

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

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

Case No: 8:20-cv-00325-MSS-NHA

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

Defendants,

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

Relief Defendants.

RECEIVER'S RESPONSE TO COURT'S ORDER (DOC. 1384)

Burton W. Wiand, as receiver over the assets of the above-captioned corporate and relief defendants (the “**Receiver**”), hereby provides this response to the Court’s order (Doc. 1384), dated November 17, 2025, which requests additional information regarding two vendors included in the Receiver’s Twenty-Third Quarterly Fee Application for Order Awarding Fees and Reimbursement of Costs to the Receiver and His Professionals (Doc. 1379) (the “**Fee Application**”). Specifically, the Court asked the Receiver to “assist the Court by identifying the docket entry at which the District Court approved the Receiver’s retention of (1) Levun Goodman & Cohen, LLP and (2) Raines

Feldman Littrell, LLP.” Doc. 1384 (citing Doc. 11 (the “**Appointing Order**”) ¶¶ 3, 5). The answer to the Court’s question is that there is no Docket Entry as it is the Receiver’s belief and interpretation of the Appointing Order that prior approval of the use of these professionals was not required as they are not in the Receiver’s understanding of “Retained Professionals” but rather are vendors providing services to the Receiver on discreet and limited matters and are not retained by the Receivership to provide ongoing representation during the course of the Receivership. *See, e.g.* Receiver’s Eleventh Quarterly Status Report, Doc. 706 at 15-16 (identifying professionals used for limited engagements for ongoing business operations of the Receivership).

With respect to both of the professionals identified by the Court, Levun Goodman & Cohen, LLP (“Levun Firm”) was retained by PDR CPAs (“PDR”) to assist that firm’s ongoing services to the Receiver and Raines Feldman Littrell, LLP (“Raines”) (specifically attorney Kathy Phelps) previously acted as local counsel for Johnson Pope Bokor Ruppel and Burns in the Receiver’s action against law firms in California that resulted in a \$44 million dollar settlement in favor of the Receivership. Ms. Phelps was asked to assist in registering six clawback judgments in California for the Receiver’s Counsel and was not retained to provide ongoing services to the Receivership. Both law firms noted by the Court have completed their tasks and the Receiver does not anticipate that they will provide future services. Each was eminently qualified and their

fees were reasonable and appropriate.

Levun Goodman & Cohen, LLP

In the summer of this year, William Price, the founder of PDR, advised the Receiver that there was a concern that the Receivership might be required to provide 1099s to the over 1600 investors who were receiving distributions from the Receivership given the extraordinary feat that the Receiver has distributed more than 100% of approved claim amounts. This possibility created the potential of a logistical nightmare for the Receivership as well as significant expense. Mr. Price believed that there might be justification for not providing the forms, but he thought that research and perhaps a private letter ruling should be sought from the IRS for assurance. He suggested that he would seek out research on the question and advise the Receiver based on his findings.

PDR is part of BDO Alliance USA, which gives the firm access to BDO Alliance's resources (12,000 accountants alone). Mr. Price advised the Receiver that he would seek assistance with the 1099 issue through this association, which resulted in Mr. Price being connected to the Levun Firm. PDR retained Scott Miller of the Levun Firm to help PDR provide guidance to the Receiver on the 1099 issue.

Through interaction with Mr. Miller and his own research, Mr. Price learned that there were several private letter rulings on the 1099 issue. While these rulings were not binding, they supported the conclusion that the IRS

would not require the issuance of 1099s in this instance. While the research suggested that the Receivership would be successful if itsought a private letter ruling, the Receiver was advised that the IRS might not respond to a request for a private letter ruling for nine months, well past the date any 1099s would have to be issued. The Receiver also learned, through Mr. Miller, the IRS would require an unexpected fee of over \$40,000 for a private letter ruling. Additionally, the Levun Firm advised the Receiver that the IRS might not respond to a request for a private letter ruling for nine months, well past the date any 1099s would have to be issued.

In light of the favorable research and similar rulings, the anticipated expense, and the timing issue, the Receiver and Mr. Price determined that it would not be in the Receivership's best interest to proceed with efforts to obtain a private letter ruling and that the Receivership was not required to issue 1099s. The matter was concluded. The Levun Firm initially billed PDR \$1,212.50 for its services, which PDR paid as an expense and added to its invoice to the Receiver. The Levun Firm sent its final invoice directly to the Receiver, which is the subject of the Court's question. Neither the Receiver nor any of his attorneys had any contact with Mr Miller or the Levun Firm. The Receiver does not anticipate that the Receivership will utilize the Levun Firm's services in the future (absent another collaboration through PDR and the BDO alliance). The Receiver, of course, obtained Court approval to retain PDR, but did not seek

prior approval for PDR's retention of Mr. Miller or the Levun Firm. (Docs. 76 and 85). The total charged by the Levun Firm for its services was \$6,790, of which \$1,212.50 was billed to PDR and \$5,577.50 was billed directly to the Receiver.

Raines Feld Littrell, LLP (Kathy Phelps, Esq.)

In June 2020, the Receiver retained Johnson Pope Bokor Ruppel & Burns ("**Johnson Pope**") pursuant to a contingency fee agreement to assert claims against DLA Piper and Fox Rothchild, two international law firms. The Court approved this retention and fee agreement on July 1, 2020. *See* Doc. 127. Johnson Pope retained Raines to serve as its local counsel in California. The action brought against these law firms was settled and approved by the Court on May 15, 2023. (Doc. 917). After the settlement, Johnson Pope's fee agreement was again approved by the Court. Doc. 1130. Fees for Ms Phelps' services were paid by Johnson Pope. Ms. Phelps is a nationally recognized authority on receiverships and receivership-related litigation. She is currently the President of the National Association of Federal Equity Receivers and is the author of one of the most respected treatises on Receivership law and litigation.

Almost a year after the Receiver resolved the case against the large law firms, the Receiver needed to register six judgments against clawback defendants in California. In November of 2024, counsel for the Receiver reached

out to Ms. Phelps and asked if she would assist the Receiver in registering the judgments in California. She did so and billed the Receivership approximately \$350 per hour for her and her partner's services as opposed to their standard billable rates of almost \$800. This was a discrete task that was not complex and was completed once the judgments were registered. It did not involve significant expenses nor assets of the Receivership. The total bill from Ms. Phelps' firm, Raines Feldman Littrell, LLP, was \$2,927.

PROCEDURES FOR THE RETENTION AND PAYMENT OF PROFESSIONALS AND VENDORS BY THE RECEIVER

The Appointing Order relating to the Receiver's authority to operate the Receivership spells out his authority and procedures to be followed by the Receiver. Pursuant to these provisions, the Receiver is authorized to solicit persons including attorneys, professionals, vendors and others to assist with the tasks of the Receivership. The procedures for using and compensating these persons are contained in various paragraphs of the Court's Appointing Order.

(Doc. 11) The significant procedures are listed below:

Paragraph 3 provides, in relevant part:

The Receiver is specifically authorized to **retain** for the purposes of the receivership, forensic accountants (Yip and Associates), information technology consultants and counsel specializing in information technology research (Adam Sharp, E-Hounds, Inc. and Robert Stines of Freeborn & Peters LLP), RWJ Group, LLC, and investigators, and counsel in Phoenix, Arizona to assist in the service of the Order and securing of records and assets. The Receiver shall

advise and seek the consent of the Court with respect to the institution of claims relating to vendors, professionals, investors, or financial institutions, or other litigation of a complex and significant nature that may involve commitment of significant assets or the incurrence of significant costs or expenses to the receivership.

Doc. 11 at 3-4, ¶ 3 (emphasis added).

In Paragraph 5, the Receiver was specifically authorized, empowered, and directed by the Court to:

[**Appoint** one or more special agents, employ legal counsel, actuaries, accountants, clerks, consultants and assistants as the Receiver deems necessary and to fix and pay their reasonable compensation and reasonable expenses, as well as all reasonable expenses of taking possession of the assets and business of the Corporate Defendants and Relief Defendants and exercising the power granted by this Order, subject to prior approval by this Court;

Id. at 4, ¶ 5 (emphasis added).

The Appointing Order further authorizes the Receiver to “[e]ngage persons in the Receiver’s discretion to assist the Receiver in carrying out the Receiver’s duties and responsibilities, including, but not limited to, the United States Marshal’s Service, accountants, or a private security firm.”

Id. at 4, ¶ 6 (emphasis added).

Paragraph 10 of the Appointing Order provides:

Subject to Paragraphs 31 - 37 immediately below, the Receiver **need not obtain Court approval prior to the disbursement of Receivership Funds for expenses in the ordinary course of the administration and operation of the receivership.** Further, prior Court approval is not required for payments of applicable federal, state or local taxes;

Id. at 10, ¶ 30 (emphasis added).

Subject to Paragraph 32 immediately below, the Receiver is authorized 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;

Id. at 10, ¶ 31 (emphasis added).

The Receiver has generally reconciled these authorizations and requirements as follows: a given matter falls within the “the ordinary course of the administration and operation of the receivership” if it is not “complex” or “significant” or does not “involve commitment of significant assets or the incurrence of significant costs or expenses to the receivership.” Under such circumstances, the Receiver may use his “discretion” to solicit and or engage vendors without Court approval. If, on the other hand, the matter in question is (1) significant or complex, (2) could involve the incurrence of significant costs or expenses, or (3) will assist the Receiver on a continuing basis, the Receiver must seek (and has sought) the Court’s approval to retain vendors (as noted in paragraph 3 of the Appointing Order) to assist him in fulfilling his mandate.¹

¹ Specifically, the Receiver sought and obtained the Court’s approval of following: PDR CPAs (Doc. 76, 85); Johnson, Pope, Bokor, Ruppel & Burns LLP (Doc. 121, 127); Johnson, Cassidy, Newlon & DeCort (Doc. 278, 282); Coldwell Banker Realty and Coldwell Banker Commercial NRT (Doc. 295, 299); Omni Agent Solutions (Doc. 335, 347); Philip Feigin (Doc. 593, 645); and Jared J. Perez (Doc. 610, 639). All of these firms or professionals provided substantial, ongoing services to the Receiver and retention involved significant matters regarding material matters to the Receivership and substantial expense.

Where a professional or vendor's activities relate to routine or discrete limited matters that do not involve a significant commitment of Receivership funds or assets, the Receiver has not sought Court approval prior to engaging such a firm.

With respect to the two items referenced by the Court, the Receiver did not seek prior Court approval for the Receiver's accountants to engage counsel through that firm's affiliated network for guidance regarding a discrete taxation issue. The total expenditure was immaterial to the Receivership and seeking prior approval of this expense as opposed to Court approval of the payment of the expense would have been a waste of Court and Receivership time and could have caused detrimental delay. The requested payment to Ms. Phelp's law firm involved a discrete, routine matter and pre-approval for her firm's efforts would also have wasted both Receivership and Court resources.

Conclusion

In summary, the Receiver believes that he has properly interpreted the various provisions in the Appointing Order and accurately distinguished between ordinary Receivership expenses and the retention of professionals or other firms for significant services. As in the past, the Receiver has kept the Court apprised through status reports or fees motions of these third-parties used for Receivership operations or limited discreet projects. *See, e.g.*, Receiver's Eleventh Quarterly Status Report, Doc. 706 at 15-16 (identifying professionals used for limited engagements for ongoing business operations of the

Receivership). The Receiver respectfully requests that the Court approve the reasonable fees presented for Levun Goodman and Cohen and Raines Feldman Littrell.

Respectfully submitted,

/s/ Katherine C. Donlon

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 24, 2025, I electronically filed a true and correct copy of the foregoing with the Clerk of the Court through the CM/ECF system, which served counsel of record.

/s/ Katherine C. Donlon