

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

U.S. COMMODITY FUTURES
TRADING COMMISSION,
Plaintiff,

v.

Case No. 09-cv-3332 (MJD/FLN)

TREVOR COOK et al.,
Defendants,

R.J. ZAYED,
Receiver.

UNITED STATES SECURITIES
AND EXCHANGE COMMISSION,
Plaintiff,

v.

Case No. 09-cv-3333 (MJD/FLN)

TREVOR G. COOK, et al.,
Defendants,

R.J. ZAYED,
Receiver.

UNITED STATES SECURITIES
AND EXCHANGE COMMISSION,
Plaintiff,

v.

Case No. 11-cv-574 (MJD/FLN)

JASON BO-ALAN BECKMAN, et al.,
Defendants,

R.J. ZAYED,
Receiver.

DECLARATION OF RECEIVER R.J. ZAYED IN SUPPORT OF MOTION TO APPROVE THE PAYMENT OF FEES INCURRED BY THE RECEIVER THAT WERE NECESSARY TO ASSIST THE RECEIVER IN HIS DUTIES

I, R.J. Zayed, hereby declare as follows:

1. I am an attorney with the law firm of Carlson Caspers.
2. On November 23, 2009 the Court entered an order appointing me Receiver in the matter of *SEC v. Cook et al.*, 09-cv-3333, for (1) the estates of Defendants Trevor G. Cook, Patrick J. Kiley; (2) Defendants UBS Diversified Growth LLC, Universal Brokerage FX Management, LLC, Oxford Global Advisors, LLC, Oxford Global Partners, LLC; (3) Relief Defendants Basel Group, LLC, Crown Forex, LLC, Market Shot, LLC, PFG Coin and Bullion, Oxford Developers, S.A., Oxford FX Growth, L.P., Oxford Global Managed Futures Fund, UBS Diversified FX Advisors, LLC, UBS Diversified FX Growth L.P., and UBS Diversified FX Management LLC; (4) all funds, accounts, and other assets held by or for Relief Defendants Clifford Berg and Ellen Berg, which were received, directly or indirectly, from the Defendants or were acquired with funds or other assets received, directly or indirectly, from the Defendants; and (5) every other corporation, partnership, trust and/or other entity (regardless of form) which is directly or indirectly owned by or under the direct or indirect control of Cook and Kiley (collectively the "Receiver Estates"). *Order Appointing Receiver*, Docket No. 13, at 4 (Nov. 23, 2009); *see also Amended Order Appointing Receiver*, Docket No. 18, at 4 (Nov. 24, 2009); *Second Amended Order Appointing Receiver*, Docket No. 68 (Dec. 11, 2009).

3. On November 23, 2009 the Court also entered an order appointing me Receiver in the matter of *CFTC v. Cook et al.*, 09-cv-3332, for Defendants Trevor Cook d/b/a Crown Forex, LLC, Patrick Kiley d/b/a Crown Forex, LLC, Universal Brokerage FX and Universal Brokerage FX Diversified, Oxford Global Partners, LLC, Oxford Global Advisors, LLC, Universal Brokerage FX Advisors, LLC f/k/a UBS Diversified FX Advisors, LLC, Universal Brokerage FX Growth, L.P. f/k/a UBS Diversified FX Growth, L.P., Universal Brokerage FX Management, LLC, f/k/a UBS Diversified FX Management, LLC, and UBS Diversified Growth, LLC, and their affiliates and subsidiaries, and all funds, properties, premises, accounts and other assets directly or indirectly owned, beneficially or otherwise, by the Defendants individually or collectively, including, but not limited to, investors' funds. *Ex Parte Statutory Restraining Order*, Docket No. 21, at 7 (Nov. 23, 2009); *see also Order Continuing Appointment of Temporary Receiver*, Docket No. 96 (Dec. 11, 2009).

4. On March 8, 2011 the Court also entered an order appointing me Receiver in the matter of *SEC v. Beckman, et al.*, 11-cv-574, for (1) the estate of Jason Bo-Alan Beckman; (2) The Oxford Private Client Group, LLC; (3) all funds, accounts, and other assets held by or for the benefit of Relief Defendant Hollie Beckman which were received, directly or indirectly, from the Defendants or were acquired with funds or other assets received, directly or indirectly, from the Defendants; and (4) every other corporation, company, partnership, trust and/or other entity (regardless of form) which is directly or indirectly owned by or under the direct or indirect control of Defendant Beckman, Defendant Oxford PCG, or Relief Defendant Hollie Beckman (collectively the

“Receiver Estates”). *Order Appointing Receiver*, Docket No. 10, at 1-2 (March 3, 2011).

5. The three receiverships are interrelated as they involve the same Ponzi scheme, the same set of co-conspirators, the same set of operative facts, a substantial overlap of victims, and the commingling of receivership funds and assets.

6. I make this declaration based on personal knowledge and offer it in support of the motion described more fully herein.

7. The motion seeks the Court’s approval to pay three types of fees incurred by the Receiver, in or about the months of July 2012 and August 2012, that were necessary to assist the Receiver in his duties. Specifically the motion seeks Court approval:

(A) to pay outstanding bills. “Outstanding bills” are those for which the Receiver seeks Court authorization to pay directly out of assets of the Receivership;

(B) to pay Carlson Caspers’ attorneys’ fees and reimburse Carlson Caspers for the necessary costs incurred and paid by Carlson Caspers; and

(C) to pay the legal fees and costs charged by Panamanian counsel in legal action involving Receivership assets in Panama.

(A) Outstanding Bills

i) Dorsey & Whitney LLP

8. With the Court’s approval, I retained the Dorsey & Whitney law firm (“Dorsey”) to assist with insurance law issues related to the Receiver’s settlement negotiations with Mesa Holdings, Inc. and Ed Baker and to pursue claims against Arch Insurance.

9. I have received invoice number 1815674 from Dorsey describing work

performed from July 1, 2012 through July 31, 2012 concerning the Receiver's claims against Arch Insurance, including researching, drafting, editing, and filing the opposition response to Arch's motion for summary judgment; and researching, drafting, editing, and filing the reply to Arch's opposition to the Receiver's motion for summary judgment. I am submitting this statement to the Court under separate correspondence for *in camera* review. The statement includes the date when work was performed, the name of the person performing the work, the applicable discounted hourly rate, the time expended, a description of the tasks performed, and a description of additional expenses. The statement reflects the amount of compensation requested for the work performed by Dorsey. The statement sets forth \$30,594.94 in total fees and expenses.

10. I have received invoice number 1822431 from Dorsey describing work performed from August 1, 2012 through August 31, 2012 concerning the Receiver's claims against Arch Insurance, including continuing to prepare for the summary judgment hearing. I am submitting this statement to the Court under separate correspondence for *in camera* review. The statement includes the date when work was performed, the name of the person performing the work, the applicable discounted hourly rate, the time expended, a description of the tasks performed, and a description of additional expenses. The statement reflects the amount of compensation requested for the work performed by Dorsey. The statement sets forth \$445.79 in total fees and expenses.

11. I am familiar with the rates charged in the local community by other firms offering legal services similar to those provided by Dorsey and certify that the requested

rates are within the range charged by law firms with comparable experience employed for work of a comparable nature and complexity.

12. I have reviewed the itemized statements describing services provided by Dorsey and certify that all of the stated work was actually performed and was necessary to fulfill my duties and responsibilities as Receiver.

13. I therefore request Court approval to pay Dorsey a total of \$31,040.73 out of the assets of the Receivership for services provided during the months of July 2012 and August 2012.

ii) Bernick, Lifson, Greenstein, Greene, and Liszt, P.A.

1. With the Court's approval, I retained the law firm of Bernick, Lifson, Greenstein, Greene, and Liszt, P.A. ("Bernick") to assist with tax law issues related to the Receiver's efforts to wind down the affairs of the Receivership Entities and comply with IRS filing requirements.

2. I have received statements from Bernick describing work performed in May 2012, June 2012, July 2012, and August 2012, including analyzing the Receiver's federal and state tax obligations with respect to the Receivership Entities, communicating with federal and state tax agencies on behalf of the Receiver, and advising the Receiver regarding the same. I am submitting these statements to the Court under separate correspondence for *in camera* review. The statements include the date when work was performed, the name of the person performing the work, the applicable hourly rate, the time expended, a description of the tasks performed, and a description of additional expenses. The statements reflect the amount of compensation requested for the work

performed by Bernick. The statements set forth \$2,768.50 in total fees and expenses for May 2012, \$634.80 in total fees and expenses for June 2012, \$193.20 in total fees and expenses for July 2012, and \$248.40 in total fees and expenses for August 2012.

3. I am familiar with the rates charged in the local community by other firms offering legal services similar to those provided by Bernick and certify that the requested rates are within the range charged by law firms with comparable tax experience employed for work of a comparable nature and complexity.

4. I have reviewed the itemized statements describing services provided by Bernick and certify that all of the stated work was actually performed and was necessary to fulfill my duties and responsibilities as Receiver.

5. I therefore request Court approval to pay Bernick a total of \$3,844.90 out of the assets of the Receivership for services provided through August 2012.

(B) Carlson Caspers' Attorneys' Fees and Costs

6. With the Court's approval, I retained the Carlson Caspers law firm to assist me in fulfilling my duties and obligations as Receiver. *Order Appointing Receiver*, 09-cv-3333, Docket No. 13, at 2 (Nov. 23, 2009); *Ex Parte Statutory Restraining Order*, 09-cv-3332, Docket No. 21, at 8 (Nov. 23, 2009); *see also Amended Order Appointing Receiver*, 09-cv-3333, Docket No. 18, at 2 (Nov. 24, 2009); *Second Amended Order Appointing Receiver*, 09-cv-3333, Docket No. 68, at 2 (Dec. 11, 2009); *Order Continuing Appointment of Temporary Receiver*, 09-cv-3332, Docket No. 96, at 4 (Dec. 11, 2009); *Order Appointing Receiver*, 11-cv-574, Docket No. 10, at 2 (March 8, 2011).

7. I have received a statement from Carlson Caspers describing work performed

by me and my agents from July 1, 2012 through July 31, 2012. I am submitting this statement to the Court under separate correspondence for *in camera* review. The statement includes the date when work was performed, the name of the person performing the work, the applicable discounted hourly rate, the time expended, and a detailed description of the tasks performed. The statement sets out the amount of compensation requested for the work performed. It reflects legal fees of \$58,621.70.

8. In the month of July 2012, Carlson Caspers continued to assist the Receiver with issues related to potential asset recovery in Panama. Carlson Caspers also assisted the Receiver in successfully opposing Jason Beckman's motion seeking return of property seized by the Receiver and participated in a hearing regarding the same. Carlson Caspers also continued to analyze the potential liability of other third parties resulting from their interactions with the Ponzi scheme, review associated documents, and examine the feasibility of bringing claims against certain third parties. Carlson Caspers also continued to assist outside counsel retained by the Receiver in litigation against PFG Best including participating in devising litigation strategy following revelation of the PFG fraud. Carlson Caspers also continued to work with co-counsel regarding ongoing Miller-Shugart litigation against Arch Insurance, including helping to prepare summary judgment briefing. Carlson Caspers also continued to respond to investor calls and to update and maintain the database of investor information, as well as update and maintain the Receivership website. Carlson Caspers also continued to perform various other asset recovery tasks which are in their initial, and non-public, stages.

9. I have reviewed the itemized statement describing services provided by Carlson

Caspers and certify that all of the stated work was actually performed and was necessary to fulfill my duties and responsibilities as Receiver.

10. I am familiar with the rates charged in the local community by attorneys performing services similar to those provided by Carlson Caspers and certify that the requested rates are within the range charged by attorneys of comparable experience employed by comparable Minnesota law firms for work of a comparable nature and complexity.

11. I have received statements from various individuals and entities providing necessary services to the Receiver and related to preserving the Receivership properties for the month of July 2012. These expenses are summarized on page 14 of Carlson Caspers invoice number 8478, under the heading "Disbursements." I am submitting the invoiced bills to the Court under separate correspondence for *in camera* review, along with copies of checks showing payment provided out of Carlson Caspers' operating account. The invoiced bills include the date the work was performed and a description of the tasks performed or the specific expense incurred. The statements set out the amount of compensation requested for the work performed. They reflect total costs of \$539.57. These disbursements include, among other things, fees for accounting services and document delivery services.

12. I have reviewed the itemized statement describing services provided to the Receivership and certify that all of the stated work was actually performed and was necessary to fulfill my duties and responsibilities as Receiver.

13. I am familiar with the rates charged in the local community by service

providers similar to those employed by the Receivership and certify that the requested rates are within the range charged by service providers of comparable experience for work of a comparable nature and complexity.

14. I have received a statement from Carlson Caspers describing work performed by me and my agents from August 1, 2012 through August 31, 2012. I am submitting this statement to the Court under separate correspondence for *in camera* review. The statement includes the date when work was performed, the name of the person performing the work, the applicable discounted hourly rate, the time expended, and a detailed description of the tasks performed. The statement sets out the amount of compensation requested for the work performed. It reflects legal fees of \$43,775.30.

15. In the month of August 2012, Carlson Caspers assisted the Receiver in resolving issues related to the Fourth Interim Distribution. Carlson Caspers also continued to analyze the potential liability of third parties resulting from their interactions with the Ponzi scheme, including reviewing associated documents, examining the feasibility of bringing claims against certain third parties, bringing motions to retain outside counsel to pursue claims against certain third parties, and participating in a hearing regarding the same. Carlson Caspers also continued to assist the Receiver's outside counsel in litigation against Arch Insurance. Carlson Caspers also assisted the Receiver in efforts to enforce the Receiver's settlement agreement with TNT, a third-party entity. Carlson Caspers also continued to respond to investor calls, update and maintain the database of investor information, update, re-design, and maintain the Receivership website, and verify investor claim files. Carlson Caspers also continued to

perform various other asset recovery tasks which are in their initial, and non-public, stages.

16. I have reviewed the itemized statement describing services provided by Carlson Caspers and certify that all of the stated work was actually performed and was necessary to fulfill my duties and responsibilities as Receiver.

17. I am familiar with the rates charged in the local community by attorneys performing services similar to those provided by Carlson Caspers and certify that the requested rates are within the range charged by attorneys of comparable experience employed by comparable Minnesota law firms for work of a comparable nature and complexity.

18. I have received statements from various individuals and entities providing necessary services to the Receiver and related to preserving the Receivership properties for the month of August 2012. These expenses are summarized on page 16 of Carlson Caspers invoice number 8485, under the heading "Disbursements." I am submitting the invoiced bills to the Court under separate correspondence for *in camera* review, along with copies of checks showing payment provided out of Carlson Caspers' operating account. The invoiced bills include the date the work was performed and a description of the tasks performed or the specific expense incurred. The statements set out the amount of compensation requested for the work performed. They reflect total costs of \$342.00. These disbursements include, among other things, fees for accounting services and document delivery.

19. I have reviewed the itemized statement describing services provided to the

Receivership and certify that all of the stated work was actually performed and was necessary to fulfill my duties and responsibilities as Receiver.

20. I am familiar with the rates charged in the local community by service providers similar to those employed by the Receivership and certify that the requested rates are within the range charged by service providers of comparable experience for work of a comparable nature and complexity.

21. I request Court approval to pay Carlson Caspers \$58,621.70 in fees and \$539.57 in costs for July 2012 and \$43,775.30 in fees and \$342.00 costs for August 2012 out of the assets of the Receivership.

(C) Morgan & Morgan (Panamanian law firm)

22. Outside counsel for Oxford FX Growth retained Morgan & Morgan, a Panamanian law firm, prior to the date the Receivership was created for the purpose of obtaining the Panamanian court order freezing assets. With the Court's approval, the Receiver has assumed control of the Panamanian litigation and has continued using Morgan & Morgan to help the Receiver repatriate assets located in Panama.

23. I have received a statement Morgan & Morgan describing work performed in July 2012 and August 2012 (invoice nos. 1193665 and 1187078), including assisting the Receiver in drafting and filing relevant pleadings with the Panamanian court. The statements include the date when work was performed, the name of the person performing the work, the time expended, and a description of the tasks performed. The statements set out the amount of compensation requested for the work performed. Invoice no. 1193665 reflects total fees of \$2,188.14 and taxes of \$153.17 for a total bill of

\$2,341.31. Invoice no. 1187078 reflects total fees of \$3,276.59 and taxes of \$229.36 for a total bill of \$3,505.95

24. I have reviewed the itemized statements describing services provided by Morgan & Morgan and certify that all of the stated work was necessary to fulfill my duties and responsibilities as Receiver.

25. The applicable rates are within the range charged by attorneys of comparable experience employed by comparable Panamanian law firms for work of a comparable nature and complexity.

26. I request Court approval of the Receiver's fee application in favor of Morgan & Morgan in the total amount of \$5,847.26 for attorneys' fees and expenses incurred in July 2012 and August 2012 out of the assets of the Receivership.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: October 3, 2012

s/ R. J. Zayed
R.J. Zayed (MN Bar No. 309,849)
Carlson Caspers, P.A.
225 South Sixth Street, Suite 3200
Minneapolis, MN 55402
Telephone: (612) 436-9600
Facsimile: (612) 436-9605
Email: rzayed@ccvl.com