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23 **UNITED STATES DISTRICT COURT**
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25 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
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27 **SOUTHERN DIVISION**
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32 SECURITIES AND EXCHANGE
33 COMMISSION,
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35 Plaintiff,
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38 vs.
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40 LAMBERT VANDER TUIG, et al.
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45 Defendants.
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Case No.
SACV 06-172AHS (ANx)

**MEMORANDUM IN
SUPPORT OF RECEIVER'S
SECOND FEE
APPLICATION**

Hearing
Date: 10/02/2006
Time: 2:30 p.m.

1 Plaintiff, Securities and Exchange Commission (the
2 "Commission"), hereby submits the following Memorandum
3 in Support of Receiver's Second Fee Application ("Fee
4 Application").

5 BACKGROUND

6 The Commission filed a Complaint, a Motion for
7 Temporary Restraining Order and various other pleadings
8 on February 16, 2006. Among those pleadings was a
9 Motion of Appointment of a Receiver. Based upon the
10 preliminary evidence and testimony provided, the Court
11 entered a Temporary Restraining Order, an Order
12 Freezing Assets and an Order Appointing Receiver on
13 February 16, 2006 (the "Receiver Order").
14

15 In the Receiver Order, the Court empowered Thomas
16 A. Seaman (the "Receiver") to take over the assets of
17 "The Carolina Company and all subsidiaries, and
18 affiliated entities (the "Companies"). The Receiver
19 was ordered to "take control of the Companies funds,
20 assets and property, wherever situated. . . ." The
21 Receiver Order ordered and empowered the Receiver:

22 "to liquidate and convert into money all of the
23 assets, property, estate, effects and interests of
24 every nature held in his possession and control
25 pursuant to this order, by selling, conveying, and
26 disposing of the property, either at public or
27 private sale, on terms and in the manner the
28 Receiver deems most beneficial to the persons or
parties entitled to the proceeds, and with **due
regard to the realization of their true and proper
value**" (Receiver Order, p. 5). The
Receiver is also authorized to be "paid out of the

1 proceeds or other assets of the Companies. . . ."
2 (Receiver Order, p. 5).

3 In appointing a Receiver for the Companies, the
4 Court recognized that, "the assets that have been
5 frozen are in danger of having their value reduced by
6 the passage of time, and it is appropriate that the
7 assets be marshaled and an accounting provided to the
8 Court." (Receiver Order, p. 2). Additional findings
9 of fact, set forth in the Finding of Fact and
10 Conclusions of Law in Support of Preliminary
11 Injunction, (the "Findings") also provide a foundation
12 for the Receiver's authorized actions. For example,
13 the Court preliminarily determined that, "[m]any of
14 defendants' representations regarding real estate were
15 false or grossly exaggerated." (Findings, ¶ 33). The
16 Court also preliminarily found, "[t]hroughout the
17 relevant time period, Carolina Company has represented
18 that it holds millions of dollars in equity in various
19 development properties." (Findings, ¶ 43). The Court
20 later found that these representations related to the
21 equity held by Carolina company were false. (Findings,
22 ¶ 51).

24 Acting in accordance with the Receivership Order,
25 the Receiver has filed the Fee Application. The Fee
26 Application contains a request for payment for the
27 Receiver's fees and costs, and the fees and costs of
28 other professionals employed by the Receiver (as

1 authorized by the Receiver Order, p. 4). Attached as
2 exhibits to the Fee Application are detailed, specific
3 and exhaustive time records representing the scope and
4 nature of the Receiver's work since his appointment.

5 **ARGUMENT**

6 **THE RECEIVER AND HIS AGENTS SHOULD BE COMPENSATED**

7 The Receiver has acted in accordance with this
8 Court's Order in carrying out his duties and
9 responsibilities. The Receiver was appointed to
10 marshal the assets of a company that had misrepresented
11 its real estate assets. Even in instances where
12 Carolina held an interest in the property, it
13 misrepresented the nature of the interest and the value
14 of its real estate holdings. Carolina and its
15 principals consistently deceived investors regarding
16 the use of funds solicited by the Private Placement
17 Memoranda and failed to disclose the encumbrances
18 against its properties and other assets. Carolina
19 Company had no accounting system in place and lacked
20 even basic internal controls.

21
22 The Fee Application details that the Receiver has
23 undertaken to unravel Carolina Company's books and
24 records. That work is continuing, the Receiver has
25 received completed claim forms from hundreds of
26 investors, and is undertaking a major review and
27 accounting of all Carolina and associated bank
28 accounts. That review has already resulted in the

1 identification of additional funds that defendants
2 misappropriated, in some cases, after the entry of the
3 Order Freezing Assets

4 The Receiver's Fee Application and the accompanying
5 time records, together with the time records of
6 professionals paid by the Receiver, reflect the
7 extensive amount of time required to marshal the assets
8 of the Carolina Company and determine its liabilities,
9 both to creditors and to investors. These services
10 will make it possible to distribute the assets to
11 investors, consistent with further orders of this
12 Court.

13 The Receiver's Fee Application provides a summary
14 of the real property assets held by defendants. The
15 description of the properties in the Fee Application
16 highlights the dramatic overstatement of assets by the
17 defendants. For example, the defendants claimed that
18 Carolina Company owned real property known as Celina
19 Bridges, which it valued at \$49 million. Carolina
20 failed to disclose an outstanding mortgage of \$22.5
21 million. The Receiver is seeking to maximize the value
22 of this significant asset through a due diligence
23 package and a bidding procedure aimed at serious real
24 estate developers.

25 Another instance of the Receiver's due diligence is
26 property held in Sutter County, California. Carolina
27 Company claimed that this real property was worth \$470
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1 million. (Duvall Dec., Exhibit G, p. DUV 057). The
2 Receiver has determined that Carolina Company's true
3 ownership interest is, "[a]n option for approximately
4 1921 acres in Sutter County. The option allows the
5 holder to buy the property for [the] next 15 years at
6 certain prices. (Fee Application, p. 9). After
7 substantial due diligence, the Receiver has
8 preliminarily determined that the option has little, if
9 any, value. Apparently, the highest and best use of
10 the optioned real estate is as a rice farm, not
11 developable real estate,

12 These two examples underscore the major tasks
13 undertaken by the Receiver with respect to the real
14 property. On behalf of the investors, the Receiver has
15 assessed the interest held by the Carolina Company (as
16 opposed to the interest claimed in its offering and
17 promotional materials). After determining ownership,
18 the Receiver must ascertain the true value of the
19 properties, particularly given that Carolina Company
20 did virtually no internal assessments. The Receiver is
21 prepared to liquidate many of these properties. For
22 example, the Receiver has sold a number of the
23 residential lots located in North Carolina.

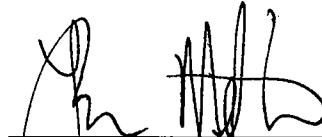
24 The Receiver has also communicated extensively
25 with the investors in this matter. Within a week of
26 his appointment, the Receiver had established a
27 website, an efficient way to communicate the status of
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1 the litigation and the receivership activities to the
2 investors. In fact, the Receiver's fee application
3 reflects that approximately one third of his time has
4 been devoted to investor relations. As before, the
5 Receiver has given notice of his fee application,
6 together with all supporting documentation, by posting
7 it on the website. Although not required to give
8 notice to non-parties to pending litigation in which he
9 was appointed, the Receiver has demonstrated his
10 commitment to the investors by allowing them to review
11 his activities in detail.

12 The Commission's counsel has been involved in a
13 number of litigated cases in which a receiver was
14 appointed. Based on the Commission's counsels'
15 experience, the fees and costs of the Receiver are
16 customary and reasonable given the expertise and
17 experience of the Receiver, the complexity of the case,
18 the geographic area including Orange County,
19 California, and Carolina's financial condition at the
20 time the Commission filed its Complaint. The
21 Commission supports the payment of all fees and costs
22 incurred by the Receiver, including the payment of all
23 professional fees. The Commission's counsel have also
24 closely reviewed the fee applications of the other
25 professionals employed by the Receiver and believes
26 that the amounts requested are amply supported by the
27 documentation supplied in their fee applications with
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1 the Court. In addition, the Receiver and his counsel
2 have apprised Commission counsel of major developments
3 and sought assistance from the Commission in
4 appropriate situations.

5 Respectfully submitted this 27th September 2006.
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11 Karen L. Martinez
12 Cheryl M. Mori
13 Attorneys for Plaintiff
14 Securities and Exchange
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CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of September 2006, I caused the foregoing MEMORANDUM IN SUPPORT OF RECEIVER'S SECOND FEE APPLICATION to be served on all parties receiving service by sending said document by United States first class mail, postage prepaid to,

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