM APPLICATION FOR ORDER AWARDING FEES
AND REIMBURSEMENT OF COSTS AND EXPENSES TO BUSH ROSS, P.A.**

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 Interim Application for an order regarding the fees and expenses incurred for his counsel, Bush Ross, P.A. ("**Bush Ross**"). This Interim Application encompasses fees, costs, and expenses incurred from November 1, 2012 through September 30, 2013 (the "**Fee Period**"). The Receiver seeks a determination by the Court that, pursuant to the Order Appointing Receiver, the fees incurred by Bush Ross are ordinary and reasonable for the services rendered and must be paid in accordance with the provisions of the Order Appointing Receiver.

INTRODUCTION

Bush Ross is a professional association engaged in the general practice of law. By order entered on May 25, 2010, the Court authorized the Receiver to employ Bush Ross as general counsel. 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.

Notwithstanding the authorization to pay legal counsel from the Receivership estate's funds provided in the Order Appointing Receiver, the Receiver requests the Court's express approval of the payment for Bush Ross's services during the Fee Period as being made in conformance with the requirements of the Order Appointing Receiver.

During the Fee Period, the Receiver has incurred \$573,493.50 in fees for professional services rendered. Accordingly, pursuant to the Order Appointing Receiver, the Court has authorized the payment of \$458,794.80 for fees incurred in the provision of the services during the Fee Period. In addition, Bush Ross is owed \$29,746.42 for costs and expenses incurred during the Fee Period.¹ By this motion, the Receiver seeks a determination from the Court that the legal fees, cost and expenses incurred during the Fee Period were reasonably incurred in connection with the administration of the receivership estate, and the approval of payment of

¹ The Case Management Order authorizes the Receiver to make immediate payment of certain costs incurred in the prosecution of Supplemental Proceedings, such as filing fees, discovery costs and service fees. To the extent that the Receiver has reimbursed Bush Ross for its payment of such litigation expenses, they are not reflected in the total amount of the costs sought for the Fee Period.

\$488,541.22 to Bush Ross in accordance with the Order Appointing Receiver with a reservation for the Receiver to seek full payment of the holdback upon final application to the Court.

**COMPENSATION REQUESTED FOR LEGAL SERVICES
AND APPLICABLE LEGAL STANDARDS
MEMORANDUM OF LAW**

“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 s to be awarded is largely within the discretion of the trial court, however, the 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 Bush Ross, the Court should consider the circumstances surrounding the receivership. *See Amos*, 106 Fla. at 322-23.

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 justifies the compensation requested. In all instances, the services rendered were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed.

Bush Ross maintains computerized records of the time spent by all Bush Ross attorneys and paraprofessionals in connection with this case, which contains details of the services rendered by Bush Ross on behalf of the Receiver. A copy of such records for the Period from November 1, 2012 to September 30, 2013 will be filed separately under seal with a copy provided to the Office of the Attorney General and to Gabriel Mazzeo, Esq., counsel for the intervening investors. Time increments are reported in tenths of an hour with one-tenth (.1) equaling six minutes.

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 Bush Ross's professional responsibilities. A chart that summarizes the number of hours expended by Bush Ross attorneys and paraprofessionals, the applicable hourly rate and total dollar amount now payable for such services during the Fee Period is attached hereto as

Exhibit A.

Fees for professional services of Bush Ross are based on its guideline hourly rates, which are periodically adjusted in the normal course of the firm's business. Adjustments typically occur in December of each year. The hourly rates reflected on the summary sheet are the same hourly rates that the Bush Ross attorneys and paraprofessionals currently charge their clients for similar services. Bush Ross did not charge the Receiver for some of the time expended in the representation of the Receivership.

During the Fee Period, Bush Ross's hourly billing rates for shareholders ranged from \$325 to \$475 per hour, associate billing rate was from \$225 to \$275 per hour, and paraprofessional billing rates ranged from \$120 to \$125 per hour. The rates charged by Bush Ross attorneys and paraprofessionals are customary for attorneys and paraprofessionals of similar skill and reputation.

During the Fee Period, as set forth on **Exhibit A**, a total of 2210.7 recorded hours have been expended by Bush Ross's attorneys and paraprofessionals in providing the requested professional services. During this period, Bush Ross's attorneys and paraprofessionals have expended approximately 1879.1 hours and 331.6 hours, respectively, for a total blended hourly rate of \$259.42 and for the total amount incurred of \$573,493.50. The blended hourly rate subject to payment pursuant this Interim Application is \$207.53.²

² The total amount of unbilled time for all time keepers is reflected on Exhibit A as "Unbilled Time" and is included in the calculation of the blended hourly rate.

Bush Ross has not received any compensation, advances, or retainers for its fees for services performed during the Fee Period from the Receiver or any other person or entity.

The professional services rendered in this case have been performed by attorneys and paraprofessionals with broad expertise and high-level skill in the areas in which they have provided services.³ This highly professional and expert group of attorneys and paraprofessionals has ensured that this case has progressed in an efficient and expeditious manner. Bush Ross attorneys have devoted a substantial portion of their time to the Receiver's needs. Substantially the same core group of Bush Ross attorneys has worked on this case and, in particular, on the litigation of the Supplemental Proceedings, thereby maximizing the efficient prosecution of the Supplemental Proceedings.

The services provided by Bush Ross have contributed substantial benefit to the Receivership. During the Fee Period, Bush Ross has been required to furnish substantial services which have often fully occupied the time of some of its attorneys. Bush Ross ordinarily charges its clients and expect to receive, on a current basis, an amount equal to or more than the amounts requested herein for the professional services rendered. Because representation is of a court-appointed Receiver, Bush Ross will not be paid in full until the conclusion of the case. Bush Ross, however, is entitled to payment on a current basis an amount equal to 80% of the fees for the services rendered to the Receiver.

The results that have been achieved to date more than substantiate charges incurred during the Fee Period in full, particularly in view of the adverse conditions under which such results were frequently obtained. The services that Bush Ross has rendered thus far have

³ Previous applications have summarized the qualifications of Jeffery W. Warren, Karen Cox, Anne-Leigh Gaylord Moe, and Joseline Hardrick, who comprise the group of attorneys who have devoted a substantial amount of time to this case. The qualifications, therefore, are not restated in this application.

produced benefits which have inured to the benefit of the Receiver and the estate that are substantially greater than the payment sought in this application.

During the Fee Period, the services focused primarily on efforts to recover fraudulent transfers to the Receivership estate through litigation and judgment collection efforts. To date, through pre-suit demands, settlement agreements, and post-judgment collection efforts, the Receiver has actually recovered approximately \$2 million as a result of Bush Ross's services in connection with recovery action litigation.

By the conclusion of the Fee Period, in total, \$7,187,759.90 had been deposited in the Receivership's bank accounts. Of this amount, \$525,452.11 was deposited during the Fee Period. By the end of the Fee Period the balance in the Receivership's bank accounts was \$1,738,178.82 was on deposit in the Receivership accounts.

The Receiver anticipates that with the assistance of Bush Ross and his other counsel, additional recoveries will be obtained for the benefit of the Receivership's creditors, including recoveries in the Supplemental Proceedings for which fees were incurred during the Fee Period.⁴ The Receiver expects further recoveries for the Receivership estate resulting in whole or in part from Bush Ross's legal services including: (1) the equity balances of the account for Botfly, Lewalski, and Hammill remain on deposit at Deutsch Bank (approximately \$460,000.00);⁵ (2) amounts due pursuant to agreed payments made pursuant to settlement agreements reached in Supplemental Proceedings (approximately \$410,000.00); (3) amounts due under final judgments

⁴ Four Supplemental Proceedings remain pending resolution before the Court. One Supplemental Proceeding is pending in California state court. In addition the Receiver has brought claims against the Bank of America in federal court.

⁵ Despite joint efforts by the Office of the Attorney General, the Department of Justice, Office of International Affairs, and the Receiver, the funds have yet to be transferred to the Receivership even though no competing claim has been asserted as to entitlement to the funds.

entered in Supplemental Proceedings;⁶ and (4) amounts due under the Chapter 13 confirmed plan in the Robert and Kelly Stead bankruptcy case.⁷

Furthermore, in light of the substantial benefits Bush Ross has conferred on the estate, the fees charged by Bush Ross for legal services rendered during the Fee Period are reasonable, and should be allowed as requested.

Bush Ross has charged its normal and customary rates. The rates charged by the attorneys and paralegals are at or below those charged by attorneys and paralegals of comparable skill from other law firms in the Middle District of Florida. Bush Ross has not received compensation for their services or for un-reimbursed out-of-pocket costs expended or incurred during the Fee Period although they have worked diligently on this matter and continue to do so.

REIMBURSEMENT OF COSTS AND EXPENSES

During the Fee Period, Bush Ross expended in total \$38,638.27 for actual and necessary costs and expenses. The Receiver has paid Bush Ross \$7,999.46 for costs incurred during the Fee Period in connection with the Supplemental Proceedings. In addition, during the Fee Period, Bush Ross received refunds for payments made to Riedsorph Reporting (\$812.50); the Clerk of Court (\$1.50); and the Pinellas County Sheriff's Office (\$29.55); and has applied \$48.84 paid by the Receiver pursuant to a prior application to the costs and expenses incurred during the Fee Period. Accordingly, Bush Ross is owed **\$29,795.26** for actual and necessary costs and expenses incurred in connection with the services rendered on behalf of the Receiver during the Fee

⁶In total, final judgments of approximately \$2,500,00.00 have been entered in Supplemental Proceedings and collection efforts are ongoing to secure payment of the judgments. The total amount that will be collected on the final judgments cannot be determined at present.

⁷ Pursuant to the confirmed plan, the Steads are required to make payments over a period of five years to pay in full the \$385,500.00 owed to the Receiver. To date, the Receiver has received \$191,534.82 from the Stead bankruptcy trustee and, therefore, \$197,965.18 is due.

Period. The expenditures made by Bush Ross in the course of the legal services it provided to the Receiver includes both expenses incurred by Bush Ross and costs paid by Bush Ross in the course of its representation. The actual and necessary expenses incurred by Bush Ross on behalf of the Receiver for which the Receiver seeks court-approval in the instant application are summarized in **Exhibit B** which is attached hereto.

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. The Order further provides that he apply to the Court for authority to pay himself and his professionals for services rendered and costs incurred. In exercising his duties, the Receiver has determined that the services rendered and their attendant fees and costs were reasonable, necessary, advisable, and in the best interest of the Receivership.

WHEREFORE, the Receiver respectfully requests entry of an order (i) awarding an allowance of compensation to Bush Ross in the full amount of the s rendered during the Fee Period and authorizing immediate payment of the amount of \$458,794.80 for Bush Ross's professional services rendered as attorneys for the Receiver during the Fee Period, and reimbursement of Bush Ross's actual and necessary costs and expenses in the amount of \$29,746.42 incurred on behalf of the Receiver during the Fee Period, for a total amount of \$488,541.22 and (ii) granting such other and further relief as is just and proper.

BUSH, ROSS, P.A.
Post Office Box 3913
Tampa, FL 33601-3913
(813) 224-9255
(813) 223-9620 (telecopy)
Counsel for the Receiver

BY: : /s/ Karen Cox
Karen Cox, Esq., FBN 456667
Primary E-Mail: kcox@bushross.com
Secondary E-Mail: mmedley@bushross.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of October, 2013, a true and correct copy of the foregoing Interim Application and the accompanying exhibits were electronically transmitted to the following:

Gregory S. Slempp, Esq.
Greg.Slempp@myfloridalegal.com

Gabriel Mazzeo, Esquire
Gmazzeo11@gmail.com

/s/ Karen Cox
Attorney

**EXHIBIT A TO INTERIM APPLICATION
FOR ORDER AWARDING FEES AND REIMBURSEMENT
OF COSTS AND EXPENSES TO BUSH ROSS, PA**

**November 1, 2012 - September 30,
2013**

Attorney/Paraprofessional	Hours Expended	Billing Rate⁸	Amount Billed
Jolyon Acosta, Esq.	0.3	265	\$79.50
Karen Cox, Esq.	109.8	325	\$35,685.00
Karen Cox, Esq.	828.3	350	\$289,905.00
Karen Cox, Esq.	84.3	*	\$24,000.00
Joseline Hardrick, Esq.	13.3	235	\$3,125.00
Joseline Hardrick, Esq.	185.9	250	\$46,475.00
Brenda Drake-Holland	0.9	125	\$112.50
Andrew Jenkins, Esq.	1.6	350	\$560.00
Kristan Long	0.6	120	\$72.00
Kristan Long	3.2	125	\$400.00
Mary Medley	7.8	120	\$936.00
Mary Medley	25.6	125	\$3,200.00
Jamie Meola, Esq.	3.9	250	\$975.00
Anne-Leigh Moe, Esq.	47.3	275	\$13,007.50
Anne-Leigh Moe, Esq.	457.5	300	\$137,250.00
Anne-Leigh Moe, Esq	70.3	*	16,000.00
Avelyne Vianueva	5.7	125	712.50
Jeffrey W. Warren, Esq.	2.1	475	\$997.50
Unbilled Time	355.1		\$0.00
Totals	2210.7		\$573,493.50

⁸ The “*” reflects that for certain time entries, Bush Ross provided the Receiver with a reduction in the total amount sought as fees for the services performed. Consequently, for such entries, the billing rate multiplied by the hours expended does not correspond to the amount billed.

**EXHIBIT B TO INTERIM APPLICATION
FOR ORDER AWARDING FEES AND REIMBURSEMENT
OF COSTS AND EXPENSES TO BUSH ROSS, PA**

November 1, 2012 - September 30, 2013

Expenses

Photocopies (11,016 pages)	\$2,385.90
Postage	\$709.58
Long Distance	\$276.09
Online Research	\$1,238.49
Facsimile charges (172 pages)	\$81.00
Total	<u>\$4,691.06</u>

Direct Costs

Federal Express and Courier	\$633.38
Judgment Lien Certificate/certified copies	\$927.80
Service of process	\$3,459.00
Clerk's Filing, Recording, and Summons Issuance Fees	\$2,783.50
Witness Fees	\$340.00
Deposition and hearings transcripts and attendance	\$17,400.50
Mileage and toll reimbursements	\$380.34
ESI File Conversion	\$2,325.20
Travel Expenses	\$1,604.34
Trial Exhibit	\$36.92
Third party fees for records including certifications	\$2,587.92
SDS Processing Lotus Notes Files	\$1,468.31
Total	<u>\$33,947.21</u>

TOTAL EXPENSES AND DIRECT COSTS

\$38,638.27

Credits

Cost reimbursement from Moecker & Associates	\$6,728.67
Cost reimbursement from Moecker & Associates	\$1,270.79
Refund from Reisdorf Reporting for overpayment	\$812.50
Refund from Clerk of Court for overpayment	\$1.50
Refund from Pinellas County Sherriff's Office for overpayment	\$29.55
Payment applied from prior fee application	\$48.84
TOTAL CREDITS	<u>\$8,891.85</u>