

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION**

CASE NO. 08-81565-CIV-HURLEY/HOPKINS

SECURITIES AND EXCHANGE COMMISSION,
Plaintiff,

v.

CREATIVE CAPITAL CONSORTIUM, LLC
A CREATIVE CAPITAL CONCEPTS, LLC
and GEORGE L. THEODULE
Defendants,

**GENOVESE JOBLOVE & BATTISTA, P.A.'s FIRST REQUEST FOR
INTERIM COMPENSATION TO PAY ATTORNEY'S FEES AND COSTS
AND MEMORANDUM IN SUPPORT
(December 24, 2008 – September 30, 2009)**

Jonathan E. Perlman, Esq., court appointed receiver (the "Receiver") of Creative Capital Consortium, LLC, A Creative Capital Concept\$, LLC, United Investment Club, LLC, Reverse Auto Loan, LLC, Wealth Builders Circle, LLC, The Dream Makers Capital Investment, LLC, G\$ Trade Financial, Inc. and Unity Entertainment Group, Inc, (collectively the "Receivership Entities"), through undersigned counsel and pursuant to the Court's Order Appointing Receiver dated December 29, 2008 (the "Receivership Order") hereby requests the Court to enter an order authorizing payment to Genovese, Joblove & Battista, P.A. ("GJB" or the "Firm") of (i) reasonable attorneys' fees and costs incurred by GJB; and (ii) the Receiver's fees, for the period December 24, 2008 through September 30, 2009, and in support of this application, states the following:

1. Attached as Exhibit "A" is a Summary of the Fees incurred by GJB in its representation of the Receiver, and the Receiver's fees, from December 24, 2008 through

CASE NO.: 08-81565-CIV-Hurley/Hopkins

September 30, 2009 (the "Application Period"). Costs are posted through September 30, 2009.

2. Attached as Exhibit "A-1" is a summary of all GJB timekeepers, including the Receiver, their billing rates and the total hours that were charged by each timekeeper. Exhibit "A-2" is a summary of each timekeeper broken down by category.¹ All time has been billed at the reduced agreed upon rate as reflected in the Receiver's letter agreement with the SEC attached as Exhibit 1 to the SEC's Motion for Appointment of Receiver. [DE 2] Partners other than David Cimo are billed at \$350/hour, representing a 10% reduction from their normal hourly rate. Mr. Cimo is billed at a current hourly rate of \$450. All non-partner timekeepers are billed at 10% below their regular hourly billing rate. Although GJB partners Michael Joblove, John Genovese and Mark Feluren have contributed several hours in legal fees, all of their time has been written off by GJB and contributed *pro bono* to the receivership. In addition, after consultation with the SEC, GJB has provided the receivership with a twenty-five percent (25%) discount off the total invoice. The total savings to the receivership reflected in these negotiated and voluntary discounts is \$466,692.50.²

3. Attached as Exhibit "B" is the summary of costs. Total costs for which GJB seeks reimbursement are \$63,786.29.

4. The services rendered in each major category can be summarized as follows:

¹ In certain instances, time billed to one category appropriately could have been billed to one or more of several different categories.

² GJB maintains detailed time records that are kept contemporaneously with the services performed. GJB will provide these detailed time records to the Court for review *in camera* should the Court wish to review them. The negotiated discount amounts to \$171,992.00 together with the voluntary discount of \$294,700.50 for a total of \$466,692.50.

CASE NO.: 08-81565-CIV-Hurley/Hopkins

I. Genovese Joblove & Battista Lawyers and Para-professionals

a. Asset Analysis and Recovery. \$413,156.00. Time included in this category reflects the efforts of GJB professionals to identify and locate assets for the benefit of the Receivership Estate. GJB professionals interviewed former employees of the Receivership Entities, friends and relatives of Theodule, including Dorothy Delisfort-Theodule, his wife, and Yvette Williams, his sister, former counsel for Creative Capital, Gabrielle Alexis, Esq., and the former accountant for Creative Capital, Carmen Romero-Tejada, and began the identification, review and analysis of pertinent documents and law to understand the extent of the assets of the Receivership Entities, the extent and nature of the interest of various parties to the funds and/or assets held or controlled by the Receivership Entities, directly or indirectly.

The Receiver discovered that most of the assets belonging to the Receivership Estate had been fraudulently transferred to Theodule, his close friends and his relatives. GJB professionals spent a substantial amount of time obtaining information to locate any hard assets belonging to the Receivership Estate. Consequently, GJB professionals issued demand letters for immediate turnover of Receivership Estate assets and filed motions before the Court as necessary to secure these valuable assets. In addition, time was spent on legal research and discovery in connection with the Receiver's Second Verified Motion to Expand Receivership as well as in discovery regarding the Dolce Regency Suites transaction eventually determined to have involved \$11 million of investor funds.

b. Asset Disposition: \$26,047.50. GJB has worked on issues relating to the efficient disposition of assets obtained by the Receiver on behalf of the Receivership Estate including a car collection, a residential property in Jupiter, Florida turned over by Theodule and

CASE NO.: 08-81565-CIV-Hurley/Hopkins

a condominium unit in Tamarac, Florida turned over by Theodule's sister. GJB interviewed auctioneers and retained the services of Moecker Auctions to sell the furniture, fixtures and equipment located at the Lake Worth offices of the Receivership Entities. The proceeds of the auction have been deposited into the Receivership account.

In addition, the Receiver took possession of eight vehicles belonging to the Receivership Estate, five of which were located in Jupiter, Florida and three in Snellville, Georgia. At the Receiver's direction, all of the vehicles were delivered to a Fort Lauderdale based car dealer that specializes in servicing, preparing, and selling collector cars such as the vehicles belonging to the Receivership Estate. To date, six cars have been sold for approximately \$100,000.00. The net proceeds of the sales have been deposited into the Receivership account.

In May, the Receiver took title to a residential condominium located in Tamarac, Florida. The Receiver was successful in securing a buyer for the property. This Court approved the contract for sale and purchase and the closing took place on September 1, 2009. The property sold for \$82,000.00 and the net proceeds of the sale have been deposited into the Receivership account.

In June, the Receiver took title to residential property in Jupiter, Florida. The Receiver retained the services of a local real estate agent and secured a buyer for the property. This Court has entered an order approving the contract for sale and purchase of the property in the amount of \$245,000.00. The net proceeds of the sale have been deposited into the Receivership account.

In November, the Receiver took title to residential property in Las Vegas, Nevada. The Receiver has retained the services of a local real estate agent and secured a buyer for the property. This Court has entered an order approving the contract for sale and purchase of the

CASE NO.: 08-81565-CIV-Hurley/Hopkins

property in the amount of \$220,000.00. The net proceeds of the sale will be deposited into the Receivership account on or about March 19, 2010.

c. Business Operations. \$2,178.00. The Receiver has determined that Creative Capital Consortium, LLC along with its affiliates, subsidiaries and related companies, had no legitimate business purpose, therefore, little time has been spent on this category. GJB timekeepers have been assisting the Receiver in handling such matters as opening and routing the mail and updating and revising information related to corporate status with the Florida and Georgia Division of Corporations.

d. Case Administration. \$67,238.50. Time billed to this category includes the efforts associated with the administration of the Receivership including the initial logistics of setting up the Receivership, leasing, staffing, general database issues, and case management staff meetings. In addition, this category includes work more generally related to the carrying out of the Receiver's responsibilities with the assistance of his counsel including preparation of receiver reports.

e. Fee/Employment Applications (Professionals). \$9,069.50. GJB professionals prepared retention applications and proposed orders for Receivership professionals. Time in this category includes the initial review of GJB time in preparation of this interim application.

f. Investor Communications. \$8,880.50. It was critical to set up a process to provide information to investors as quickly as possible. Accordingly, GJB timekeepers handle or supervise the handling of "hot lines" in English, Spanish, and Creole and answering hundreds of messages in English, Spanish and Creole. The Receiver also established for the benefit of the

CASE NO.: 08-81565-CIV-Hurley/Hopkins

investors a Receivership website at www.creativecapitalreceivership.com which contains relevant information and pleadings which are updated regularly. Investors and other interested parties may contact the Receiver using the e-mail link on the website. GJB is building an investor database by maintaining an Investor Contact Sheet.

g. Takeover and Logistics. \$74,380.50. As described more fully in the Receiver's First Report, GJB timekeepers and other personnel assisted in securing the three Creative Capital locations in Lake Worth, Florida. The takeover required a significant amount of time – the seizure took place over three days - and personnel to ensure that all records were seized contemporaneously and to avoid the compromise of assets and records, and computer records. In addition, GJB timekeepers contacted and met with former employees and agents of Creative Capital and other Receivership Entities to secure additional records, over 40 boxes of company documents not seized at the main office. The time charged to this category includes the costs associated with the initial set up of the Receivership website, critical for investor communications and for receiving tips for further investigation.

h. General Litigation. \$104,670.00. To the extent possible, GJB has divided litigation efforts into specific categories as illustrated below. However, some litigation efforts relate to all litigation including set up for discovery responses, which time is generally included here.

i. Litigation Third Party. \$155,205.00. The Receiver has filed twenty-six (26) proactive lawsuits seeking to recover over \$25 million in fraudulent transfers for the benefit of Creative Capital's investors and creditors. In particular, the following lawsuits initiated by the Receiver are currently pending against non-insiders:

CASE NO.: 08-81565-CIV-Hurley/Hopkins

1. **Receiver v. Captin Construction Group, Inc.**, Case #09-80190-Civ-Hurley/Hopkins (action to recover fraudulent conveyances of at least \$350,000.00 to pay for Theodule's purchase of two homes in Georgia);
2. **Receiver v. G&R Aviation Services et al.**, Case #09-81089-Civ-Cohn/Seltzer (action to seek to recover fraudulent conveyances to Sky King Air Express, Inc. of \$200,000.00 and G&R Aviation Services of at least \$380,000.00);
3. **Receiver v. Patrick Eliacin**, Case #09-81087-Civ-Hurley/Hopkins (action to recover fraudulent conveyances of at least \$300,000.00);
4. **Receiver v. Ridahs Productions LLC**, Case #09-81086-Civ-Hurley/Hopkins (action to recover fraudulent conveyances of at least \$300,000.00);
5. **Receiver v. Rony Desvarenes**, Case #09-81090-Civ-Marra/Johnson (action to recover fraudulent conveyances of at least \$200,000.00);
6. **Receiver v. Jean Dupre**, Case #09-22327-Civ-Cooke/Bandstra (action to recover fraudulent conveyances of at least \$200,000.00);
7. **Receiver v. Lakay Investment Inc.**, Case #09-22326-Civ-King/Bandstra (action to recover fraudulent conveyances of at least \$780,000.00);
8. **Receiver v. Millenium Executive Realty, Inc. et al.**, Case #09-81221-Civ-Marra/Johnson (action to recover advanced commissions paid by Creative Capital of at least \$500,000.00);
9. **Receiver v. Dean Mead Egerton Bloodworth Capuano & Bozarth, P.A.**, Case #09-81222-Civ-Hurley (action to recover fraudulent conveyances to the law firm of Dean Mead Egerton Bloodworth Capuano & Bozarth, P.A. of at least \$300,000.00);
10. **Receiver v. Showcase Investment Group, Inc.**, Case #09-81223-Civ-Ryskamp/Vitunac (action to recover consulting fees of at least \$100,000.00);
11. **Receiver v. Dolce Regency Suites, LLC**, Case #09-81224-Civ-Zlock/Rosenbaum (action to recover fraudulent conveyances made by Creative Capital of at least \$7,000,000.00 for the purchase of member interests in Dolce Regency Suites, LLC);
12. **Receiver v. Five Corners Investors I, LLC et al.**, Case #09-81225-Civ-Hurley (action to recover fraudulent conveyances made by Creative Capital to

CASE NO.: 08-81565-CIV-Hurley/Hopkins

the equity owners of Regency Suites, I, of at least \$7,000,000.00 to pay for the outstanding financial obligations of Regency Suites and to avoid the purchase money promissory note executed by Dolce Regency on behalf of the Defendants in amount of \$7,754,759.40);

13. **Receiver v. Development Funding & Services, LLC et al.**, Case #09-81226-Civ-Zlock/Rosenbaum (action to recover consulting fees of at least \$197,000.00);

Each of these actions has required the Receiver's professionals to engage in the various activities involved in pursuing federal civil actions, ranging from discovery and the taking of depositions, to motion practice and trial preparation. In particular, during this application period, the Receiver and his counsel spent substantial time researching, preparing and filing various complaints against several parties involved in the purchase of the membership interest in Dolce Regency Suites, LLC, an entity that received several million dollars in investor funds.

j. **Litigation Insiders.** \$128,871.00. Timekeepers at GJB have assisted the Receiver in litigation focused primarily on fraudulent transfers to the Theodule insiders including his wife and close relatives. A considerable amount of time has been spent on formulating settlement provisions that will fully protect the interests of the Creative Capital investors. In certain instances, time billed to this category has been appropriately billed to a particular matter, however, often times it was difficult to divide the time between the various insider matters as the work may have been related to multiple matters, in which case time was appropriately billed to this general category.

1. **Receiver v. Gabrielle Alexis, Esq. et al.**, Case #09-20865-Civ-Hurley/Hopkins (action against Creative Capital's former attorney to recover for damages as counsel to Creative Capital and to recover fraudulent conveyances in excess of \$6,000,000.00);

CASE NO.: 08-81565-CIV-Hurley/Hopkins

2. **Receiver v. v. Yolette Williams et al.** Case #09-20864-Civ-Hurley/Hopkins (action against Theodule's sister to recover fraudulent conveyances of at least \$413,100.00 and for compensatory, punitive and special damages in excess of \$60 million as a result of Defendant's aiding and abetting Theodule in the conversion of Creative Capital's property);
3. **Receiver v. Mario Theodule, et al. ,** Case #09-80477-Civ-Hurley/Hopkins (action against Theodule's brother to recover fraudulent conveyances of at least **\$386,000.00** and for compensatory, punitive and special damages of over \$60 million as a result of Defendant's aiding and abetting Defendant Theodule in the conversion of Creative Capital's property);.
4. **Receiver v. Dorothy Delisfort-Theodule et. al.,** Case #09-80480-Civ-Hurley/Hopkins(action against Theodule's wife and her companies to recover fraudulent conveyances of least \$1.7 million and seeking compensatory, punitive and special damages of over \$60 million as a result of Defendant's aiding and abetting Theodule in the conversion of Creative Capital's property);
5. **Receiver v. Michel Beaubrun et al. ,**Case #09-81091-Civ-Zloch/Rosenbaun (action to recover fraudulent conveyances of at least \$860,000.00 and seeking compensatory, punitive and special damages of over \$60 million as a result of Defendant's aiding and abetting Theodule in the conversion of Creative Capital's property);
6. **Receiver v. Georgette Delisfort,** Case #09-81088-Civ-Ryskamp/Vitunac (action against Theodule's mother-in-law to recover fraudulent conveyances of at least \$8,000.00 and for compensatory, punitive and special damages of over \$60 million as a result of Defendant's aiding and abetting Theodule in the conversion of Creative Capital's property);
7. **Receiver v. Paulette Theodule,** Case #09-81085-Civ Ryskamp/Vitunac (action against Theodule's mother to recover fraudulent conveyances of at least \$490,000.00 and for compensatory, punitive and special damages of over \$60 million as a result of Defendant's aiding and abetting Theodule in the conversion of Creative Capital's property);
8. **Receiver v. Kathryn Parker at al.,** Case #09-80191-Civ-Hurley/Hopkins (action against former employee to recover fraudulent

CASE NO.: 08-81565-CIV-Hurley/Hopkins

conveyances of at least \$231,000.00 to pay for personal expenses and to her company);

9. **Receiver v. Krissy McKeon**, Case #09-80192-Civ-Hurley/Hopkins (action against former employee to recover fraudulent conveyances in excess of \$300,000.00);
10. **Receiver v. Evens Theodule**, Case #09-80474-Civ-Hurley/Hopkins (action against Theodule's relative to recover fraudulent conveyances of at least \$50,000.00);
11. **Receiver v. Yves Theodule et al.**, Case #09-80478-Civ-Hurley/Hopkins (action against Theodule's brother to recover fraudulent conveyances of at least \$344,000.00);
12. **Receiver v. George Julius Theodule**, Case #09-80479-Civ-Hurley/Hopkins (action against Theodule's son to recover fraudulent conveyances of at least \$101,000.00);
13. **Receiver v. Gerson Corominas, et al.**, case #09-22325-Civ/Hurley (action against Theodule's close friends and their companies to recover fraudulent conveyances of at least \$260,000.00 and seeking compensatory, punitive and special damages of over \$60 million as a result of Defendants' aiding and abetting Theodule in the conversion of Creative Capital's property);

k. **Litigation SEC.** \$58,715.50. All time associated directly to the pending SEC litigation is included in this category including review and modification of the freeze order, review of pleadings, preparation of receiver reports, production of documents and responses to other discovery requests, attendance at depositions and hearings and assistance with the SEC's filing of its Motion for Summary Judgment.

II. Receiver

The Receiver is responsible for administering the Receivership Entities pursuant to the Order Appointing Receiver and overseeing the work of the professionals and staff working on

CASE NO.: 08-81565-CIV-Hurley/Hopkins

the Receivership. The Receiver has spent considerable time reviewing documents, corresponding, e-mailing and communicating with various entities, lawyers, bankers and employees as well as managing and overseeing asset analysis and recovery efforts. Since his appointment, the Receiver has worked extensively on litigation issues, including meeting and communicating with lawyers. In addition, the Receiver has participated extensively in litigation decisions, meetings and conferences regarding strategy and case administration as well as case management decisions. The Receiver has also worked diligently with the SEC in its litigation efforts, including the preparation of the affidavit in support of the SEC's Motion for Summary Judgment.

The Receiver is requesting \$130,390.00 for his hours.

5. For the application period, GJB seeks reimbursement for 3851.70 hours of attorney time, including the Receiver, and 632.20 hours of para professional time. The total amount of fees sought during the application period is \$884,101.50. Total expenses sought by GJB for the application period is \$63,786.29. No prior applications for compensation have been filed and no compensation has been paid to GJB.

6. In consideration of the Receivership Estate's current cash position, the undersigned recommends and consents to a holdback of seventy-four percent (74%) of the total invoices outstanding, without prejudice to request at a later date the remaining amount due. Accordingly, GJB seeks authorization to be paid \$226,213.71 for its fees and that of the Receiver and reimbursement of \$63,786.29 in costs.

7. The undersigned has closely reviewed the invoices and believes the information was accurately recorded and necessary. Moreover, I am responsible for supervising all of the

CASE NO.: 08-81565-CIV-Hurley/Hopkins

attorneys in my firm on the case. Further, I have carefully reviewed the exhibits attached hereto. I certify that the hours expended and the costs incurred were necessary and reasonable to represent the Receiver during the Application Period.

8. The Securities and Exchange Commission has reviewed this Application, as well as the underlying time and billing records, and consents to the payment requested herein.

III. Receivership Funds

As of December 31, 2009, the Receiver had collected \$773,800.52.³

MEMORANDUM OF LAW

When determining the award of attorneys' fees, the Court should give consideration to the factors for compensation that the 11th Circuit articulated in *In re Norman v. Housing Authority of City of Montgomery*, 836 F.2d 1292 (11th Cir. 1988) - (1) the time and labor properly employed by the attorneys in processing the case; (2) the quality of services rendered; (3) the scope of the activity and conspiracy under attack; (4) the financial risk involved; (5) the magnitude, complexity and novelty of the issues involved; (6) the beneficial results obtained; and (6) the degree to which, if any, effort were supported by prior governmental action. GJB respectfully suggests that its application meets all the criteria for this interim request for compensation. The Receiver, with the assistance of GJB, has secured assets and aggressively and successfully, instituted and pursued litigation to recover Receivership Estate assets while communicating regularly with all parties in interest, especially investors. The Receiver has done so at great financial risk given the cashless condition of the estate when appointed.

³ This amount includes the anticipated proceeds from the sale of the Las Vegas property which is scheduled to close on or about March 19, 2010.

CASE NO.: 08-81565-CIV-Hurley/Hopkins

WHEREFORE, GENOVESE JOBLOVE & BATTISTA, by and through the undersigned counsel, respectfully requests that this Court enter an order authorizing the payment of \$226,213.71 in fees and reimbursement of \$63,786.29 in costs for a total payment of \$290,000.00 for the Application Period. A proposed form of order is attached.

Dated: February 18, 2010
Miami, Florida

Respectfully submitted,

By: s/Jonathan E. Perlman .
Jonathan E. Perlman
Receiver

-and-

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CASE NO.: 08-81565-CIV-Hurley/Hopkins

CERTIFICATE OF SERVICE

I hereby certify that on February 18, 2010, the foregoing document is being served on all counsel of record and entities identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

s/David C. Cimo
David C. Cimo

CASE NO.: 08-81565-CIV-Hurley/Hopkins

SERVICE LIST

**Securities and Exchange Commission v. Creative Capital Consortium, LLC et. al.
CASE NO.: 08-CIV-81565-HURLEY/HOPKINS**

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