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UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

U.S. COMMODITY FUTURES  
TRADING COMMISSION,

Plaintiff(s)

Case No: 09-cv-3332 MJD/FLN

v.

TREVOR COOK d/b/a CROWN  
FOREX, LLC, PATRICK KILEY d/b/a  
CROWN FOREX, LLC, UNIVERSAL  
BROKERAGE FX and UNIVERSAL  
BROKERAGE FX DIVERSIFIED, OXFORD  
GLOBAL PARTNERS, LLC, OXFORD  
GLOBAL ADVISORS, LLC, UNIVERAL  
BROKERAGE FX ADVISORS, LLC f/k/a  
UBS DIVERSIFIED FX ADVISORS, LLC,  
UNIVERSAL BROKERAGE FX  
GROWTH, L.P. f/k/a UBS DIVERSIFIED FX  
GROWTH L.P., UNIVERSAL BROKERAGE  
FX MANAGEMENT, LLC f/k/a UBS  
DIVERSIFIED FX MANAGEMENT, LLC  
and UBS DIVERSIFIED GROWTH, LLC,

Defendant(s)

R.J. ZAYED,

Receiver.

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UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

UNITED STATES SECURITIES  
AND EXCHANGE COMMISSION,

Case No: 09-cv-3333 MJD/FLN

Plaintiff(s)

v.

TREVOR G. COOK,  
PATRICK J. KILEY,  
UBS DIVERSIFIED GROWTH, LLC,  
UNIVERSAL BROKERAGE FX  
MANAGEMENT, LLC,  
OXFORD GLOBAL ADVISORS, LLC,  
and OXFORD GLOBAL PARTNERS, LLC,

Defendants

and

BASEL GROUP, LLC,  
CROWN FOREX, LLC,  
MARKET SHOT, LLC,  
PFG COIN AND BULLION,  
OXFORD DEVELOPERS, S.A.,  
OXFORD FX GROWTH, L.P.,  
OXFORD GLOBAL MANAGED  
FUTURES FUND, L.P., UBS DIVERSIFIED  
FX ADVISORS, LLC, UBS DIVERSIFIED  
FX GROWTH, L.P., UBS DIVERSIFIED  
FX MANAGEMENT, LLC, CLIFFORD  
BERG, and ELLEN BERG,

Relief Defendants.

R.J. ZAYED,

Receiver.

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**JOINT STATUS REPORT RELATED TO RECEIVER'S PETITION FOR RETURN OF RECEIVERSHIP ASSETS FROM INVESTOR RESPONDENTS**

The parties/counsel identified below conferred on November 4 and 5, 2010 and prepared the following report.

The status conference in this matter is scheduled for November 12, 2010, at 10:00 a.m. before the United States Magistrate Judge Noel in Suite 9W, United States Courthouse, 300 South 4th Street, Minneapolis, Minnesota. Adam S. Huhta, counsel for Respondent Dot Anderson, may need to appear by telephone given a pre-existing motion hearing set at 9:00 a.m in *Nilan Johnson Lewis PA v. David Lopez, M.D., et al*, Court File No. 27-CV-10-17120, Hennepin County District Court. The other parties do not request that the status conference be held by telephone.

**A. Description of Case and Case Status**

**(1) Concise Factual Summary of Receiver's Petition**

In furtherance of his duty as the Court-appointed Receiver in this action, R.J. Zayed brought a Petition seeking:

- (i) to avoid the monetary transfers to the Respondents because they were fraudulent transfers under Minn. Stat. §513.41, *et seq.*; or in the alternative
- (ii) to recover the full amount of money transferred to Respondents because Respondents were unjustly enriched under the common law of Minnesota.

**(2) Concise Factual Summary of Respondents' Claims/Defenses**

- (A) Respondents David Buisse, Steven and Pamela Cheney, Walter Defiel, Terry Frahm, Steven and Jenene Fredell, Michael and Jennifer Heise, Michael and Cynthia Hillesheim, Larry Hopfenspirger, Steven Kautzman, James McIntosh, George and Karen Morrisset, and Reynold Sundstrom.**

Respondents David Buisse, Steven and Pamela Cheney, Walter Defiel, Terry Frahm, Steven and Jenene Fredell, Michael and Jennifer Heise, Michael and Cynthia Hillesheim, Larry Hopfenspirger, Steven Kautzman, James McIntosh, George and Karen Morrisset, and Reynold Sundstrom (the "Respondent Group") have moved to dismiss the Petition for lack of subject matter and personal jurisdiction and for failure to state a claim upon which relief can be granted. If the Receiver has claims against the Respondent

Group based on the facts alleged in the Petition, the Receiver is required to assert those claims in a plenary proceeding – i.e., a normal District Court action under Article III of the Constitution. This motion has been fully briefed, and the hearing is scheduled for December 2, 2010 in front of Chief Judge Michael Davis, Courtroom 14E, United States Courthouse, 300 South 4th Street, Minneapolis, Minnesota. Assuming the Receiver ultimately brings such an action, or the Court denies the Motion to Dismiss, the Receiver’s claims against the Respondent Group should be dismissed because: (i) the Respondent Group received the return of its own investment monies from the Trevor Cook entities well in advance of the SEC, CFTC and the DOJ commencing proceedings against Trevor Cook; therefore, no fraudulent transfer occurred and (ii) the Respondent Group simply received back their own investment funds; therefore, the Respondent Group was not unjustly enriched. More specifically, the evidence will show that the Respondent Group received the return of their investment funds in “good faith” because (i) the Respondent Group had no knowledge of Trevor Cook’s fraudulent scheme and (ii) Trevor Cook and his entities were actively concealing the fraud for their own benefit. The Respondent Group believes that evidence obtained in discovery from the individuals involved with the Trevor Cook entities will demonstrate that the Receiver cannot establish any material facts to support its claims.

**(B) Respondent Dot Anderson.**

Respondent Dot Anderson has moved to dismiss for failure to state a claim upon which relief can be granted (including that Count I of the Petition fails to plead the elements of the fraudulent transfer with particularity as required by Fed. R. Civ. P. 9(b) which prevents Mrs. Anderson from adequately defending against the claim) and for lack of standing. This motion has been partially briefed and is currently scheduled to be heard on February 11, 2010 in front of Chief Judge Michael Davis, United States Court House, District of Minnesota, Devitt Courtroom, 316 North Robert Street, 100 Federal Building, St. Paul, MN 55101.

The Receiver will be filing a request to have the hearing on Mrs. Anderson’s motion to dismiss rescheduled to December 2, 2010. Counsel for Mrs. Anderson has stated that he is unavailable that day.

**(C) Respondent William Harris.**

Respondent William Harris has specifically denied the receipt of any fraudulent transfer and denied any claim he was unjustly enriched, and raised the affirmative defenses of failure to state a claim upon which relief can be granted; lack of standing; receipt of the transfer in good faith and in exchange for reasonably equivalent value; under Minn. Stat. § 513.48(d), a right to a lien on or a right to retain any interest in the asset transferred, enforcement of all obligations incurred by the Receivership Entities, and/or a reduction in the amount of the liability on any judgment entered against him in

this case; unclean hands and the doctrine of in pari delicto; and waiver, estoppel, and/or release.

### (3) Statement of Jurisdiction

The Receiver contends that this Court has original subject matter jurisdiction over this matter under Section 22(a) of the Securities Act (15 U.S.C. § 77v(a)), Section 27 of the Exchange Act (15 U.S.C. § 78aa), Section 6d of the Commodity Exchange Act (7 U.S.C. § 13a-2(2)), Chapter 49 of Title 28, Judiciary and Judicial Procedure (28 U.S.C. § 754), Chapter 113 of Title 28, Judiciary and Judicial Procedure (28 U.S.C. § 1692), supplemental jurisdiction over claims arising under state law pursuant to Chapter 85 of Title 28, Judiciary and Judicial Procedure (28 U.S.C. § 1367(a)). Further, the Receiver contends that as the Court that appointed the Receiver, this Court has jurisdiction over any claim brought by the Receiver in furtherance of his Receivership powers and duties, including Summary Proceedings pursuant to the Court's July 20, 2010 Order.

Further, the Receiver contends that this Court has personal jurisdiction over Respondents and *in rem* jurisdiction over property in their possession because the Receiver filed the original Complaint and Order Appointing the Receiver in all United States District Court pursuant to 28 U.S.C. §§ 754 and 1692 within ten days of his appointment.

The Respondents contend that this Court does not have personal and subject matter jurisdiction over them or their property *in this summary proceeding arising wholly within the Receivership action*. The Respondents contend that because the Respondents (i) do not hold any receivership property and (ii) the members of the various Respondents are not *parties* to this *case* – as demonstrated by the fact that no Complaint has been served against them and they are entitled “Respondents” as opposed to Defendants – the Receiver may not adjudicate its claims against the Respondent Group for money judgments in excess of \$5,000,000 in a “Summary Proceeding” which does not contain the procedural protections of a normal civil action (e.g., a jury trial). The Receiver can file a separate action against the Respondents under the Rules of Civil Procedure. However, the Receiver may not obtain, and this Court may not issue, a Court Order compelling that the members of the Respondents appear as something called “Respondents” in this SEC and CFTC receivership proceeding and then obtain \$5,000,000 in money judgments against them. Simply put, because of the numerous due process procedural defects in the proposed Summary Proceeding, the Respondents believe that this Court lacks both personal jurisdiction over the Respondents as non-parties and subject matter jurisdiction over the Respondents *in this summary proceeding arising wholly within the Receivership action*.

**(4) Statement of Whether Jury Trial Has Been Timely Demanded by Any Party**

Respondent William Harris has timely demanded a jury trial in his Answer. [SEC Docket No. 450.] The remaining Respondents have not yet answered.

The Respondent Group and Respondent Dot Anderson have not Answered because they filed Motions to Dismiss. The Respondent Group and Dot Anderson further contend that it is unclear when the time for demanding a jury trial in this summary proceeding expires because Rule 38 does not address summary proceedings.

**B. Motion and Discovery Schedule, Deadlines, and Limitations**

**(1) The parties recommend that the Court establish the following discovery deadlines:**

**Receiver's Position:** Fact discovery shall be completed no later than **three months** after November 12, 2010. The Receiver suggests a date of **February 11, 2011** for the completion of fact discovery.

**The Respondents' Position:** The Respondents contend as a matter of judicial economy that the Court should not set any scheduling deadlines until after the Court rules on the pending Motions to Dismiss including the Motion based on subject matter jurisdiction. Nonetheless, if the Court is inclined to set a schedule, fact discovery should be completed no later than eleven months after **November 12, 2010**. The Respondents suggest a date of **October 12, 2011** for completion of fact discovery. In addition, the Respondents suggest an additional two months for completion of expert discovery. The Respondents suggest a date of **December 12, 2011** for completion of expert discovery.

**(2) The parties recommend that the Court establish the following motion deadlines:**

**Non-dispositive Motions:**

The Receiver recommends that all non-dispositive motions and supporting documents, including those that relate to fact discovery, shall be filed and served by no later than **one week** after the close of fact discovery. The Receiver suggests a date of **February 18, 2011**.

The Respondents recommend that all non-dispositive motions and supporting documents related to fact discovery be filed and served by no later than **one week** after the close of fact discovery. The Respondents suggest a date of **October 19, 2011**. The Respondents recommend that all other non-dispositive motions and supporting documents be filed and served by no later than **one week** after the close of expert discovery. The Respondents suggest a date of **December 19, 2011**.

The parties agree that the briefing schedule for non-dispositive motions shall follow the deadlines set out by Local Rule 7.1(a).

**Dispositive Motions:**

The Receiver suggests that all dispositive motions be filed and served no later than **one month** after the close of fact discovery. The Receiver suggests the date of **March 11, 2011**.

The Respondents suggest that all dispositive motions be filed and served no later than **one month** after the close of expert discovery. The Respondents suggest the date of **January 12, 2012**.

The parties agree that the briefing schedule for dispositive motions shall follow the deadlines set out by Local Rule 7.1(b).

**(3) Other Deadlines:**

The Receiver agrees that the parties should be compelled to serve initial disclosures under Rule 26 but contends that the disclosures should be made by **November 26, 2010**.

The Respondents contend that the parties should be compelled to serve initial disclosures under Rule 26 and that such initial disclosures should be made by **December 15, 2010** assuming the Court sets a scheduling order prior to a ruling on the Motions to Dismiss.

**C. Protective Order**

The parties will jointly submit a Protective Order.

**D. Experts**

The Receiver anticipates that he will not require expert witnesses at trial. Moreover, the Receiver contends that the trier of fact will be able to understand all facts at issue without the assistance of scientific, technical, or other specialized knowledge. The factual issues of whether the Investor Respondents took the assets received from the Receivership Entities in good faith and for reasonably equivalent value, and whether they received preferential treatment due to their connections to insiders, are within the competence of a jury. Thus expert testimony is not permitted by Federal Rule of Evidence 702.

The Respondents anticipate calling experts at trial, and may designate (i) an accountant or other financial professional to trace funds invested and (ii) an expert to address that there was no fraud in the transfer of the principal investment back to the Respondents, that the Respondents acted in good faith, and that the transfers were for an equivalent value.

**E. Trial-Ready Date**

The Receiver suggests that the case will be ready for trial **one month** after the Court issues a final ruling on any outstanding dispositive motions; or, in the instance that there are no outstanding dispositive motions, **one month** after the close of fact discovery.

The Respondents suggest that the case will be ready for trial **one month** after the Court issues a final ruling on any outstanding dispositive motions; or, in the instance that there are no outstanding dispositive motions, **two month** after the close of expert discovery. Thus, this case will be ready for trial on **January 12, 2012**. The Receiver's expected length of trial is **two** days. The Respondent Group's expected length of trial is **ten to fourteen days** given that there are 17 members of the Respondent Group who will all testify and that unknown number of individuals involved with the Trevor Cook entities will also be called to testify including testimony from Trevor Cook.

**F. Trial by Magistrate Judge**

The parties have not agreed to consent to jurisdiction by the Magistrate Judge pursuant to Title 28, United States Code, Section 636(c).

[signature page follows]



DATE: November 5, 2010

**MOHRMAN & KAARDAL, P.A.**

By: s/William F. Mohrman  
William F. Mohrman #168826  
Gregory M. Erickson #276522  
James R. Magnuson #0389084  
Tona T. Dove #232130  
33 South Sixth Street, Suite 4100  
Minneapolis, MN 55402  
Telephone: (612) 341-1074  
mohrman@mklaw.com  
erickson@mklaw.com  
magnuson@mklaw.com  
dove@mklaw.com

ATTORNEYS FOR THE RESPONDENT  
GROUP

DATE: November 5, 2010

**CARLSON, CASPERS,  
VANDENBURGH & LINDQUIST, P.A.**

By: s/ Peter M. Kohlhepp  
R.J. Zayed #309849  
Tara C. Norgard #307683  
Russell J. Rigby #323652  
Brian W. Hayes # 294585  
Peter M. Kohlhepp #390454  
225 South Sixth Street, Suite 3200  
Minneapolis, MN 55402  
Telephone: (612) 436-9600  
Facsimile: (612) 436-9605  
Email: pkohlhepp@ccvl.com

ATTORNEYS FOR RECEIVER

DATE: November 5, 2010

**HUHTA LAW FIRM, PLLC**

By: /s Adam S. Huhta  
Adam S. Huhta #236470  
36 South 9<sup>th</sup> Street, Suite 200  
Minneapolis, Minnesota 55402  
Tel.: (612) 353-4044  
Fax: (612) 353-4085

ATTORNEY FOR INVESTOR RESPONDENT  
DOT ANDERSON

DATE: November 5, 2010

By: s/ Daniel Gerdts  
Daniel Gerdts #207329  
Suite 110  
Tritech Center  
331 Second Avenue South  
Minneapolis, MN 55401  
Telephone: (612) 371-0722  
Facsimile: (612) 371-0840

ATTORNEY FOR INVESTOR  
RESPONDENT WILLIAM HARRIS