

for (a) himself, (b) his firm, Klein & Associates, PLLC, and (c) Hawley Troxell Ennis & Hawley LLP, for the period October 1, 2009 through March 31, 2010 (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” [Document No. 9 in Case No. 09-075] and orders appointing a receiver [Document No. 8 in Case No. 09-075 and Document No. 5 in Case No. 09-076].

3. The Receiver has filed five Status Reports with the Court for the periods ending March 31, 2009, June 30, 2009, October 31, 2009, December 31, 2009, and March 31, 2010. Those status reports describe the work performed by the Receiver and the progress made to date. Copies of these reports are also available on the Receiver’s website, www.kleinutah.com.

SERVICES PERFORMED

4. Pursuant to the orders appointing a Receiver, the Receiver, the Receiver’s professionals, and counsel for the Receiver have performed the following services during the Fee Application Period:

- a. **Lawsuits Filed:** The Receiver has filed 16 lawsuits since October 1, 2009. The litigation seeks several million dollars in recovery from financial partners of Palmer and Trigon, relatives of Palmer, recipients of funds from Trigon, overpaid investors, and Duane Yost. Additional lawsuits are planned.

- b. Real Estate: The Receiver has been identifying, managing, and selling real estate assets of the Receivership Estate.
- i. Properties Sold. Properties sold include a) the sale of the Idaho Falls warehouse owned by Palmer (which sale closed on February 1, 2010), b) an airplane hangar in California which had been paid for, in part, by Trigon, and c) reaching agreement to sell a timeshare in Hawaii owned by the Palmers. In addition, the Coeur d'Alene home under construction was transferred to Mauri Ventures in exchange for \$470,831.00 plus the release of liens on five other properties;
 - ii. Rental Properties. Two rental properties (containing eight rental units) have been repaired and are being rented. The properties are listed for sale. In the interim, they are providing positive cash flow for the Receivership;
 - iii. Mansion. The mansion in Idaho Falls is being actively marketed. For the mansion and the rental properties, the Receiver is paying expenses relating to all the properties (insurance, utility costs, property taxes, and security). The Receiver paid for security upgrades to the mansion to prevent any unauthorized entry or vandalism. The Receiver has also paid a \$5,000 insurance deductible for repairs to the electrical systems of the mansion which were damaged in vandalism last fall;
 - iv. Other Properties. The Receiver plans lawsuits and other measures to recover properties that should have been delivered to the Receiver, or recover payments for those properties.

- c. Asset Sales: The Receivership was paid \$22,018.05 in proceeds from the September auction of household goods and furniture.
- d. Settlement With Mauri Ventures: A substantial settlement was reached with Mauri Ventures that resulted in a recovery of \$470,831.00, the release of \$352,611 held in an escrow account, and the release of liens on five properties held by the estate.
- e. Settlement With Bank of Commerce: The Bank of Commerce has agreed to repay the Receiver \$2,072,082.19 it received from Trigon as payments on debts owed the bank by two Trigon investors. This amount will be paid in four installments before the end of 2010. The bank has provided significant assistance to the Receiver.
- f. Other New Settlement Agreements: During this period, the Receiver entered into eight additional settlements. Six of these settlements were with overpaid investors, the seventh with a recipient of a charitable contribution, and the eighth with an entity that facilitated investments by others. These settlements are expected to bring cash and properties valued at over \$350,000 to the Receivership by the end of 2010. In addition, claims valued at \$1,548,721 that could be asserted against the Receivership are being waived.
- g. Payments Under Prior Settlement Agreements. Funds continue to be received pursuant to settlements entered into previously including the Palmer's personal trainer, a Yost debtor, a commodities broker, and a tax refund paid to Yost.
- h. Additional Payments: The Receiver also recovered funds from the receiver of another Ponzi scheme into which Daren Palmer had invested, the proceeds of a

tax refund by Duane Yost, and the partial liquidation of a real estate investment made by Palmer.

- i. Contempt Order: The Receiver has tracked Mr. Palmer's obligations under the contempt order entered by the Court in October 2009. In the process, the Receiver recovered a portion of the funds Palmer was ordered to pay, reviewed progress reports by Palmer, measured his compliance with the order, and reported to the SEC and CFTC regarding compliance.
- j. Negotiations: The Receiver is engaged in negotiations with another party for the recovery of significant payments made by the Palmers. Payment demands have been made on a large number of other persons and entities. Some of these have progressed to the point of substantive settlement discussions. The Receiver expects that additional settlement agreements will be finalized in the near future.
- k. Analysis of Yost Financial Transactions: The Receiver completed an analysis of the bank accounts for five companies operated by Duane Yost, through which investor funds were forwarded to Trigon. The analysis has revealed the sources of some of the funds sent to Trigon and also allowed the Receiver to identify persons and entities that were the recipients of funds that might be recovered. Some of the lawsuits filed and settlements reached are with investors who were overpaid through their dealings with Yost.
- l. Assisting Government Agencies: The Receiver has continued providing information and assistance to government agencies conducting investigations into the activities of Trigon, Palmer, and others affiliated with them. Information has been gathered, analysis has been performed, and documents have been created for

those agencies. These agencies have included the SEC, CFTC, the Idaho Department of Finance, and others. These government agencies have all provided assistance to the Receiver, greatly facilitating the Receiver's work.

- m. Financial Activities of the Receivership: As described in detail in the reports to the Court, the Receiver has managed the financial affairs of the Receivership, including receipts of funds and paying expenses related to identifying, preserving, and managing assets of the Receivership.
- n. Business Operations: The Receiver has dealt with matters arising from the apartment rental business owned by the Palmers, including having the apartments prepared for rental, refunding tenant security deposits, and paying significant expenses.
- o. Communications With Investors: The Receiver has responded to inquiries by investors regarding the role of the Receiver, their individual circumstances, and what assistance they can provide to the Receiver and government investigators.
- p. Claims Process: In January, the Court approved the Receiver's proposed claims process. Claim forms were mailed to investors and other potential claimants. The claim submission deadline was February 28, 2010. A summary of the claims received and the results of the Receiver's initial review of those claims are contained in the Receiver's Fifth Report to the Court.

REQUEST FOR COURT APPROVAL OF FEES AND EXPENSES

5. The Order Appointing a Receiver in the SEC action [Document 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 [Document 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 April 12, 2010, 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 the CFTC have both advised the Receiver that they have no objections to the fee application.

Approval of Prior Applications for Fees and Expenses

10. On September 1, 2009, the Court approved payment of the Receiver's first application for fees and expenses. The order permitted the Receiver to pay \$339,080 in fees and \$11,107.68 in expenses. The Court approved payment of the Receiver's second application for fees and expenses on December 3, 2009. This order permitted payment of \$125,097.50 in fees and \$11,426.41 in expenses. On December 9, 2009, the Receiver withdrew \$217,500.00 from the Receivership bank account for full payment of the expenses and partial payment of fees. On February 26, 2010, the Receiver withdrew an additional \$175,500.00 from the Receivership bank account for payment of expenses and partial payment of outstanding fees. The Receiver withdrew the remaining \$93,711.59 of authorized fees and expenses from the Receivership bank account on April 6, 2010.

11. The Receiver's plan is to continue to limit the payment of his fees and expenses to 25% of the amount recovered by the Receiver, to ensure that the bulk of the funds recovered will be available for payment to investors.

Application Summary and Billing Methodology

12. 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, 2009 and March 31, 2010) in the amounts described below.

13. 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.

14. 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:

Name	Profession	Hourly Rate Billed
Earl S. Maeser	Attorney	\$120
Jill Howe	Analyst	\$120
Cidne Orchard	Analyst	\$120
P. Jake Hennessy	Analyst	\$120
Keith J. Williams	Analyst	\$75
Collin Snow	Analyst	\$75

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

Name	Position	Hourly Rate Billed
John F. Kurtz	Partner	\$270
Richard A. Riley	Partner	\$275
Jason D. Scott	Partner	\$225
Michelle Points	Partner	\$175

Matthew Gordon	Associate	\$140
Michelle Gustavson	Associate	\$140
Nick Taylor	Associate	\$160
Kathy Royster	Paralegal	\$125
Teri French	Paraprofessional	\$80

- 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

15. From October 1, 2009 through March 31, 2010, the Receiver, who himself is an attorney, has rendered 373.3 hours of administrative, investigative, and legal services to the Receivership Estate, for total fees of \$93,325.00.¹ 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, six employees of Klein & Associates, PLLC have assisted with the case, spending 341.1 billable hours assisting the Receiver. Additional time was spent that was not billed to the Receivership.² The Receiver seeks compensation of \$32,269.50 for this billable time – time billed at an average rate of \$94.60 per hour. The services rendered

¹ This does not include an additional 8.3 hours of time that were not billed, valued at \$2,075.00.

² Another 55.5 hours of work were performed by these employees, but not billed. This work is valued at \$4,311.00.

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

17. During this Reporting Period, seven attorneys and two paraprofessionals at Hawley Troxell have provided legal services on the case, spending 416.3 billable hours providing legal services for the Receiver and the Receivership Entities. Hawley Troxell seeks compensation of \$82,149.00 for this time.³ 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. Klein & Associates, PLLC has advanced expenses for the operation of the Receivership totaling \$663.14. Hawley Troxell has advanced expenses related to litigation in the amount of \$17,183.36. Total expense reimbursements being requested are \$17,846.50.⁴

Summary

19. Total fees and expenses requested (after adjustments) are as follows:

	<u>Fees</u>	<u>Expenses</u>	<u>Total</u>
a. Receiver and Klein & Associates	\$125,594.50	\$663.14	\$126,257.64
b. Hawley Troxell	<u>\$82,149.00</u>	<u>\$17,183.36</u>	<u>\$99,332.36</u>

³ This total does not include 24.7 hours of work valued at \$3,458.00 that is not being billed.

⁴ The expenses for which reimbursement is requested do not include \$58,754.98 in 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 Fourth and Fifth Reports of the Receiver (for the periods ending December 31, 2009 and March 31, 2010). The Receiver seeks the Court's ratification of those expenditures.

c. *Total* *\$207,743.50* *\$17,846.50* *\$226,690.00*

Proportional Reimbursement

20. As with the prior two fee applications, the Receiver has still not yet recovered sufficient funds to pay the full amount sought in this Application. The Receiver again requests that, as part of the Court's approval of this Application, the Court permit the Receiver to automatically pay himself and others assisting him up to 25% of future amounts recovered by the Receiver toward payment of the approved fees and expenses.

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 five 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 27th day of April, 2010.

By *R. Wayne Klein*
R. Wayne Klein, Receiver

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of April, 2010, I electronically filed the foregoing RECEIVER'S THIRD APPLICATION SEEKING COURT APPROVAL OF FEES AND EXPENSES with the Clerk of the Court using the CM/ECF system which sent a Notice of Electronic Filing to the following persons:

Karen L. Martinez
Thomas M. Melton
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Securities and Exchange Commission
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Salt Lake City, UT 84101
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himesm@sec.gov

Alison B. Wilson
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Counsel for Plaintiff Securities and Exchange Commission

Counsel for Plaintiff Commodity Futures Trading Commission

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Counsel to Defendant Daren L. Palmer

AND, I HEREBY CERTIFY that I have served the foregoing document to the following non-CM/ECF Registered Participants (list names and addresses):

Alan Conilogue
Deputy Attorney General
State of Idaho
PO Box 83720
Boise, ID 83720-0031

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- E-mail
- Telecopy

Local Counsel for Plaintiffs



John F. Kurtz, Jr.

EXHIBIT A - RECEIVER AND KLEIN & ASSOCIATES, PLLC

Legal Fees

<i>Employee</i>	<i>Position</i>	<i>Rate</i>	<i>Hours</i>	<i>Amount</i>
Wayne Klein	Receiver	250.00	373.3	93,325.00
Cidne Orchard	Analyst	120.00	40.5	4,860.00
Jill Howe	Analyst	120.00	92.4	11,088.00
Earl Maeser	Attorney	120.00	6.2	744.00
Jake Hennessy	Accountant	120.00	9.5	1,140.00
Keith Williams	Analyst	75.00	152.3	11,422.50
Collin Snow	Analyst	75.00	40.2	3,015.00
Total billed				125,594.50
<i>Value of non-billable hours</i>				<i>6,561.00</i>
Total value				132,155.50

Expenses

<i>Category</i>	<i>Amount</i>
Airfare	243.21
Copies	192.55
Shipping/postage	82.10
Contract analysis	44.80
Car rental, gas	100.48
Total	663.14
Total Fees and Expenses	126,257.64

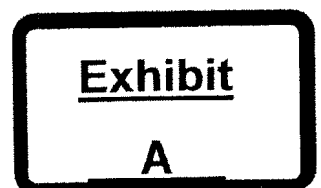


EXHIBIT B - HAWLEY TROXELL ENNIS & HAWLEY

Legal Fees

<i>Employee</i>	<i>Position</i>	<i>Rate</i>	<i>Hours</i>	<i>Amount</i>
John Kurtz	Partner	270.00	207.3	55,971.00
Richard Riley	Partner	275.00	0.3	82.50
Jason Scott	Partner	225.00	0.2	45.00
Michelle Gustavson	Partner	175.00	101.5	14,693.00
Nick Taylor	Associate	160.00	3.4	544.00
Matthew Gordon	Associate	140.00	99.5	13,930.00
Kathy Royster	Paralegal	125.00	0.3	37.50
Teri French	Paraprofessional	80.00	3.8	304.00
Subtotal			416.3	85,607.00
Reduction in fee				-3,458.00
Total				82,149.00

Expenses

<i>Category</i>	<i>Amount</i>
Copies	304.80
Computer research	10,428.82
Court filing fees	4,200.00
Service of process	2,087.00
Recording fees	45.00
Conference calls	113.74
PACER court fees	4.00
Total	17,183.36
GRAND TOTAL	99,332.36

