

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

Case No. 8:20-CV-325-T-35AEP

BRIAN DAVISON;
BARRY M. RYBICKI;
EQUIALT LLC;
EQUIALT FUND, LLC;
EQUIALT FUND II, LLC;
EQUIALT FUND III, LLC;
EA SIP, LLC;

Defendants, and

128 E. DAVIS BLVD, LLC, et al.,

Relief Defendants.

**RECEIVER’S UNOPPOSED MOTION TO APPROVE RETENTION OF
EXPERT WITNESS PHILIP FEIGIN**

Burton W. Wiand, as receiver (the “Receiver”) over the assets of the above-captioned Corporate Defendants and Relief Defendants,¹ moves the

¹ The (“**Receivership**” or “**Receivership Estate**”) has been expanded to include the Corporate and Relief Defendants and also the following entities: EquiAlt Qualified Opportunity Zone Fund, LP; EquiAlt QOZ Fund GP, LLC; EquiAlt Secured Income Portfolio REIT, Inc.; EquiAlt Holdings LLC; EquiAlt Property Management LLC; and EquiAlt Capital Advisors, LLC. *See* Doc. 184, at 6–7. *See also*, Doc. 284.

Court to approve the retention of Philip Feigin as an expert witness in the cases styled *Wiand v. Adamek, et al.*, Case No. 8:21-cv-360 (M.D. Fla.) (the “**Adamek Case**”) and *Wiand v. Family Tree Financial Planning, LLC et al.*, Case No. 8:21-cv-00361 (M.D. Fla.) (the “**Family Tree Case**” and, collectively with the Adamek Case, the “**Clawback Cases**”). The Receiver has notified (Doc. 269), this Court of his filing the Clawback Cases. *See also*, Docs. 258 and 330. The Clawback Cases involve claims against more than 150 defendants and damages in excess of \$20 million. *See* Docs. 269 at 2; and 563 at 23–25.

BACKGROUND

At the request of the Securities and Exchange Commission (“**SEC**”), the Court appointed the Receiver on February 14, 2020 and directed him, in relevant part, to “[t]ake immediate possession of all property, assets and estates of every kind of the Corporate Defendants and Relief Defendants,” which includes all “rights of action . . . and to administer such assets as is required in order to comply with the directions contained in this Order.” Doc. 11 (the “**Order**”) at 2–3, ¶ 1. The Order also directs the Receiver to “institute such actions and legal proceedings . . . as the Receiver deems necessary” *Id.* at 3, ¶ 2.

The Order specifically authorizes the retention of certain professionals to assist the Receiver in meeting his duties. *See id.* at 3–4, ¶ 3. The Order also authorizes the Receiver “to solicit persons and entities (“Retained Personnel”)

to assist him in carrying out the duties and responsibilities described in this Order. Except as otherwise provided herein, the Receiver shall not engage any Retained Personnel without first obtaining an Order of the Court authorizing such engagement.” Doc. 11 at 10, ¶ 31. Therefore, the Receiver seeks the Court’s approval to retain Mr. Feigin as an expert witness in the Clawback Cases.

Philip A. Feigin

Mr. Feigin is an attorney specializing in securities law since 1979. Mr. Feigin’s curriculum vitae is attached as **Exhibit 1**. Since 2000, Mr. Feigin has “served as an expert in dozens of criminal, civil enforcement, private civil and arbitration cases, dealing with a wide variety of issues involving state and federal securities and commodities laws and regulations.” Ex. 1 at 1. The Receiver anticipates that Mr. Feigin will testify about the following areas:

1. whether the fixed rate debentures and shares of a real estate investment trust offered and sold by the Defendants under the circumstances described in the various related complaints were, at a minimum, “notes,” “debentures,” “investment contracts,” with regard to the real estate investment trust involved in the cases, “stock” or, in general, “any interest or instrument commonly known as a “security” as those terms are defined in the Securities Act of 1933 and the Securities and Exchange Act of 1934;

2. the requirement for the registration of securities under the '33 Act and the exemptions from the requirement provided in '33 Act § 4(a) or SEC Regulation D;
3. the requirement for registration/licensing of “brokers” under the '34 Act and “agents” (or similar terms) under related state securities laws and any exemptions therefrom;
4. whether an investment adviser or an investment adviser representative of an investment adviser may offer or sell securities under their registration/licensing in those capacities;
5. the subject of “finders;”
6. the anti-fraud provisions of the '33 and '34 Acts and Rule 10b-5, and in particular, the meaning of the term “material facts” as used therein;
7. whether particular facts are considered material;
8. whether *scienter* is required to establish a violation of such provisions;
9. the duties of persons selling securities to investors; and
10. such other and further subjects that may arise within the scope of Mr. Feigin’s expertise.

Mr. Feigin’s rate for these services is \$650 per hour.

MEMORANDUM OF LAW

The Court's power to supervise an equity receivership and to determine the appropriate actions to be taken in the administration of the receivership is extremely broad. *S.E.C. v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992); *S.E.C. v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986). The Court's wide discretion derives from the inherent powers of an equity court to fashion relief. *Elliott*, 953 F.2d at 1566; *S.E.C. v. Safety Finance Service, Inc.*, 674 F.2d 368, 372 (5th Cir. 1982). A court imposing a receivership assumes custody and control of all assets and property of the receivership, and it has broad equitable authority to issue all orders necessary for the proper administration of the receivership estate. *See S.E.C. v. Credit Bancorp Ltd.*, 290 F.3d 80, 82-83 (2d Cir. 2002); *S.E.C. v. Wencke*, 622 F.2d 1363, 1370 (9th Cir. 1980). The court may enter such orders as may be appropriate and necessary for a receiver to fulfill his duty to preserve and maintain the property and funds within the receivership estate. *See, e.g., Official Comm. Of Unsecured Creditors of Worldcom, Inc. v. S.E.C.*, 467 F.3d 73, 81 (2d Cir. 2006). Any action taken by a district court in the exercise of its discretion is subject to great deference by appellate courts. *See United States v. Branch Coal*, 390 F.2d 7, 10 (3d Cir. 1969). Such discretion is especially important considering that one of the ultimate purposes of a receiver's appointment is to provide a method of gathering, preserving, and ultimately liquidating assets to return funds to creditors. *See S.E.C. v. Safety Fin. Serv., Inc.*, 674 F.2d 368, 372 (5th Cir. 1982) (court overseeing equity

receivership enjoys “wide discretionary power” related to its “concern for orderly administration”) (citations omitted).

As noted above, the Order authorizes the Receiver to retain professionals to assist him in carrying out his mandate, but requires the Receiver to seek the Court’s approval of that retention. The Receiver thus seeks the Court’s approval of his retention of Mr. Feigin to provide the above-described services. As demonstrated by Exhibit 1, Mr. Feigin has extensive expertise in his field and has substantial experience testifying as an expert witness in similar matters. Because of the size and complexity of the Clawback Cases, the Receiver seeks Mr. Feigin’s assistance to accomplish his mandate as set forth in the Order.

LOCAL RULE 3.01(G) CERTIFICATION

Counsel for the Receiver has conferred with counsel for the SEC and is authorized to represent to the Court that the SEC does not object to the relief sought.

Respectfully submitted,

s/R. Max McKinley

R. Max McKinley, FBN 119556

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Attorneys for the Receiver Burton W. Wiand

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 12, 2022, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

s/R. Max McKinley

R. Max McKinley, FBN 119556

EXHIBIT 1

PHILIP A. FEIGIN

PFeiginLaw LLC
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pfeiginlaw@outlook.com

April 2022

I have practiced law since December 1977. Beginning in April 1979, I have focused my practice on securities law, with experience as both a regulator and an attorney in the private sector. My practice is focused on federal and state securities law, regulation, compliance and enforcement actions, involving investment advisers, private hedge funds, real estate syndicators, broker-dealers and other issuers as well as investors in dealing with securities-related matters. I have also served as counsel to U.S. and non-U.S. precious metals dealers on federal and state compliance and enforcement issues.

Expert Witness Experience

During my 20 year career in securities regulation and while representing clients in private practice for over 22 years now, I have served as an expert witness in a multitude of matters. While a state securities regulator, I served as an expert for prosecutors in Colorado, New Mexico and Nevada in dozens of criminal cases brought under state securities and commodities law. From 2000 to the present, I have served as an expert in dozens of criminal, civil enforcement, private civil and arbitration cases, dealing with a wide variety of issues involving state and federal securities and commodities laws and regulations. Included among the matters on which I have consulted and testified are:

- all aspects of federal and state law securities fraud, commodities-related fraud, so-called “Ponzi” schemes and a wide range of other investment frauds;
- the identification of securities (particularly “investment contracts” and “notes”);
- the materiality of facts;
- broker-dealer and investment adviser regulation, responsibilities and abuses;
- a securities lawyer’s standard of care and fiduciary duty;
- securities markets in general;
- customer and client suitability;
- day trading;
- insider trading;
- the unenforceability of unregistered broker agreements; and
- private placement offerings, federal Regulation D and other federal and state securities registration exemptions generally.

I have consulted with and testified on behalf of state securities administrators, state attorneys general, the Securities and Exchange Commission, U.S. Attorneys, counsel for brokerage firms, investment advisers and agents, plaintiff’s and claimant’s counsel, federal and state prosecutors, and civil and criminal defense counsel. I have appeared in criminal, civil, and administrative cases, in trials, arbitrations, depositions and mediations. I have been retained for

cases in many jurisdictions, including Alabama, Arizona, California, Colorado, Florida, Georgia, Nevada, New Jersey, North Carolina, Oklahoma and Washington State. I have consulted as an expert on many more cases than those that proceeded as far as providing testimony (matters resolved before they got that far), but, since 2000, I have provided testimony, declarations and affidavits in criminal trials, private civil and regulatory enforcement court proceedings and trials, administrative enforcement proceedings, before FINRA (NASD) arbitrations and in mediations. In my regulatory and private practice career, I have also testified before numerous committees and subcommittees of the U.S. Senate and House of Representatives, as well as the legislatures of Colorado, Nevada, Washington State and Massachusetts on investor protection and regulatory issues.

Practice Experience

I established my own part-time law practice, PFeiginLaw LLC, in early 2018, after retiring as a senior partner at Lewis Roca Rothgerber Christie LLP, practicing in the firm's Denver, Colorado and Tucson, Arizona offices for 18 years.

Before turning to private practice in 2000, I had a long career as a state securities regulator in Wisconsin, Colorado and Washington, D.C. I served in Washington, D.C. as Executive Director of the North American Securities Administrators Association ("NASAA")* from 1998 to 1999. During my 14 months as NASAA's Executive Director, I participated in the association's successful efforts to preserve state functional regulation of bank securities activities in the Gramm-Leach-Bliley Act. I was also a central figure in drawing national attention to abuses and concerns relating to day trading, on-line brokerage activities, overly aggressive advertising by brokerage firms and Internet-based investment fraud.

Prior to becoming NASAA's Executive Director, I served as Colorado's Securities Commissioner for 10 years, where I championed the reshaping of Colorado securities and investment regulation. I spearheaded the drafting and enactment of the Colorado Securities Act (1990), the Colorado Commodity Code, the Colorado Municipal Bond Supervision Act, Colorado local government investment pool trust fund regulation, and provisions under which Colorado's investment advisers and investment adviser representatives are regulated. I was also actively involved in the drafting of the Uniform Securities Act (2002).

While Commissioner in Colorado, I had the honor of serving as NASAA President in 1994-1995, and otherwise as a member of the NASAA Board of Directors for seven years. I testified on behalf of NASAA on numerous occasions before committees of both the U.S. House of Representatives and the Senate as well as various committees of the Colorado General Assembly and other state legislatures on securities, banking, commodities regulation and investor protection issues. I chaired the multi-state "Lloyd's of London" task force leading to a settlement of more than \$60 million for American investors. I also served on NASAA's Task Force on the Future of Shared State and Federal Securities Regulation. I was appointed a member of two advisory committees to the federal Commodity Futures Trading Commission. Until assuming my duties in Washington in 1998, I also served as a founding trustee on the Board of the Investor Protection Trust. I was a principal authority in the creation and adoption of the Model State Commodity Code designed to prohibit off-exchange commodities fraud. In

October 1995, I was awarded NASAA's highest award, the "Blue Sky Cube," in recognition of my successful presidency, years of service and work in the cause of investor protection.

Before being named Colorado Securities Commissioner in 1988, I served as the Assistant Colorado Securities Commissioner from 1982 to 1988, and before that, as the Chief Attorney of the Enforcement Division of the Office of the Wisconsin Commissioner of Securities. I began my legal career in Madison, Wisconsin in private practice from 1977 to 1979. I received a Juris Doctor degree from Pepperdine University School of Law in 1977 and a Bachelor of Arts degree in American History from the University of Wisconsin-Madison in 1971. I am admitted to practice in California, Wisconsin, Colorado and Arizona (inactive in California and Wisconsin).

During my career, I have been quoted and cited as an expert in securities and commodities law and investor and consumer protection issues, in both national and local television, radio and print media. Before my retirement, I appeared frequently as a speaker, panelist and lecturer. I also served as an adjunct professor teaching real estate securities, syndication and entrepreneurship at the Burns School of Real Estate Management and Construction, Daniels College of Business, University of Denver. I have served since 2015 as a Professor of the Practice (adjunct professor) of securities law at the James E. Rogers College of Law, University of Arizona in Tucson, contributed material to the West treatise, **Blue Sky Law** and co-authored **Real Estate Securities** with Prof. Mark Levine.

I am a member of the American Bar Association's State and Federal Regulation of Securities Committees. I have authored numerous articles, including "The Model State Commodity Code in 2012 and New CFTC Jurisdiction—Whither the States? Can "new dogs" learn "old tricks?" Banking & Financial Services Policy Report (Feb. 2012 edition); "The Model State Commodity Code in 2011, Whither the States? Can "new dogs" learn "old tricks?" and "Dodd-Frank, Suitability and Fiduciary Duty," and "The Uniform Securities Act of 2002,"[©] for the Blue Sky Bugle (American Bar Association Committee on State Regulation of Securities, Section of Business Law); and for RJ&L publications—co-authored two Colorado Adviser Advisories with Nina G. Ward; "Do We Really Have to Do This? Some Observations on Dealing with the Sarbanes-Oxley Act," and "Truth or Consequences: The Sarbanes-Oxley Act of 2002". Most recently, I served as an independent hearing officer for the New Jersey Bureau of Securities considering promulgation of a rule to impose a fiduciary duty on broker-dealers and agents, and my report was submitted in August 2019.

*NASAA, the voice of the 67 state and provincial securities agencies of the 50 states, the District of Columbia, Puerto Rico, the provinces and territories of Canada, and the Republic of Mexico, is the oldest international organization devoted to investor protection.

**EXPERT TESTIMONY,
DECLARATIONS, AFFIDAVITS
AND OTHER STATEMENTS OF RECORD**

(January 2003—present)

FEDERAL COURTS

U.S. v. Bank, et al., United States District Court for the Eastern District of Virginia, Norfolk Division, Criminal No. 2:17cr126 (trial testimony anticipated in November 2020—expert witness for the U.S. Attorney—securities markets in general, identification of membership interests in limited liability companies as “investment contract” securities and “notes” as securities, securities and transactional securities registration exemptions, securities fraud and “materiality” under the Securities Act of 1933, as amended)

U.S. v. Spanier, United States District Court for the Southern District of California, Case No. 12CR918-BEN (expert witness for the U.S. Attorney—retrial testimony on November 16, 2016) (operation of U.S. securities markets and loans secured by shares of stock)

U.S. v. Spanier, United States District Court for the Southern District of California, Case No. 12CR918-BEN (expert witness for the U.S. Attorney—trial testimony on December 13, 2013) (operation of U.S. securities markets and loans secured by shares of stock)

U.S. v. Forehand, United States District Court for the Middle District of Alabama, Southern Division, Case No. 1:12cr181 MHT (expert witness for U.S. Attorney and Alabama Securities Commission—trial testimony, week of April 8, 2013) (notes as securities under federal securities laws, Ponzi schemes)

Gross and Pepper v. Silverberg, United States District Court for the Southern District of Florida, Case No. 11-80210-CIV-DMM (expert witness for Plaintiffs—trial testimony, November 10, 2011) (state securities law—promissory notes as securities and materiality of facts)—(change of venue from United States District Court for the District of Colorado, Case No. 1:10-cv-00687-REB-BNB)

Sun River Energy, Inc. v. Nelson, United States District Court for the District of Colorado, Civil Action No. 11-CV-00198-MSK-MEH (expert witness for Plaintiff—Declaration pursuant to 28 U.S.C. § 1746 in Support of Plaintiff’s Motion for Preliminary Injunction, May 20, 2011) (state and federal securities law—unregistered, unlicensed broker-dealer, illegal contract and insider trading)

CFTC v. 20/20 Trading Company, Inc., United States District Court for the Central District of California, Southern Division, Case No. SACV11-00643 (FMOx) 0643 (expert witness for Defendants—Declaration pursuant to 28 U.S.C. § 1746 in Opposition to Plaintiff’s Motion for Preliminary Injunction, May 13, 2011) (Commodity Exchange Act—regulation of sale of precious metals, leverage contract fraud)

Gross and Pepper v. Silverberg, United States District Court for the District of Colorado, Case No. 1:10-cv-00687-REB-BNB (expert witness for Plaintiffs—deposition December 9, 2010) (state securities law—notes as securities)

U.S. v. Schmidt, United States District Court for the District of Colorado, Criminal Case No. 04-CR-103-RB (expert witness for U.S. Attorney—trial testimony April 2007) (federal securities law—“prime bank” securities fraud)

Tong v. Direct Trading Corp., U.S. District Court, Northern District of Texas, Fort Worth Division, Case No. 4:03-CV-1234-Y (expert witness for Plaintiff—deposition March 2005) (federal and state securities law—broker-dealer and agent regulation)

STATE COURTS

People v. Thacker, District Court, County of Eagle, Colorado, Case No. 19CR78, Division 3, testimony scheduled for June 2021 (expert witness for Defendant—“prime bank” fraud)

Rome v. Weiss, District Court for the City and County of Denver, Colorado, Case No. 2014CV30773, July 29, 2015 (expert witness for Plaintiff Securities Commissioner—civil injunctive trial testimony) (securities registration exemptions, fraud)

Bonsall v. Fahrendorf, Superior Court of the State of Arizona in and for the County of Maricopa, Case No. CV2010-053879, May 13, 2014 (expert witness for Defendant Ryley Carlock & Applewhite—deposition testimony) (liability of law firm for private placement disclosures by bank holding company)

Joseph v. HEI Resources, Inc., District Court of the City and County of Denver, Colorado, Case No. 2009CV7181, July 23, 2013 (expert witness for Plaintiff—trial testimony) (identification of securities, broker-dealers, sale representatives)

Joseph v. HEI Resources, Inc., District Court of the City and County of Denver, Colorado, Case No. 2009CV7181, June 13, 2013 (expert witness for Plaintiff—deposition testimony) (identification of securities, broker-dealers, sale representatives)

Woolbert v. McNamara, District Court of the City and County of Denver, Colorado, Case No. 2011CV346, May 2, 2012 (expert witness for Plaintiffs—trial testimony) (identification of securities, sellers, broker-dealers, sales representatives, control persons and materiality)

CapitalValue M&A, LLC v. K2D, Inc., Case Number. 2011 CV 609 (expert witness of Plaintiffs) (Affidavit in Opposition to Defendants’ Motion for Summary Judgment, March 2012) (federal and state securities law—unlicensed broker-dealer, illegal contract)

Woolbert v. McNamara, District Court of the City and County of Denver, Colorado, Case No. 2011CV346, December 9, 2011 (expert witness for Plaintiffs—Affidavit in Support of Motion for Summary Judgment) (identification of securities, sellers, broker-dealers, sales representatives, control persons and materiality)

CMKM Diamonds, Inc. v. Casavant, Eighth Judicial District Court for the State of Nevada, Clark County, Case No. A540161, Dept. No. XIII (expert witness for Defendants D. Roger Glenn and Edwards Angell Palmer Dodge—trial testimony, August 2011) (federal and state securities law, attorney malpractice—attorney negligence in connection with penny stock fraud and Rule 144 letters)

Alabama v. Harris, Jefferson County Case No. CC-04-2050 (expert witness for State of Alabama—trial testimony February 2011) (state securities law—investment contract securities, definition of investment advisers and investment adviser fraud)

Joseph v. Polocz, In the District Court for the City and County of Denver, Case No. 2010CV1583 (expert witness for Plaintiff—deposed December 17, 2010) (state securities law—investment contract securities and exempt securities transactions)

Joseph v. Financial Services Investors #4, LLC, In the District Court for the City and County of Denver, Case No. 09CV0939 (expert witness for Plaintiff—trial testimony October 27, 2010) (state securities law—broker-dealer regulation and civil liability)

MMH54 LLC v. Revenue Cycle Partners LLC, Montana Thirteenth Judicial District Court, Yellowstone County, Cause No. DV-09-0334 (expert witness for Defendant—expert disclosures May 7, 2010) (state securities law—unlicensed broker-dealer, illegal contract)

Joseph v. Financial Services Investors #4, LLC, In the District Court for the City and County of Denver, Case No. 09CV0939 (expert witness for Plaintiff—deposed December 21, 2009) (state securities law—broker-dealer regulation and civil liability)

Joseph v. Life Partners, In the District Court for the City and County of Denver, Case No. 2007 CV 5218 (expert witness for Plaintiff—deposed November 2008) (state securities law—life settlement/viatical contracts as investment contract securities)

Cohen v. Merrill Lynch, In the Superior Court of Arizona, Maricopa County, No. CV2003-011120 (expert witness for Defendants—deposition December 2005) (state securities law—broker-dealer regulation and civil liability)

Alabama v. Harris, Montgomery County Case No. CC-04-501, Jefferson County Case No. CC-04-2050 (expert witness for State of Alabama—trial testimony January 2005) (state securities law—investment contract securities)

People v. Chipperfield, In the District Court for Douglas County, Colorado (rebuttal expert witness for the State of Colorado—trial testimony June 2004) (state securities law—materiality, securities fraud)

Bendahan v. Wade Cook, Washington Superior Court, King County Case No. 01-2-09754-7SEA (expert witness for Plaintiff—trial testimony 2003) (state securities law—securities fraud)

ADMINISTRATIVE PROCEEDINGS

Report of Philip A. Feigin, Hearing Officer, Public Hearing On Proposed N.J.A.C. 13:47a-6.4, August 12, 2019 (hearing officer in New Jersey Securities Bureau rule proceeding)

In the Matter of Fidelity Brokerage Services LLC, Commonwealth of Massachusetts, Office of the Secretary of State of the Commonwealth, Securities Division, Docket No. E-2015-0078 (expert witness for Respondent broker-dealer charged with allowing unregistered investment advisers to manage client accounts, constituting dishonest and unethical conduct—affidavit in support of Respondent’s motion to dismiss)

In the Matter of Intervest International Inc., State of Colorado, Department of Labor and Employment, Division of Employment and Training, Case No. 5460-2012 (expert testimony for Respondent Intervest, an SEC registered investment adviser at hearing to appeal Liability Determination that the firm’s investment adviser representatives were employees and not independent contractors under Colorado law—October 1, 2012) (federal and state investment adviser law and FINRA regulations—supervisory requirements imposed by law on investment advisers)

In the Matter of Mieka Corporation, et al., Before the Securities Commissioner, State of Colorado, Case No. XY 11-CD-11 (expert testimony for Staff of Colorado Securities Division at hearing before Panel of Colorado Securities Board on Order to Show Cause—March 17, 2011) (state securities law—joint venture interests as investment contract securities, materiality, securities fraud)

ARBITRATIONS

One additional FINRA arbitration involving Allegis Investment Advisors, LLC in Utah (claim against broker-dealer affiliate for conduct of affiliated SEC registered investment adviser)

Anderson v. Allegis Investment Advisors, LLC, Case No. 01-16-0005-0320, Salt Lake City, UT (expert witness for respondent in 2017 AAA arbitration wherein claimants asserted claims against federal covered investment adviser under Utah securities statute and common law)

Hansen v. Allegis Investment Services, LLC, Case No. 17-00135, Boise, ID and Salt Lake City, UT (expert witness for respondents in 2017 FINRA arbitration wherein claimants asserted claims against broker-dealer and representative liability under federal and Idaho securities statutes, FINRA rules and common law for acts of affiliated federal covered investment adviser in options trading)

Petersen v. Allianz, Minneapolis, MN (expert witness for claimant in 2015 FINRA arbitration on claimant registered representative’s claim respondent broker-dealer wrongfully harmed claimant with wrongful termination and improper reporting of her termination on Form U5)

Anderson v. Fintegra, Case No. 13-01265, Phoenix, AZ (expert witness for respondents Fintegra and Galinsky in 2016 FINRA arbitration in which claimants alleged sale of unregistered securities, sales by unlicensed agent, securities fraud and common law claims in private equity acquisition of founders shares in anticipation of liquidity event that never materialized)

Schott v. Shareholders Services Group, Inc., Case No. 13-02525, Denver, CO (expert witness for claimant in FINRA arbitration in 2016 in which claimant alleged defendant introducing broker improperly honored two forged requests for transfers of cash from her account)

PH Pharmaceuticals, Inc. v. Dunn, Case No. 02CV110, Arapahoe County, CO (expert witness in arbitration in March 2012 on coverage to pay award won by minority shareholders with insurance carrier of company against whom judgment obtained—question was whether company was a “subsidiary” under securities law, and whether there had been a “sale” of securities)

Comet Enterprises, LLC v. Merrill Lynch, Case No. 04-04080, Denver CO (expert witness for Respondents—hearing testimony December 2005-January 2006) (federal and state securities law—broker-dealer regulation and civil liability, “prime bank” securities fraud)

Cornett v. Pensco Pension Services, Inc., Charlotte, NC (expert witness for Claimant—hearing testimony May 6-8, 2003) (state securities law—broker-dealer regulation and civil liability)

Moedes v. Merrill Lynch, Denver CO (expert witness for Claimants—hearing testimony March 2003) (state securities law—broker-dealer regulation and civil liability)

PUBLICATIONS

(January 2000—through present)

Report of the Independent Hearing Officer in Public Hearing on Proposed N.J.A.C. 13:47A-6.4, proposed amendments and new rule under which broker-dealers and agents licensed in New Jersey would owe a fiduciary duty to their customers, August 12, 2019

*Suitability” and “Failure to Supervise” Have No Place in FINRA Arbitrations, **The Blue Sky Bugle**, a publication of the American Bar Association Committee on State Regulation of Securities, Section of Business Law, March 2018*

Real Estate Securities, with Bar Association Committee on State Regulation of Securities, Section of Business Law, September Prof. Mark Levine, Denver University, available on Amazon, September 2014

*State Regulation of Broker-Dealers, Agents, Investment Advisers and Investment Adviser Representatives, Contributing Author, **Blue Sky Law**, Joseph C. Long, West Publishing, Spring 2014*

wallstreetmainstreetlaw.com, a blog sponsored by Rothgerber Johnson & Lyons LLP, Denver, Colorado:

THE “ACCREDITED INVESTOR” QUESTION, August 2014

ABOUT “NEITHER ADMITTING NOR DENYING” July 11, 2013

WHY ALL THE ANGST ABOUT PUBLIC SOLICITATION? June 18, 2013

HAPPY BIRTHDAY, CHARLIE! January 2013

SOMETIMES THE REGULATED OBEY MORE WHILE THE REGULATORS COULD CARE LESS, November 2012

LOOKING BACK (in three parts), August 2012

BACHUS BUNKUM, August 7, 2012

“SO WHAT WAS I SUPPOSED TO DO?” July 2012

INVESTMENT ADVISER SRO (in four parts) June 2012

THE JOBS ACT, Is it Really Securities Regulation that Hurts Small Business? (in five parts), May 2012

Prime Bank Fraud, The Scam that Will Not Die, Rothgerber Johnson & Lyons LLP, Denver, Colorado, April 2012

The Model State Commodity Code in 2011 and New CFTC Jurisdiction—Whither the States? Can “new dogs” learn “old tricks”? **Banking and Financial Services Policy Report**, February 2012

The Model State Commodity Code in 2011, Whither the States? Can “new dogs” learn “old tricks”? **The Blue Sky Bugle**, a publication of the American Bar Association Committee on State Regulation of Securities, Section of Business Law, September 2011

“Dodd-Frank, Suitability and Fiduciary Duty,” **The Blue Sky Bugle**, a publication of the American Bar Association Committee on State Regulation of Securities, Section of Business Law, August 2010

“Investment Adviser Advisories,” Rothgerber Johnson & Lyons LLP, August 2010, All Rights Reserved

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“Do We Really Have to Do This? Some Observations on Dealing with the Sarbanes-Oxley Act,”© Rothgerber Johnson & Lyons LLP, 2006, All Rights Reserved

“The Uniform Securities Act of 2002,”© Rothgerber Johnson & Lyons LLP, 2003, All Rights reserved. Originally published in **The Blue Sky Bugle**, a publication of the American Bar Association Committee on State Regulation of Securities, Section of Business Law, July 2003.

“Truth or Consequences: The Sarbanes-Oxley Act of 2002,”© 2002, Rothgerber Johnson & Lyons LLP. All Rights Reserved.

Prior to 2000

I served as the Executive Director of the North American Securities Administrators Association, Inc. (“NASAA”), Washington, D.C. from October 1998 through December 1999. As Executive Director, I authored many documents that became public on behalf of NASAA. These documents represented the views and perspectives of NASAA and not necessarily my personal views. I served as Colorado’s Securities Commissioner from March 1988 through November 1998, as Colorado’s Assistant Securities Commissioner from November 1982-March 1988, and as Chief Attorney of the Enforcement Division of the Wisconsin Commissioner of Securities from April 1979 to October 1982. In those official capacities, I was either the principal draftsman or participated in the drafting of much legislation and many rules, authored dozens, if not hundreds, of other documents that became matters of public record, including pleadings, press releases, a multitude of interpretive letters, state legislative and Congressional testimony, guest commentaries, educational materials, blue ribbon papers and more.