

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

SECURITIES AND EXCHANGE  
COMMISSION,

and

COMMODITY FUTURES TRADING  
COMMISSION,

Plaintiffs,

v.

DAREN L. PALMER and TRIGON  
GROUP, INC.

Civ. No. 09-075-E-EJL

Civ. No. 09-076-E-EJL

The Honorable Edward J. Lodge

RECEIVER'S SIXTH APPLICATION  
SEEKING COURT APPROVAL OF  
FEES AND EXPENSES

R. Wayne Klein, the Court-Appointed Receiver (the "Receiver") of Trigon Group, Inc. ("Trigon") and all the assets of Daren L. Palmer ("Palmer") (collectively the "Receivership Entities"), hereby submits his Sixth Application Seeking Court Approval of Fees and Expenses for (a) himself, (b) his firm, Klein & Associates, PLLC, and (c) Hawley Troxell Ennis & Hawley LLP, for the period April 1, 2011 through September 30, 2011 (the Fee Application Period).

**BACKGROUND**

1. This action commenced on February 26, 2009 with the filing of companion enforcement actions by the Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC) alleging fraud by Trigon and Palmer in violation of federal securities and commodities laws.

2. The same day, the Court entered an "Order Freezing Assets and Prohibiting Destruction of Documents" [Doc. #9 in Case No. 09-075] and orders appointing a receiver [Doc. #8 in Case No. 09-075 and Doc. #5 in Case No. 09-076].

3. The Receiver has filed eleven Status Reports with the Court, one for each quarter since March 31, 2009. The most recent report covered the period up through September 30, 2011. Those status reports describe the work performed by the Receiver and the progress made to date in recovering assets. Copies of these reports are also available on the Receiver's website, [www.kleinutah.com](http://www.kleinutah.com).

### **SERVICES PERFORMED**

4. As described in the Eleventh Status Report to the Court, the most significant efforts during this Fee Application Period was pursuing litigation filed by the Receiver. A number of the cases in litigation resulted in settlements:

- a. The lawsuit against Ken & Julie Smith was settled with a payment by the Receiver and the delivery of real estate in Meridian being delivered to the Receiver;
- b. The Piano Gallery delivered possession of the Palmer piano to the Receiver;
- c. George Heffernan agreed to pay \$200,000.00 to the Receiver, based on a percentage of his future income; and
- d. Jeff Struchen agreed to repay the amount he received from Trigon in excess of his original investment amount.

5. Substantial litigation efforts continue in connection with the other cases being pursued by the Receiver.

6. Some of the personal assets of Palmer have been sold, including the Faberge Egg.

7. Palmer was sentenced by this Court in connection with a criminal case brought by the U.S. Attorney.

**REQUEST FOR COURT APPROVAL OF FEES AND EXPENSES**

8. The Order Appointing a Receiver in the SEC action [Doc. #8, Case No. 09-075]

provides:

The costs, fees and expenses of the Receiver incurred in connection with the performance of his duties described herein, including the costs and expenses of those persons who may be engaged or employed by the Receiver to assist him in carrying out his duties and obligations hereunder shall be paid out of the proceeds or other assets of the Companies, or any and all assets under the control of the Receiver pursuant to this Order. All applications for costs, fees and expenses for services rendered in connection with the Receiver shall be made by application setting forth in reasonable detail the nature of the services and shall be heard by the Court. The court-appointed receiver shall submit his fee application to counsel for the Commission for review at least ten (10) days prior to filing the application with this Court.

Appointment Order at p. 5, ¶ h.

9. The Order Appointing a Receiver in the CFTC action [Doc. #8, Case No. 09-076]

provides:

The Receiver and all personnel hired by the Receiver as herein authorized, including counsel to the Receiver, are entitled to reasonable compensation for the performance of duties pursuant to this Order and for the cost of actual out-of-pocket expenses incurred by them, from the assets now held by, or in the possession or control of, or which may be received by the Defendants. The Receiver shall file with the Court and serve on the parties, including Plaintiff Commission, periodic requests for the payment of such reasonable compensation, with the first such request filed no more than sixty (60) days after the date of this Order. Plaintiff Commission may object to any part of a request within 30 calendar days of service of a request. The Receiver shall not increase the hourly rates used as the bases for such fee applications without prior approval of the Court.

Order Granting Motion for Statutory Restraining Order, ¶ IV.G.

10. This Application is being submitted pursuant to these provisions.

**Review by SEC and CFTC**

11. On October 10, 2011, the Receiver submitted detailed invoices for the fees and

expenses underlying this Application to the SEC and to the CFTC for review in compliance with ¶h of the Court's Order Appointing Receiver in the SEC action.

12. The SEC and CFTC have both advised the Receiver that they have no objections to the fee application.

### **Approval of Prior Applications for Fees and Expenses**

13. The Court approved payment of the Receiver's prior applications for fees and expenses on September 1, 2009 (Doc. #36), December 3, 2009 (Doc. #49), May 5, 2010 (Doc. #68), December 28, 2010 (Doc. #118), and May 24, 2011 (Doc. #93). These fees and expenses have been paid to the Receiver and his counsel.

### **Application Summary and Billing Methodology**

14. Through this Application, the Receiver, on behalf of himself, Klein & Associates, PLLC, and Hawley Troxell, the Receiver's legal counsel, is requesting approval of compensation for services provided to and reimbursement of expenses incurred by the Receivership Estate between April 1, 2011 and September 30, 2011 in the amounts described below.

15. Summary invoices reflecting the services rendered by the Receiver and Klein & Associates, PLLC and expenses incurred are attached as Exhibit A. Summary invoices reflecting the services rendered by Hawley Troxell, counsel for the Receiver, and expenses incurred are attached as Exhibit B. Detailed invoices describing the work performed by the Receiver, Klein & Associates, and Hawley Troxell on a daily basis, as well as detailed lists of expenses incurred, have been provided to the SEC and CFTC and are being filed with the Court under seal. The detailed invoices are not being made public because they include investment and personal information about investors, describe negotiating stances and legal theories being pursued by the Receiver, identify persons providing assistance to the Receiver, and reference investigative

information of governmental agencies.

16. The Applicants' services are billed on an hourly-rate basis.

a. Although the Receiver's standard hourly rate is \$350, by agreement with the SEC and CFTC, the Receiver's hourly rate has been capped in this case at \$250.

b. The standard hourly rates of analysts and other employees of Klein & Associates, PLLC range from \$60 to \$120. The professionals and paraprofessionals who have billed time to this case, and their rates are:

<b>Name</b>	<b>Profession</b>	<b>Hourly Rate Billed</b>
James Shupe	Analyst	\$120
Keith J. Williams	Analyst	\$75
Ben Hawker	Analyst	\$60

c. Hawley Troxell has also agreed to discount their standard rates for time spent working on this case. The following Hawley Troxell professionals who have billed time to this case, and the hourly rates they are billing for this case are summarized as follows:

<b>Name</b>	<b>Position</b>	<b>Hourly Rate Billed</b>
John F. Kurtz	Partner	\$270
Matthew Gordon	Associate	\$150
Kyle Millard	Paralegal	\$95

d. In rendering services and incurring expenses, the Applicants have endeavored to use the most economical means and methods that are available and appropriate under the circumstances.

### **Specific Requests**

#### The Receiver

17. From April 1, 2011 through September 30, 2011, the Receiver, who himself is an attorney, rendered 84.7 hours of administrative, investigative, and legal services to the

Receivership Estate, for total fees of \$21,175.00.<sup>1</sup> The services rendered by the Receiver are described in his invoices with regard to the tasks accomplished. The services rendered are summarized above and in Exhibit A, and are fully detailed in the invoices provided to the SEC and CFTC, and to the Court under seal.

Klein & Associates, PLLC

18. During this Reporting Period, three employees of Klein & Associates, PLLC have assisted with the case, spending 7.1 billable hours assisting the Receiver. The Receiver seeks compensation of \$723.00 for this billable time – time billed at an average rate of \$101.83 per hour. The services rendered by Klein & Associates are summarized above and in Exhibit A, and are fully detailed in the invoices submitted to the Court and government plaintiffs.

Hawley Troxell Ennis & Hawley LLP

19. During this Reporting Period, two attorneys and one paralegal at Hawley Troxell provided legal services on the case, spending 291.8 billable hours providing legal services for the Receiver and the Receivership Entities. Hawley Troxell seeks compensation of \$53,449.50 for this time. The services rendered by Hawley Troxell are among those summarized above and in Exhibit B, and are fully detailed in the invoices submitted to the Court and government plaintiffs.

Expenses

20. Hawley Troxell advanced expenses related to litigation in the amount of \$2,855.89. The Receiver advanced expenses of \$279.86 related to the work of the receivership.<sup>2</sup> Exhibits A and B show the details of the expenses for which reimbursement is sought.

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<sup>1</sup> This does not include an additional 9.9 hours of time that were not billed, valued at \$2,475.00.

<sup>2</sup> The expenses for which reimbursement is requested do not include expenses paid by the Receiver from funds in the Receivership bank account. The expenses paid by the Receiver from funds collected are described in the Tenth and Eleventh Reports of the Receiver (for the periods ending June 30, 2011 and September 30, 2011).

21. Total fees and expenses requested are as follows:

	<u>Fees</u>	<u>Expenses</u>	<u>Total</u>
a. Receiver and Klein & Associates	\$21,898.00	\$279.86	\$22,177.86
b. Hawley Troxell	<u>\$53,449.50</u>	<u>\$2,855.89</u>	<u>\$56,305.39</u>
<b>Total</b>	<b>\$75,347.50</b>	<b>\$3,315.75</b>	<b>\$78,483.25</b>

**CONCLUSION**

The Receiver respectfully submits this Application Seeking Court Approval of Fees and Expenses related to Trigon Group and Daren Palmer. Based on the description of work performed in this Application and the eleven reports to the Court filed to date, the Receiver requests that the Court enter the proposed Order attached hereto as Exhibit C, approving the fees and expenses incurred by the Receiver and his professionals as set forth herein, and authorizing the Receiver to pay such amounts as a cost of administering the Receivership Estate.

The Receiver verifies under penalty of perjury that the foregoing is true and correct.

DATED this 19<sup>th</sup> day of October, 2011.

  
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 WAYNE KLEIN, Receiver

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of October, 2011, I caused to be sent via first-class mail, postage prepaid, a true and correct copy of the foregoing Receiver's Application Seeking Court Approval of Fees and Expenses to:

Karen L. Martinez  
Thomas M. Melton  
Tanya Beard  
Securities and Exchange Commission  
15 West South Temple, Suite 1800  
Salt Lake City, UT 84101  
*Counsel for Plaintiff Securities and Exchange Commission*

Alison B. Wilson  
John W. Dunfee  
Division of Enforcement  
Commodity Futures Trading Commission  
1155 21<sup>st</sup> Street, N.W.  
Washington, D.C. 20581  
*Counsel for Plaintiff Commodity Futures Trading Commission*

Alan Conilogue  
Deputy Attorney General  
State of Idaho  
PO Box 83720  
Boise, ID 83720-0031  
*Local Counsel for Plaintiffs*

Daren L. Palmer  
Register #13952-023  
Mini-Cassia Justice Center Jail  
1415 Albion Avenue  
Burley, ID 83318  
*Defendant*

/s/ John F. Kurtz, Jr.  
John F. Kurtz, Jr.



**EXHIBIT A - INVOICE SUMMARY****Receiver/Klein & Associates**

**DATE:** September 30, 2011  
**CLIENT:** TRIGON RECEIVERSHIP

**Summary of Services:**

<b>Professional</b>	<b>Hours</b>	<b>Rate</b>	<b>Amount</b>
Wayne Klein	84.70	250.00	21,175.00
James Shupe	4.30	120.00	516.00
Keith Williams	2.60	75.00	195.00
Ben Hawker	0.20	60.00	12.00
<b>Total</b>	<b>91.80</b>		<b>21,898.00</b>

<b>Amount Waived</b>	<b>2,475.00</b>
<b>Total Fees Requested</b>	<b>21,898.00</b>
<b>Expenses</b>	<b>279.86</b>
<b>Total Fees and Expenses</b>	<b>22,177.86</b>
<b>Value of Non-Billed Time</b>	<b>2,475.00</b>

**EXPENSES**

<b>Recipient</b>	<b>Amount</b>	<b>Date</b>	<b>Category</b>	<b>Description</b>
Pocatello Creek	63.24	5/9/2011	Gasoline	Rental car for deposition of Receiver by Beck
Guesthouse	63.72	5/10/2011	Hotel	Hotel during deposition of Receiver
Maverik	40.97	5/11/2011	Gasoline	Rental car for deposition of Receiver by Beck
Fox Car Rental	57.76	5/11/2011	Car Rental	Rental car for deposition of Receiver by Beck
DocuMart	35.48	5/17/2011	Copying	Scan Trigon bank records for Hawley Troxell
United Parcel Serv	18.69	5/17/2011	Shipping	Overnight mail of CD to Hawley Troxell
<b>Total</b>	<b>279.86</b>			

**EXHIBIT B - HAWLEY TROXELL ENNIS & HAWLEY**

July 1, 2010 - September 30, 2011

**Legal Fees**

<i>Employee</i>	<i>Position</i>	<i>Rate</i>	<i>Hours</i>	<i>Amount</i>
John Kurtz	Partner	270.00	81.9	22,113.00
Matthew Gordon	Associate	150.00	207.2	31,080.00
Kyle Millard	Paralegal	95.00	2.7	256.50
<b>Total</b>			<b>291.8</b>	<b>53,449.50</b>

**Expenses**

<i>Case</i>	<i>Copies</i>	<i>Postage</i>	<i>Computer Research</i>	<i>Travel</i>	<i>Messenger</i>	<i>Total</i>
General	20.70					<b>20.70</b>
Heffernan	39.24	58.75	369.57			<b>467.56</b>
Piano Gallery	76.32	19.14	97.31			<b>192.77</b>
Doyle Beck	96.66		925.52	355.44		<b>1,377.62</b>
Struchen	130.68			437.40		<b>568.08</b>
RoChel Burtenshaw	4.32					<b>4.32</b>
Sight & Sound	29.16				4.00	<b>33.16</b>
American Express			160.69			<b>160.69</b>
Diners Club	0.72		30.27			<b>30.99</b>
<b>Total</b>	<b>397.80</b>	<b>77.89</b>	<b>1,583.36</b>	<b>792.84</b>	<b>4.00</b>	<b>2,855.89</b>

**GRAND TOTAL****56,305.39**