

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.

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**APPLICATION FOR APPROVAL OF FEES AND EXPENSES OF BUSH ROSS, P.A.  
FOR THE PERIOD FROM SEPTEMBER 1, 2014 TO  
NOVEMBER 30, 2015 AND FOR AUTHORIZATION OF PAYMENT**

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 payment of the fees and expenses incurred for his counsel, Bush Ross, P.A. ("**Bush Ross**") for the period from September 1, 2014 through and including November 30, 2015 (the "**Fee Period**"). In support of this Application, the Receiver states as follows:

**INTRODUCTION**

The Court has authorized the Receiver's employment of Bush Ross as general counsel. Bush Ross has represented the Receiver since his appointment on April 1, 2010 throughout the proceedings in this case. From time to time during the Receivership case, the Court has considered applications for payment of Bush Ross's fees and costs. The last fee application sought payment for Bush Ross's services through August 31, 2014. On October 20, 2014, the

Court approved full payment by the Receiver for the fees and costs for Bush Ross through August 31, 2014.

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

During the Fee Period, the Receiver has incurred **\$29,290.00** in fees for professional services rendered by Bush Ross. Pursuant to this Application, the Receiver seeks authority to pay Bush Ross **\$29,290.00** representing full amount of fees incurred during the Fee Period.

“A receiver is an officer of the court, and is entitled to reasonable compensation, including a reasonable sum for attorneys.” *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 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.

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 September 1, 2014 to November 30, 2015 will be filed separately under seal with a copy provided to the Office of the Attorney General. 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 for the Fee Period 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 summarizing the number of hours expended by Bush Ross attorneys and paraprofessionals, the applicable hourly rate and total dollar amount for services is attached hereto as **Exhibit A**. The rates charged by Bush Ross attorneys and paraprofessionals during the Fee Period are customary for attorneys and paraprofessionals of similar skill and reputation.

During the Fee Period, as set forth on **Exhibit A**, a total of 91.40 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 79.40 hours and 12 hours, respectively, for a total blended hourly rate of \$320.46 and for the total amount incurred of \$29,290.00.

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 results that have been achieved to date more than substantiate full payment to Bush Ross for its services during the Fee Period. During the Fee Period the Receiver recovered an additional \$1,310,001.63. To date, the Receiver has recovered \$8,781,732.19. Payments of \$5,171,056.24 have been made from the Receivership estate to the holders of allowed claims.

The Receiver anticipates that additional recoveries will be obtained through payment of amounts due under settlement agreements and collection of the amounts awarding in final judgments entered in Supplemental Proceedings.<sup>1</sup>

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<sup>1</sup>In total, final judgments of approximately \$2,500,000.00 have been entered in Supplemental Proceedings and collection efforts are ongoing to secure payment of the judgments. Recoveries have been made on some of the judgments. The total amount that will ultimately be collected cannot be predicted with any certainty.

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.

### **REIMBURSEMENT OF COSTS AND EXPENSES**

During the Fee Period, Bush Ross expended in total **\$362.66** for actual and necessary costs and expenses. Accordingly, Bush Ross is owed **\$362.66** for actual and necessary costs and expenses incurred in connection with the services rendered on behalf of the Receiver during the Fee 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 awarding (i) an allowance of compensation to Bush Ross in the full amount of the fees rendered during the Fee Period and authorizing immediate payment of the amount of \$29,290.00 for Bush Ross's professional services rendered as attorneys for the Receiver during the Interim Fee Period, (ii)

reimbursement of Bush Ross's actual and necessary costs and expenses in the amount of \$362.66 incurred on behalf of the Receiver during the Fee Period, for a total amount of \$29,652.66, and (iii) granting such other and further relief as is just and proper.

BUSH, ROSS, P.A.  
Post Office Box 3913  
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(813) 223-9620 (telecopy)  
*Counsel for the Receiver*

BY: : /s/ Karen Cox  
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### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 14th day of December, 2015, a true and correct copy of the foregoing Application and the accompanying exhibits were electronically transmitted to the following:

Gregory S. Slemph, Esq.  
[Greg.Slemph@myfloridalegal.com](mailto:Greg.Slemph@myfloridalegal.com)

/s/ Karen Cox  
Attorney

**EXHIBIT A TO APPLICATION FOR APPROVAL  
OF FEES AND EXPENSES OF BUSH ROSS, PA**

September 1, 2014 – November 30, 2014

<b>Attorney/Paraprofessional</b>	<b>Hours Billed</b>	<b>Billing Rate</b>	<b>Amount Billed</b>
<b>Fees</b>			
Karen Cox	<b>79.40</b>	<b>350</b>	\$27,790.00
Mary Medley	<b>12.0</b>	<b>125</b>	\$1,500.00
<b>TOTAL FEES</b>	<b>91.4</b>		<b>\$29,290.00</b>

**EXHIBIT B TO APPLICATION FOR APPROVAL  
OF FEES AND EXPENSES OF BUSH ROSS, PA**

September 1, 2014 through November 30, 2015

<b>Expenses:</b>	
Federal Express	\$193.58
Court reporter/depositions	\$85.00
Long Distance call	\$12.05
Postage	\$25.35
Online Research / Pacer	\$4.70
Travel Expenses / mileage	\$41.98
<b>TOTAL BILLED COSTS</b>	<b>\$362.66</b>