

1 DAVID R. ZARO (BAR NO. 124334)
TED FATES (BAR NO. 227809)
2 ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
3 501 West Broadway, 15th Floor
San Diego, California 92101-3541
4 Phone: (619) 233-1155
Fax: (619) 233-1158
5 E-Mail: dzaro@allenmatkins.com
tfates@allenmatkins.com

6 Attorneys for Receiver
7 THOMAS C. HEBRANK

8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10
11 SECURITIES AND EXCHANGE
COMMISSION,

12 Plaintiff,

13 v.

14 LOUIS V. SCHOOLER and FIRST
15 FINANCIAL PLANNING
CORPORATION d/b/a WESTERN
16 FINANCIAL PLANNING
CORPORATION,

17 Defendants.
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Case No. 3:12-cv-02164-GPC-JMA

**RECEIVER'S SUPPLEMENTAL
BRIEF IN RESPONSE TO MOTION
TO MODIFY PRELIMINARY
INJUNCTION ORDER TO REMOVE
THOMAS C. HEBRANK AS COURT-
APPOINTED RECEIVER**

Date: February 13, 2015
Time: 1:30 p.m.
Ctrm.: 2D
Judge: Hon. Gonzalo P. Curiel

1 Thomas C. Hebrank ("Receiver"), Court-appointed receiver for First Financial
2 Planning Corporation d/b/a Western Financial Planning Corporation ("Western"), its
3 subsidiaries and the General Partnerships established by Western (collectively,
4 "Receivership Entities"), submits this Supplemental Brief in Response to Motion to
5 Modify Preliminary Injunction Order to Remove Thomas C. Hebrank as Court-
6 Appointed Receiver ("Motion").

7 I. INTRODUCTION

8 Throughout this case, the Receiver has acted solely as an independent agent
9 of the Court. At all times, the Receiver has taken actions necessary and appropriate
10 to preserve and protect the assets of the receivership estate and conserve such assets
11 for the benefit of investors during the pendency of this litigation. Dkt. No. 948-1,
12 Declaration of Thomas Hebrank, ¶ 2. Although the Receiver has defended
13 Defendant Louis Schooler's numerous attacks on the receivership as necessary and
14 appropriate in carrying out his Court-ordered duties, the Receiver has taken no part
15 whatsoever in the underlying securities litigation.

16 II. THE RECEIVER'S COMMUNICATIONS WITH THE COMMISSION

17 The Receiver's work in performing his duties includes interactions with the
18 Securities and Exchange Commission ("Commission") through its counsel. Those
19 interactions and communications fall into the following categories:

20 **Seeking information from the Commission.** The Commission performed
21 an investigation of the Receivership Entities prior to filing this case. As a result, the
22 Commission had information and documentation useful to the Receiver's securing,
23 preserving, and administering assets of the receivership estate. At various times, the
24 Receiver has requested such information from the Commission as an efficient means
25 of locating it as opposed to searching through electronic databases and/or hard copy
26 files or pursuing costly discovery.

27 **Responding to information requests from the Commission.** The
28 Commission has, at various times, requested information from the Receiver relating

1 to the Receiver's activities and administration of the receivership estate. The
2 Receiver has had no reason not to provide such information, so he has.

3 **Seeking input regarding filings.** The Receiver, with the assistance of his
4 counsel, independently prepares all reports, motions, and other documents he files
5 with the Court. Although the Receiver took possession of the Receivership Entities'
6 books and records at the beginning of the case, he had no prior knowledge of their
7 history or operations and did not believe it was appropriate to consume substantial
8 receivership estate resources reviewing hundreds of boxes of documents.
9 Accordingly, he submitted reports, motions, applications and other documents to
10 both parties for their constructive input with the goal of providing the Court and
11 investors with the most accurate information and logical recommendations for
12 preserving and protecting the assets of the receivership estate. If the parties
13 provided input, the Receiver considered it and independently determined whether
14 any revisions to the documents should be made.

15 As discussed below, after the initial phase of the case, the Receiver's actions
16 were met with hostility and aggressive opposition from Schooler. It became clear
17 that seeking constructive input from Schooler would be futile, so communications
18 became very limited.

19 **Procedural matters.** The Receiver and the Commission have exchanged
20 numerous e-mails since the case was filed relating to things like scheduling and
21 other procedural issues, inquiries from investors (some investors contact the
22 Commission with questions about the receivership), articles and inquiries from
23 reporters about the case, notices of ex parte applications, and joint motions.
24 Schooler's counsel has been included on many of these e-mails. The Receiver's
25 counsel has also made empty offices available to the Commission's counsel as a
26 professional courtesy when they have arrived to San Diego early for hearings.

27 There is nothing improper about the communications between the Receiver,
28 his counsel, and the Commission. The communications relate solely to issues

1 affecting the receivership. At all times, the Receiver has taken positions and actions
2 he independently determined were necessary and appropriate in preserving and
3 protecting the assets of the receivership estate for the benefit of investors.

4 **III. THE RECEIVER'S COMMUNICATIONS WITH SCHOOLER**

5 At the beginning of the case, communications between the Receiver and
6 Schooler were open. The Receiver, Schooler, and the Commission discussed issues
7 affecting the receivership and tried to resolve issues in a constructive manner.
8 Attached hereto as Exhibit A are emails from September and October 2012
9 reflecting the open nature of communications during the initial phase of the case.
10 As the e-mails reflect, the Receiver sent reports, applications, other Court filings,
11 and investor letters to Schooler for his input before they were filed or mailed out.
12 The Receiver and his counsel also participated in various in-person meetings and
13 conference calls with Schooler and his counsel, some of which counsel for the
14 Commission participated in as well.

15 Soon thereafter, however, Schooler changed course and began attacking the
16 Receiver in pleadings filed with the Court and communications to investors. This
17 was a litigation strategy Schooler chose and pursued aggressively. As the case
18 progressed, the unfounded attacks became a continuous theme and the Receiver
19 determined that conferring with Schooler and his counsel about Court filings would
20 not be a productive use of receivership estate resources. Schooler not only opposed
21 virtually every one of the Receiver's filings, but he misrepresented the facts in ways
22 designed to denigrate and undermine the Receiver and confuse and alarm investors.¹
23 It was clear, therefore, that discussing issues affecting the receivership with
24 Schooler in a constructive manner was not possible. Had Schooler not chosen this
25

26 ¹ The Court has had to remind Schooler not to interfere with the Receiver's
27 performance of his duties, has observed that Schooler's actions demonstrate an
28 effort to "guide and influence the actions and perceptions of investors," and has
held Schooler in contempt for violating the Preliminary Injunction Order. Dkt.
Nos. 549, 851.

1 strategy, the situation would have been very different and the open line of
2 communication that existed at the beginning of the case would have continued.

3 To be clear, this is not a personal issue. Mr. Hebrank has been appointed
4 receiver and bankruptcy trustee in many cases and worked for other receivers for
5 many years before starting his own company. As all court-appointed fiduciaries
6 must, he has a thick skin and does not take challenges from those who disagree with
7 his recommendations and actions personally. Schooler's misrepresentations,
8 however, have been very detrimental to the GPs and administration of the
9 receivership. Substantial fees have been incurred responding to investors confused
10 and alarmed by Schooler's misrepresentations. While many investors change their
11 thinking after hearing the facts, others do not know what to believe and become
12 frustrated. Moreover, the Court has received numerous filings and held hearings
13 where investors have asserted positions based on Schooler's misrepresentations.
14 Investors with different views have been criticized and marginalized, resulting in a
15 polarized population of investors based on positions for or against the receivership,
16 rather than focusing on what matters – the financial condition of each GP and how
17 to achieve the maximum recovery for investors. All of this further threatens the
18 ability of GPs to raise necessary capital and make important decisions.

19 **IV. THE RECEIVER'S E-MAIL PRODUCTION**

20 The Receiver is not a party to the litigation between the Commission and
21 Defendants. The Receiver has not been sued and his work as Receiver is not the
22 subject of litigation. Although Schooler has treated the Receiver as an adversary, he
23 cites no authority for the proposition that rules regarding preservation of evidence
24 by parties to litigation apply to court-appointed receivers. Moreover, the Receiver
25 has not intentionally deleted any e-mails. He maintains a sensible document
26 retention policy designed to maintain important e-mails and avoid computer crashes
27 from storing excess data. Moreover, the Receiver and his counsel have produced
28 hundreds of e-mails to Schooler. The Receiver's e-mails with the Commission are

1 virtually identical to those of his counsel and all emails between his counsel and the
2 Commission have been produced.

3 **V. OCTOBER 22, 2014 E-MAIL FROM SUSAN MCDONALD**

4 Schooler's supplemental reply brief references e-mails seeking input from the
5 Commission on filings, which is addressed above. The only other new e-mail raised
6 is from Susan McDonald, counsel for the Commission, dated October 22, 2014.
7 Dkt. No. 978-1, Ex. 38. Schooler construes the e-mail as evidence the Receiver
8 made a suggestion that a property management firm be used as an alternative to the
9 Receiver, that the Commission disagreed, and therefore the Receiver did not include
10 the suggestion in his Report and Recommendations Regarding General Partnerships.
11 In fact, the opposite is the case. *Ms. McDonald's e-mail expresses disagreement*
12 *with a proposal included in the Receiver's report* – that the GPs be transitioned
13 from the Partnership Administrators to Lincoln Property Group, which would give
14 them a better chance of survival if they were to be released. Dkt. No. 852, pp. 25-
15 28. In her email, Ms. McDonald states she does not think that "fixes the problem"
16 and that "endorsing that [would] be inconsistent [with] and undercut the holding that
17 the interests are securities." Dkt. No. 978-1, Ex. 38. *Yet, the Receiver included the*
18 *recommendation in his report notwithstanding the fact counsel for the*
19 *Commission disagreed with it and that it "undercut" the Commission's positions*
20 *in the underlying litigation.* As discussed in the Receiver's Opposition, the e-mails
21 from Ms. McDonald reflect that the Receiver considered the Commission's
22 positions, but did not incorporate any of them into his report. Dkt. No. 948, pp. 5-6.
23 Once again, the evidence shows the Receiver acted not as an agent of the
24 Commission, but as an independent agent of the Court.

25 **VI. CONCLUSION**

26 It is important not to conflate issues affecting the receivership with the
27 underlying securities litigation. The Receiver has conferred with the Commission
28 and Schooler on issues affecting the receivership as appropriate in carrying out his

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ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

TED FATES
Attorneys for Receiver
THOMAS C. HEBRANK

EXHIBIT INDEX

Exhibit A	Emails from September and October 2012	9
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EXHIBIT A

EXHIBIT A

Subject: RE: Western Financial
Date: 9/27/2012 1:03 PM
From: "Eric Hougen" <eric@hougenlaw.com>
To: "Fates, Ted" <tfates@allenmatkins.com>, "phildysonlaw@gmail.com" <phildysonlaw@gmail.com>
Cc: "Tom Hebrank" <thebrank@ethreadvisors.com>

Sure -- I am available -- I will dial in at 2:30 to the number you indicated below.

From: Fates, Ted [mailto:tfates@allenmatkins.com]
Sent: Thursday, September 27, 2012 12:10 PM
To: eric@hougenlaw.com; phildysonlaw@gmail.com
Cc: Tom Hebrank
Subject: Western Financial

Eric and Phil,

Tom Hebrank and I would like to discuss the cash flow situation at Western Financial with you this afternoon if possible. Mr. Schooler is of course welcome to participate.

Are you available at 2:30? If not, please let me know a time that works for you.

We can use my conference line (800) 528-2987, pin # 2351527.

Thanks,

Ted Fates

Senior Counsel
Allen Matkins Leck Gamble Mallory & Natsis LLP
501 West Broadway, 15th Floor, San Diego, CA 92101-3541
(619) 235-1527 (direct)
(619) 233-1155 (main)
(619) 233-1158 (fax)

Subject: Schedules
Date: 9/27/2012 3:07 PM
From: "Tom Hebrank" <thebrank@ethreadvisors.com>
To: "Eric Hougen" <eric@hougenlaw.com>
Cc: "Fates, Ted" <tfates@allenmatkins.com>

Attached are the schedules we discussed.

Thomas C. Hebrank, CPA, CIRA
E3 Advisors
501 W. Broadway, Suite 800
San Diego, CA 92101
Off (619) 400-4922
Cel (619) 997-0042
thebrank@ethreadvisors.com

Fates, Ted

From: Fates, Ted <tfates@allenmatkins.com>
Sent: Monday, October 1, 2012 12:04 PM
To: Puathasnanon, Sam; Kalin, Sara; Eric Hougen
Cc: Tom Hebrank
Subject: Stipulation Regarding Western Operating Expenses

Counsel:

Just to give you all an update, Tom Hebrank and I are working on a stipulation addressing Western's short-term cash situation, as well as a joint ex parte application for approval. Our goal is to circulate the papers this afternoon for your review and signature. We will be in touch shortly.

Thanks,

Ted Fates

Senior Counsel
Allen Matkins Leck Gamble Mallory & Natsis LLP
501 West Broadway, 15th Floor, San Diego, CA 92101-3541
(619) 235-1527 (direct)
(619) 233-1155 (main)
(619) 233-1158 (fax)

Fates, Ted

From: Fates, Ted <tfates@allenmatkins.com>
Sent: Monday, October 1, 2012 2:57 PM
To: Puathasnanon, Sam; Kalin, Sara; Eric Hougen
Cc: Tom Hebrank
Subject: RE: Stipulation Regarding Western Operating Expenses
Attachments: SD-#793174-v1-
Joint_Ex_Parte_App_for_Approval_of_Stip_Re_Western_Interim_Operating_Exps_.DOCX;
SD-#793193-v1-
Western_Financial_-_Hebrank_Dec_ISO_Joint_Ex_Parte_App_Re_Operating_Expenses.DOC
X; SD-#793178-v1-
Western_Financial_-_Proposed_Order_Re_Joint_Ex_Parte_App_Re_Western_Operating_E
xps_.DOCX; SD-#793176-v1-
Western_Financial_-_Stipulation_Re_Western_Interim_Operating_Expenses.DOCX; SD-#
793266-v1-Western_Bank_Account_Activity_9_6_12-9_30_12.XLSX; SD-#793274-v1-
Western_Income_and_Expenses_--_Before.XLS; SD-#793275-v1-
Western_Income_and_Exoenses_--_After.XLS

Counsel:

Attached are the following:

- 1) Joint Ex Parte Application for Approval of Stipulation Regarding Western Interim Operation Expenses
- 2) Declaration of Thomas Hebrank in Support of Joint Ex Parte Application
- 3) [Proposed] Order Granting Joint Ex Parte Application

Also attached are the following Exhibits to the Hebrank Declaration:

- A) Stipulation
- B) Post-Receivership Receipts and Disbursements for Western
- C) Western Income and Expense Projection (as is)
- D) Western Income and Expense Projection (if Stipulation is approved)

Please review and let us know if you have any questions or concerns.

Eric, you will see there are some items in the Joint Ex Parte App and Stipulation highlighted. If you and Mr. Schooler could check those to make sure we've identified the correct payee, that would be great.

Thank you,

Ted Fates

Senior Counsel
Allen Matkins Leck Gamble Mallory & Natsis LLP
501 West Broadway, 15th Floor, San Diego, CA 92101-3541
(619) 235-1527 (direct)
(619) 233-1155 (main)
(619) 233-1158 (fax)

From: Fates, Ted
Sent: Monday, October 01, 2012 12:04 PM
To: Puathasnanon, Sam; Kalin, Sara; 'Eric Hougen'

Cc: 'Tom Hebrank'

Subject: Stipulation Regarding Western Operating Expenses

Counsel:

Just to give you all an update, Tom Hebrank and I are working on a stipulation addressing Western's short-term cash situation, as well as a joint ex parte application for approval. Our goal is to circulate the papers this afternoon for your review and signature. We will be in touch shortly.

Thanks,

Ted Fates

Senior Counsel

Allen Matkins Leck Gamble Mallory & Natsis LLP

501 West Broadway, 15th Floor, San Diego, CA 92101-3541

(619) 235-1527 (direct)

(619) 233-1155 (main)

(619) 233-1158 (fax)

Subject: FW: Cash projections

Date: 10/2/2012 2:40 PM

From: "Eric Hougen" <eric@hougenlaw.com>

To: "Ted Fates" <tfates@allenmatkins.com>, "Tom Hebrank"
<thebrank@ethreadvisors.com>

for our discussion.

From: Traci Harris [mailto:traci.harris@wfpc.com]

Sent: Tuesday, October 02, 2012 2:38 PM

To: Eric Hougen

Subject: Cash projections

Traci Harris
Accounting Manager
Western Financial Planning Corporation
5186 Carroll Canyon Road
San Diego, CA 92121
Direct line 858-875-5814

Subject: RE: LinMar and WFP Securities
Date: 10/4/2012 12:46 PM
From: "Eric Hougen" <eric@hougenlaw.com>
To: "Tom Hebrank" <thebrank@ethreadvisors.com>
Cc: "Fates, Ted" <tfates@allenmatkins.com>, "Geno Rodriguez" <grodriguez@ethreadvisors.com>

Tom -- I will get these to you. Thanks.

From: Tom Hebrank [mailto:thebrank@ethreadvisors.com]
Sent: Wednesday, October 03, 2012 9:55 AM
To: 'Eric Hougen'
Cc: Fates, Ted; 'Geno Rodriguez'
Subject: LinMar and WFP Securities

Eric --

Can you please me with corporate documents indicating the current ownership structure (and any related documents indicating corporate control) for these two entities as soon as possible in order that we may determine their relationship and/or inclusion in the receivership estate.

Thanks - Tom

Thomas C. Hebrank, CPA, CIRA
E3 Advisors
501 W. Broadway, Suite 800
San Diego, CA 92101
Off (619) 400-4922
Cel (619) 997-0042
thebrank@ethreadvisors.com

Subject: RE: Meeting
Date: 10/9/2012 4:45 PM
From: "Philip H. Dyson" <phildysonlaw@gmail.com>
To: "Eric Hougen" <eric@hougenlaw.com>, "Fates, Ted" <tfates@allenmatkins.com>
Cc: "thebrank@ethreadvisors.com" <thebrank@ethreadvisors.com>

2:00 p.m. is fine.

Sincerely,

PHILIP H. DYSON

Attorney At Law
8461 La Mesa Boulevard
La Mesa, CA 91942
Tel 619.462.3311
Fax 619.462.3382
phil@phildysonlaw.com
www.phildysonlaw.com

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From: Eric Hougen [mailto:eric@hougenlaw.com]
Sent: Tuesday, October 09, 2012 3:37 PM
To: 'Fates, Ted'
Cc: thebrank@ethreadvisors.com; phildysonlaw@gmail.com
Subject: RE: Meeting

That works for Louis and me -- and I believe it works for Phil as well, but I will let him confirm to be sure. Thanks.

From: Fates, Ted [mailto:tfates@allenmatkins.com]
Sent: Tuesday, October 09, 2012 1:34 PM
To: Eric Hougen
Cc: thebrank@ethreadvisors.com; phildysonlaw@gmail.com
Subject: RE: Meeting

No problem. How about 2:00?

From: Eric Hougen [mailto:eric@hougenlaw.com]
Sent: Tuesday, October 09, 2012 1:19 PM
To: 'Eric Hougen'; Fates, Ted
Cc: thebrank@ethreadvisors.com; phildysonlaw@gmail.com
Subject: RE: Meeting

Ted and Tom -- my apologies, but can we move this to the afternoon tomorrow? Thanks.

From: Eric Hougen [mailto:eric@hougenlaw.com]

Sent: Tuesday, October 09, 2012 12:00 PM
To: 'Fates, Ted'
Cc: thebrank@ethreadvisors.com; phildysonlaw@gmail.com
Subject: RE: Meeting

Ted and Tom -- how about 10:30 tomorrow (Wednesday) morning at Western's offices?

From: Fates, Ted [<mailto:tfates@allenmatkins.com>]
Sent: Monday, October 08, 2012 9:48 AM
To: Eric Hougen
Cc: 'thebrank@ethreadvisors.com'
Subject: Meeting

Hi Eric,

As you know, we need to meet and confer and figure out how the receivership/monitoring is going to work. Are you and Mr. Schooler available to meet with Tom and me on Wednesday morning at the Western offices?

Ted Fates
Senior Counsel
Allen Matkins Leck Gamble Mallory & Natsis LLP
501 West Broadway, 15th Floor, San Diego, CA 92101-3541
(619) 235-1527 (direct)
(619) 233-1155 (main)
(619) 233-1158 (fax)

Subject: RE: Meeting
Date: 10/10/2012 10:56 AM
From: "Fates, Ted" <tfates@allenmatkins.com>
To: "Eric Hougen" <eric@hougenlaw.com>, "Tom Hebrank" <thebrank@ethreadvisors.com>, "Philip H. Dyson" <phildysonlaw@gmail.com>

9:30 tomorrow works for us.

From: Eric Hougen [mailto:eric@hougenlaw.com]
Sent: Wednesday, October 10, 2012 10:52 AM
To: 'Tom Hebrank'; 'Philip H. Dyson'; Fates, Ted
Subject: RE: Meeting

I am available later this afternoon if that makes any difference -- as is Louis.

I also checked with Louis regarding his morning schedule -- we could meet at 9:30 am tomorrow if that works for everyone.

From: Tom Hebrank [mailto:thebrank@ethreadvisors.com]
Sent: Wednesday, October 10, 2012 10:35 AM
To: 'Philip H. Dyson'; 'Eric Hougen'; 'Fates, Ted'
Subject: RE: Meeting

I am not available then. What about first thing tomorrow morning?

Thomas C. Hebrank
E3 Advisors

From: Philip H. Dyson [mailto:phildysonlaw@gmail.com]
Sent: Wednesday, October 10, 2012 10:30 AM
To: 'Eric Hougen'; 'Fates, Ted'
Cc: thebrank@ethreadvisors.com
Subject: RE: Meeting

All,

I just got called to appear for a 1:30 hearing. Can we please do the meeting at 3:30. Eric and I are available then.

Thanks.

Phil

Sincerely,

PHILIP H. DYSON

Attorney At Law
8461 La Mesa Boulevard
La Mesa, CA 91942
Tel 619.462.3311

Fax 619.462.3382
phil@phildysonlaw.com
www.phildysonlaw.com

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From: Eric Hougen [<mailto:eric@hougenlaw.com>]
Sent: Tuesday, October 09, 2012 3:37 PM
To: 'Fates, Ted'
Cc: thebrank@ethreadvisors.com; phildysonlaw@gmail.com
Subject: RE: Meeting

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From: Fates, Ted [<mailto:tfates@allenmatkins.com>]
Sent: Tuesday, October 09, 2012 1:34 PM
To: Eric Hougen
Cc: thebrank@ethreadvisors.com; phildysonlaw@gmail.com
Subject: RE: Meeting

No problem. How about 2:00?

From: Eric Hougen [<mailto:eric@hougenlaw.com>]
Sent: Tuesday, October 09, 2012 1:19 PM
To: 'Eric Hougen'; Fates, Ted
Cc: thebrank@ethreadvisors.com; phildysonlaw@gmail.com
Subject: RE: Meeting

Ted and Tom -- my apologies, but can we move this to the afternoon tomorrow? Thanks.

From: Eric Hougen [<mailto:eric@hougenlaw.com>]
Sent: Tuesday, October 09, 2012 12:00 PM
To: 'Fates, Ted'
Cc: thebrank@ethreadvisors.com; phildysonlaw@gmail.com
Subject: RE: Meeting

Ted and Tom -- how about 10:30 tomorrow (Wednesday) morning at Western's offices?

From: Fates, Ted [<mailto:tfates@allenmatkins.com>]
Sent: Monday, October 08, 2012 9:48 AM
To: Eric Hougen
Cc: 'thebrank@ethreadvisors.com'
Subject: Meeting

Hi Eric,

As you know, we need to meet and confer and figure out how the receivership/monitoring is going to work. Are

you and Mr. Schooler available to meet with Tom and me on Wednesday morning at the Western offices?

Ted Fates

Senior Counsel

Allen Matkins Leck Gamble Mallory & Natsis LLP

501 West Broadway, 15th Floor, San Diego, CA 92101-3541

(619) 235-1527 (direct)

(619) 233-1155 (main)

(619) 233-1158 (fax)

Fates, Ted

From: Fates, Ted <tfates@allenmatkins.com>
Sent: Wednesday, October 10, 2012 4:26 PM
To: Eric Hougen; 'Puathasnanon, Sam'
Cc: phildysonlaw@gmail.com; 'Tom Hebrank'; 'Kalin, Sara'
Subject: RE: Proposed scheduling order

The Receiver is okay with it.

From: Eric Hougen [mailto:eric@hougenlaw.com]
Sent: Wednesday, October 10, 2012 4:23 PM
To: 'Puathasnanon, Sam'; Fates, Ted
Cc: phildysonlaw@gmail.com; 'Tom Hebrank'; 'Kalin, Sara'
Subject: RE: Proposed scheduling order

I'm okay with that -- see attached -- everyone okay with this?

From: Puathasnanon, Sam [mailto:puathasnanons@sec.gov]
Sent: Wednesday, October 10, 2012 4:13 PM
To: Eric Hougen; 'Fates, Ted'
Cc: phildysonlaw@gmail.com; 'Tom Hebrank'; Kalin, Sara
Subject: RE: Proposed scheduling order

I still have a problem with addressing, but I think we can solve the problem by making the language "adopting or modifying the Receiver's proposal." Addressing is too ambiguous and I would like the order to be as clear as possible to avoid going back to the Court yet again. Thanks.

Sam S. Puathasnanon
Senior Trial Counsel
Securities and Exchange Commission
Los Angeles Regional Office
5670 Wilshire Blvd., 11th Floor
Los Angeles, CA 90036
323-965-4503 - office
703-813-9576 - direct fax

From: Eric Hougen [mailto:eric@hougenlaw.com]
Sent: Wednesday, October 10, 2012 4:08 PM
To: Puathasnanon, Sam; 'Fates, Ted'
Cc: phildysonlaw@gmail.com; 'Tom Hebrank'; Kalin, Sara
Subject: RE: Proposed scheduling order

See attached with two tweaks to Ted's edits.

Sam -- with regard to your comment below, the reason I added the "otherwise addressing the proposal" language in paragraph 2 is to cover the situation where the court modifies the proposal instead of simply adopting it. As a practical matter, if the court issues an order leaving us completely short of direction we could return to the court for clarity as we did today.

From: Puathasnanon, Sam [<mailto:puathasnanons@sec.gov>]
Sent: Wednesday, October 10, 2012 3:34 PM
To: Fates, Ted; Eric Hougen
Cc: phildysonlaw@gmail.com; 'Tom Hebrank'; Kalin, Sara
Subject: RE: Proposed scheduling order

Thanks Ted for your comments. I agree with those changes and would propose one more.

Please delete "or otherwise" from paragraph 2. My concern is that the Court could order additional negotiations, which would "address", but not adopt the proposal, leaving us all in the dark about what should be in the PI order. My preference is 7 days from the adoption of any proposal.

Thanks.

Sam S. Puathasnanon
Senior Trial Counsel
Securities and Exchange Commission
Los Angeles Regional Office
5670 Wilshire Blvd., 11th Floor
Los Angeles, CA 90036
323-965-4503 - office
703-813-9576 - direct fax

From: Fates, Ted [<mailto:tfates@allenmatkins.com>]
Sent: Wednesday, October 10, 2012 3:29 PM
To: Eric Hougen; Puathasnanon, Sam
Cc: phildysonlaw@gmail.com; 'Tom Hebrank'
Subject: RE: Proposed scheduling order

Eric and Sam,

Attached are my redline comments to the scheduling order.

Thanks, Ted

From: Eric Hougen [<mailto:eric@hougenlaw.com>]
Sent: Wednesday, October 10, 2012 3:18 PM
To: Puathasnanon, Sam; Fates, Ted
Cc: phildysonlaw@gmail.com
Subject: Proposed scheduling order

Sam and Ted -- please review -- if it meets with our discussion, I will submit to chambers.

Hougen Law Offices
624 Broadway, Suite 303
San Diego, CA 92101
619-702-1000 (office)
858-581-2150 (mobile)
eric@hougenlaw.com | www.HougenLaw.com

Subject: 12 CV 2164 -- SEC v. Schooler et al. -- Proposed Scheduling Order
Date: 10/10/2012 4:39 PM
From: "Eric Hougen" <eric@hougenlaw.com>
To: "Judge Burns -- proposed orders" <efile_burns@casd.uscourts.gov>
Cc: "Puathasnanon, Sam" <puathasnanons@sec.gov>, "kalins@sec.gov" <kalins@sec.gov>, "Ted Fates" <tfates@allenmatkins.com>, "phildysonlaw@gmail.com" <phildysonlaw@gmail.com>

Your Honor,

Per the parties' teleconference with Hans this afternoon, the parties jointly submit the attached proposed scheduling order for the Court's consideration.

Sincerely,
Eric Hougen

Hougen Law Offices
624 Broadway, Suite 303
San Diego, CA 92101
619-702-1000 (office)
858-581-2150 (mobile)
eric@hougenlaw.com | www.HougenLaw.com

Fates, Ted

From: Fates, Ted <tfates@allenmatkins.com>
Sent: Thursday, October 11, 2012 1:15 PM
To: 'Puathasnanon, Sam'; 'Kalin, Sara'
Cc: 'Tom Hebrank'
Subject: Western

Sam and Sara,

We met with Eric Hougen, Phil Dyson and Louis Schooler this morning. Are you available this afternoon for a call to discuss where we are? Let us know what time works for you.

Thanks,

Ted Fates

Senior Counsel
Allen Matkins Leck Gamble Mallory & Natsis LLP
501 West Broadway, 15th Floor, San Diego, CA 92101-3541
(619) 235-1527 (direct)
(619) 233-1155 (main)
(619) 233-1158 (fax)

Subject: RE: Meeting
Date: 10/11/2012 7:19 PM
From: "Fates, Ted" <tfates@allenmatkins.com>
To: "Eric Hougen" <eric@hougenlaw.com>, "Philip H. Dyson" <phildysonlaw@gmail.com>
Cc: "Tom Hebrank" <thebrank@ethreadvisors.com>

Eric,

Yes, the plan is to just send the one page letter.

On a separate note, we understand from our meeting today that you disagree that Tom should be monitor over Mr. Schooler's assets. However, the Court has instructed the Receiver to submit a proposal that includes him monitoring Mr. Schooler's assets. In order for the Receiver to formulate such a proposal, we ask that Mr. Schooler provide a statement of his monthly expenses. Our objective is for the parties to reach agreement on a schedule of monthly expenses that the Court can approve in connection with the Receiver's proposal. These would not be the only expenditures allowed. The Receiver's proposal would include a mechanism for review/approval of expenditures and transactions above a certain dollar amount that are not on the approved schedule.

Per your request at our meeting today, the schedule of monthly expenses would be filed under seal.

Let me know if you have any questions or concerns. We appreciate your cooperation with this request.

Ted Fates

Senior Counsel
Allen Matkins Leck Gamble Mallory & Natsis LLP
501 West Broadway, 15th Floor, San Diego, CA 92101-3541
(619) 235-1527 (direct)
(619) 233-1155 (main)
(619) 233-1158 (fax)

From: Eric Hougen [mailto:eric@hougenlaw.com]
Sent: Thursday, October 11, 2012 5:55 PM
To: 'Tom Hebrank'; 'Philip H. Dyson'
Cc: Fates, Ted
Subject: RE: Meeting

Tom -- one quick question -- I see that the letter does not indicate any enclosure or attachment -- am I right to assume it is only this one page that you are sending?

From: Tom Hebrank [mailto:thebrank@ethreadvisors.com]
Sent: Thursday, October 11, 2012 5:15 PM
To: 'Philip H. Dyson'; 'Eric Hougen'
Cc: 'Fates, Ted'
Subject: RE: Meeting

Per our discussion, please see the attached investor notification letter that we intend to send out tomorrow. Please let me know as soon as possible if you have any comments or concerns.

Thanks - Tom

Thomas C. Hebrank, CPA, CIRA
E3 Advisors
501 W. Broadway, Suite 800
San Diego, CA 92101
Off (619) 400-4922
Cel (619) 997-0042
thebrank@ethreadvisors.com

Subject: RE: Meeting
Date: 10/12/2012 9:33 AM
From: "Eric Hougen" <eric@hougenlaw.com>
To: "Tom Hebrank" <thebrank@ethreadvisors.com>, "Philip H. Dyson" <phildysonlaw@gmail.com>
Cc: "Fates, Ted" <tfates@allenmatkins.com>

Tom,

Thank you for sharing this with us ahead of sending. We do not have any edits or comments.

Thanks,
Eric

From: Tom Hebrank [mailto:thebrank@ethreadvisors.com]
Sent: Thursday, October 11, 2012 5:15 PM
To: 'Philip H. Dyson'; 'Eric Hougen'
Cc: 'Fates, Ted'
Subject: RE: Meeting

Per our discussion, please see the attached investor notification letter that we intend to send out tomorrow. Please let me know as soon as possible if you have any comments or concerns.

Thanks - Tom

Thomas C. Hebrank, CPA, CIRA
E3 Advisors
501 W. Broadway, Suite 800
San Diego, CA 92101
Off (619) 400-4922
Cel (619) 997-0042
thebrank@ethreadvisors.com

Subject: Proposed Order re Appointment of Monitor
Date: 10/15/2012 11:21 AM
From: "Eric Hougen" <eric@hougenlaw.com>
To: "Tom Hebrank" <thebrank@ethreeadvisors.com>, "Ted Fates" <tfates@allenmatkins.com>
Cc: "phildysonlaw@gmail.com" <phildysonlaw@gmail.com>

Tom and Ted,

Attached for your benefit please find a proposed order we drafted setting forth what our proposal for the monitor's role based on all of our discussion points when we met with you last week.

We are working to put together the schedule of expenses you requested -- you will see reference to two such schedules in the attached proposal.

We are available to discuss in more detail.

Thanks,
Eric

Hougen Law Offices
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San Diego, CA 92101
619-702-1000 (office)
858-581-2150 (mobile)
eric@hougenlaw.com | www.HougenLaw.com

Fates, Ted

From: Fates, Ted <tfates@allenmatkins.com>
Sent: Tuesday, October 16, 2012 2:44 PM
To: Kalin, Sara; Puathasnanon, Sam; Berry, John W.; Eric Hougen; 'Philip H. Dyson'
Cc: Tom Hebrank
Subject: SEC v. Louis V. Schooler
Attachments: SD-#793971-v1-Western_Financial_-_Receiver_s_Second_Report.DOCX

Counsel:

Attached is the Receiver's draft Second Report and Proposal Regarding the Assets of Western and Louis Schooler.

Please let us know if you would like to meet and confer regarding the Receiver's proposal. Eric and Phil, if you would like to meet in person at the Western offices, Tom and I are available tomorrow afternoon.

Regards,

Ted Fates

Senior Counsel
Allen Matkins Leck Gamble Mallory & Natsis LLP
501 West Broadway, 15th Floor, San Diego, CA 92101-3541
(619) 235-1527 (direct)
(619) 233-1155 (main)
(619) 233-1158 (fax)

Fates, Ted

From: Fates, Ted <tfates@allenmatkins.com>
Sent: Wednesday, October 17, 2012 6:00 PM
To: Eric Hougen; Tom Hebrank
Cc: phildysonlaw@gmail.com; Puathasnanon, Sam; Kalin, Sara
Subject: RE: Lodging of Proposal with Chambers

Eric,

I just spoke with Hans. I asked whether the Court prefers that the Receiver lodge or file his proposal. He said either is fine and responses should be transmitted in the same manner as the proposal. I explained that our proposal includes a report on the Receiver's activities, and therefore our preference is to file it as part of the record in the case. He agreed that makes sense. We will proceed accordingly.

Regards,

Ted Fates

Senior Counsel
Allen Matkins Leck Gamble Mallory & Natsis LLP
501 West Broadway, 15th Floor, San Diego, CA 92101-3541
(619) 235-1527 (direct)
(619) 233-1155 (main)
(619) 233-1158 (fax)

From: Eric Hougen [mailto:eric@hougenlaw.com]
Sent: Wednesday, October 17, 2012 1:47 PM
To: Fates, Ted; Tom Hebrank
Cc: phildysonlaw@gmail.com
Subject: Lodging of Proposal with Chambers

Tom and Ted,

I spoke with Hans, the clerk, this afternoon about the possibility that, depending on the final form of your proposal, that as discussions currently stood we would likely be filing an opposition. The clerk commented that the order did not require the proposal to be filed publicly and can be simply lodged directly with chambers and that our opposition should similarly be lodged only with chambers.

We are of the view the your proposal should NOT be filed publicly and should instead be lodged directly with chambers (cc'ing all relevant parties of course) and wanted to be sure you are aware of this position of the court's clerk.

Sincerely,
Eric

Hougen Law Offices
624 Broadway, Suite 303
San Diego, CA 92101
619-702-1000 (office)

858-581-2150 (mobile)

eric@hougenlaw.com | www.HougenLaw.com

PROOF OF SERVICE

I am employed in the County of San Diego, State of California. I am over the age of eighteen (18) and am not a party to this action. My business address is 501 West Broadway, 15th Floor, San Diego, California 92101-3541.

On February 9, 2014, I served the within document(s) described as:

- **RECEIVER'S SUPPLEMENTAL BRIEF IN SUPPORT OF OPPOSITION TO DEFENDANTS' MOTION TO MODIFY PRELIMINARY INJUNCTION ORDER TO REMOVE THOMAS C. HEBRANK AS COURT-APPOINTED RECEIVER**

on interested parties in this action by:

☒ **BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF"):** the foregoing document(s) will be served by the court via NEF and hyperlink to the document. On February 9, 2014, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email addressed indicated below:

- Lynn M. Dean - deanl@sec.gov; larofiling@sec.gov; berryj@sec.gov; irwinma@sec.gov; cavallones@sec.gov
- Philip H. Dyson - phildysonlaw@gmail.com; jldossegger2@yahoo.com; phdtravel@yahoo.com
- Edward G. Fates - tfates@allenmatkins.com; bcrfilings@allenmatkins.com; jbatiste@allenmatkins.com
- Eric Hougen - eric@hougenlaw.com
- Sara D. Kalin - kalins@sec.gov; irwinma@sec.gov
- Sam S. Puathasnanon - puathasnanons@sec.gov; haackk@sec.gov; berryj@sec.gov; irwinma@sec.gov; cavallones@sec.gov
- Edward P. Swan, Jr. - pswan@jonesday.com; dpippin@jonesday.com

☐ **BY MAIL:** I placed a true copy of the document in a sealed envelope or package addressed as indicated on the attached Service List on the above-mentioned date in San Diego, California for collection and mailing pursuant to the firm's ordinary business practice. I am familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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

Executed on February 9, 2014, at San Diego, California.

Ted Fates
(Type or print name)

/s/ Ted Fates
(Signature of Declarant)