

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 NINTH APPLICATION  
SEEKING COURT APPROVAL OF  
FEES AND EXPENSES (FOR THE  
PERIOD OCTOBER 1, 2012 TO  
SEPTEMBER 30, 2013)

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 Ninth 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 October 1, 2013 through September 30, 2013 (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 eighteen Status Reports with the Court, one for each quarter since March 31, 2009. The most recent report, covering the period up through September 30, 2013, was filed October 22, 2013. 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 Sixteenth, Seventeenth, Eighteenth and Nineteenth Status Reports to the Court, the most significant efforts during this Fee Application Period were pursuing litigation filed by the Receiver and selling the remaining personal property (a painting and the piano). The case was advanced notably with judgments being entered against defendants in three of the four remaining litigation cases: Capital One, Lawson, and Beck.

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

5. 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.

6. 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.

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

#### **Review by SEC and CFTC**

8. On December 3, 2013, 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.

9. 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**

10. 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), May 24, 2011 (Doc. #93), December 21, 2011 (Doc. #140), June 8, 2012 (Doc. #146), and December 18, 2012 (Doc. #116 [Case No. 09-076]). These fees and expenses have been paid to the Receiver and his counsel.

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

11. 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 October 1, 2012 and September 30, 2013 in the amounts described below.

12. 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.

13. 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 \$75 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>
Keith J. Williams	Analyst	\$75.00
Rendell Etherington	CPA	\$120.00
Jill Howe	Investigator	\$100.00

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	\$160
Daniel Mooney	Associate	\$145/\$155 <sup>1</sup>
Kathy Royster	Paralegal	\$140
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

14. From October 1, 2012 through September 30, 2013, the Receiver, who himself is an attorney, rendered 58.4 hours of administration, investigative, and legal services for the Receivership Estate. Of this total, 15.6 hours, primarily travel time to a mediation session held in Boise, was not billed. Thus, the receiver seeks total earned fees of \$10,700.00.

15. 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

16. During this Reporting Period, two employees of Klein & Associates, PLLC assisted with the case, spending 20.1 billable hours assisting the Receiver. The Receiver seeks compensation of \$2,316.00 for this billable time – time billed at an average rate of \$115.2222 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.

---

<sup>1</sup> Mr. Mooney's rate was raised to \$155.00 per hour in 2013.

Hawley Troxell Ennis & Hawley LLP

17. During this Reporting Period, three attorneys at Hawley Troxell provided legal services on the case, spending 20.1 billable hours providing legal services for the Receiver and the Receivership Entities. Hawley Troxell seeks compensation of \$20,404.00 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

18. Hawley Troxell advanced expenses related to litigation in the amount of \$1,104.63. The Receiver advanced expenses of \$200.79 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.

Summary

19. Total fees and expenses requested are as follows:

	<u>Fees</u>	<u>Expenses</u>	<u>Total</u>
a. Receiver and Klein & Associates	\$13,016.00	\$200.79	\$13,216.79
b. Hawley Troxell	<u>\$20,404.00</u>	<u>\$1,104.63</u>	<u>\$21,508.63</u>
<b><i>Total</i></b>	<b><i>\$33,420.00</i></b>	<b><i>\$1,305.42</i></b>	<b><i>\$34,725.42</i></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 seventeen 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

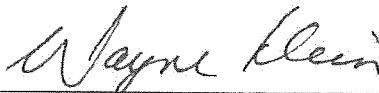
---

<sup>2</sup> The expenses for which reimbursement is requested are in addition to 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 Sixteenth through Nineteenth Reports of the Receiver.

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 20<sup>th</sup> day of December, 2013.

A handwritten signature in cursive script that reads "Wayne Klein".

---

WAYNE KLEIN, Receiver

**CERTIFICATE OF SERVICE**

I hereby certify that on this 30<sup>th</sup> day of December, 2013, 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  
13952-023  
FPC Duluth  
PO Box 1000  
Duluth, MN 55814  
*Defendant*

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



<b>EXHIBIT A - INVOICE SUMMARY</b>				
<b>Receiver/Klein &amp; Associates</b>				
<b>DATE:</b>	September 30, 2013			
<b>CLIENT:</b>	TRIGON RECEIVERSHIP			
<i>Summary of Services:</i>				
<b>Professional</b>	<b>Hours</b>	<b>Rate</b>	<b>Amount</b>	
Wayne Klein	42.80	250.00	10,700.00	
Wayne Klein	15.60	0.00	0.00	
Rendell Etherington	17.80	120.00	2,136.00	
Jill Howe	0.30	100.00	30.00	
Keith Williams	2.00	75.00	150.00	
<b>Total</b>	<b>78.50</b>		<b>13,016.00</b>	
<b>Total Fees Requested</b>			<b>13,016.00</b>	
<b>Expenses</b>			<b>200.79</b>	
<b>Total Fees and Expenses</b>			<b>13,216.79</b>	
<b>EXPENSES</b>				
<b>Recipient</b>	<b>Amount</b>	<b>Date</b>	<b>Category</b>	<b>Description</b>
Super 8 Motel	68.03	1/10/2013	Motel	Motel on trip to Boise settlement conf.
Hub Plaza	25.09	1/11/2013	Gas	Gas for rental car
Pilot Gas	31.52	1/11/2013	Gas	Gas for rental car
Maverik	29.44	1/12/2013	Gas	Gas for rental car
Fox Car Rental	46.71	1/12/2013	Car rental	Rental car for Capital One settlement conf.
<b>Total</b>	<b>200.79</b>			

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

October 1, 2012 - September 30, 2013

**Legal Fees**

<i>Employee</i>	<i>Position</i>	<i>Rate</i>	<i>Hours</i>	<i>Amount</i>
John Kurtz	Partner	270.00	10.3	2,781.00
Matthew Gordon	Associate	160.00	103.8	16,608.00
Daniel Mooney	Associate	145.00	5.3	797.50
Kathy Royster	Paralegal	140.00	0.4	56.00
Kyle Millard	Para Clerk	95.00	1.7	161.50
<b>Total</b>			<b>121.5</b>	<b>20,404.00</b>

<i>Case</i>	<b>Expenses</b>					<i>Total</i>
	<i>Copies, Printing, and Binding</i>	<i>Computer Research</i>	<i>Fees</i>	<i>Shipping</i>	<i>Travel</i>	
General	9.36	0.00	0.00	0.00	0.00	<b>9.36</b>
Dean Palmer	0.00	0.00	0.00	0.00	0.00	<b>0.00</b>
Doyle Beck	2.88	61.60	0.00	0.00	0.00	<b>64.48</b>
Steve Lawson	13.14	30.43	0.00	0.00	0.00	<b>43.57</b>
Mills	0.00	0.00	0.00	0.00	0.00	<b>0.00</b>
Capital One	0.00	774.31	175.25	37.66	0.00	<b>987.22</b>
<b>Total</b>						<b>1,104.63</b>

**GRAND TOTAL 21,508.63**

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-S-EJL

The Honorable Edward J. Lodge

**ORDER APPROVING RECEIVER'S  
APPLICATION FOR FEES AND  
EXPENSES**

The matter before the Court is the Receiver's Application Seeking Court Approval of Fees and Expenses (Application) filed by R. Wayne Klein, the Court-Appointed Receiver of Trigon Group, Inc. and the assets of Daren L. Palmer. The Court has reviewed the Application and the applicable law, and based thereon and for good cause shown,

IT IS HEREBY ORDERED that:

1. The Application is APPROVED.
2. The fees and expenses incurred by the Receiver and his professionals, as set forth in the Application, are reasonable and necessary, and may be paid as an expense of administering the receivership estate.
3. The Receiver is authorized to pay the Receiver and Klein & Associates, PLLC \$13,016.00 in fees for services rendered and \$200.79 as reimbursement of expenses paid on behalf of the Receivership Estate from October 1, 2012 to September 30, 2013.
4. The Receiver is authorized to pay Hawley Troxell \$20,404.00 in fees for services rendered for the benefit of the Receivership Estate and \$1,104.42 as reimbursement of

EXHIBIT     C

expenses paid on behalf of the receivership estate from October 1, 2012 through  
September 30, 2013.

# end of text