

ROBB EVANS
Receiver of
Assets of James P. Lewis, Jr.,
Financial Advisory Consultants,
Income Fund Ltd. &
Growth Fund Ltd.

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Securities and Exchange Commission v. James P. Lewis, Jr., et al.
CASE No. CV 03-9354 ABC (VBKx)

**Notice of Motion and Motion for Approval of Receiver's Settlements with
Settling Parties**

Filed May 30, 2008

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7 Attorneys for Receiver
ROBB EVANS

8
9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

11
12 SECURITIES AND EXCHANGE
COMMISSION,

13 Plaintiff,

14 v.

15 JAMES P. LEWIS, JR., individually
16 and doing business as FINANCIAL
ADVISORY CONSULTANTS,
17 INCOME FUND, LTD. AND
GROWTH FUND, LTD.,

18 Defendants.
19

CASE NO. CV 03-9354 ABC (VBKx)

**NOTICE OF MOTION AND
MOTION FOR APPROVAL OF
RECEIVER’S SETTLEMENTS
WITH SETTLING PARTIES**

[Filed concurrently with Memorandum
of Points and Authorities; Declaration of
Brick Kane in support thereof; Exhibit]

DATE: June 23, 2008
TIME: 10:00 a.m.
PLACE: Courtroom 680

20
21 PLEASE TAKE NOTICE that on June 23, 2008, commencing at 10:00 a.m.
22 or as soon thereafter as the parties may be heard in Courtroom 680 of the above-
23 entitled court located at 255 East Temple Street, Los Angeles, California 90012,
24 Robb Evans as Receiver of the assets of James P. Lewis, Jr., individually and doing
25 business as Financial Advisory Consultants, Income Fund, Ltd. and Growth Fund,
26 Ltd. (“Receiver”) will and does hereby move the Court for an order approving
27 settlements with the following investors (individually and collectively referred to
28 herein as “Settling Parties”) who prior to the receivership received payments

1 totaling more than the principal amount of their investment in the fraudulent
 2 investment scheme perpetrated by defendant James P. Lewis, Jr. (“Lewis”).

3	4	5	6	7	8
Defendants	Amount Sued	Settlement Amount	Settlement Terms	Settlement Document	
L. Tan	\$1,120,200.00	\$200,000.00 and waiver of any future distribution payments to V. Tan, V. O. Tan, V. Tan and V. Tan	All cash	Yes – with mutual releases	
M. Smith	\$188,875.36	\$12,388.40	All cash	Yes – with mutual releases	
M. Keller	\$197,280.24	\$90,000.00	All cash	Yes – with mutual releases	
J. Schoney, S. Schoney & Cedar Wood Financial	\$175,581.23	\$13,000.00	\$13,000 to be paid upon execution of agreement.	Yes – with mutual releases	
H. Tanner, M. Tanner & M.R. Tanner Development	\$1,483,077.92 combined	\$435,000.00 combined	\$435,000.00 to be paid no later than June 15, 2008	Yes – with mutual releases	
TOTAL:	\$3,165,014.75	\$750,388.40			

18 The Receiver seeks an order of the Court (a) approving the foregoing
 19 settlements, (b) determining that the settlement payments made or to be made by
 20 the above-referenced Settling Parties shall be deemed to be made in full and final
 21 satisfaction of all claims, demands, actions and causes of action that could have
 22 been asserted by any party for recovery of excess profits or other claims for
 23 recovery against the Settling Parties arising out of or pertaining to their investment
 24 in the Lewis fraudulent investment scheme and that such claims by third parties
 25 shall be deemed barred, and (c) determining that upon Court approval of the
 26 settlements and upon each Settling Party’s full and complete performance of all
 27 settlement terms, including without limitation payment in full of the settlement
 28

1 payment by each Settling Party, all such claims, demands, actions and causes of
2 action by the Receiver shall be deemed satisfied.

3 This Motion is made pursuant to Local Rule 66-7 and 66-8 and applicable
4 authorities cited in the accompanying memorandum of points and authorities on the
5 grounds that (1) the foregoing settlements are fair and equitable to the receivership
6 estate, and (2) resolution of the claims with the Settling Parties pursuant to the
7 foregoing settlements is in the best interests of the receivership estate and within the
8 range of reasonableness for settlement of the claims in question given: (a) the
9 nature and amount of the claims against the Settling Parties; (b) the financial
10 condition of the Settling Parties and other personal circumstances affecting the
11 collectability and time and expense that would likely be incurred in collection of the
12 claims; and (c) other factors warranting settlement with the Settling Parties in the
13 amount of the settlement payments set forth, based on the Receiver's exercise of his
14 business judgment and discretion under the circumstances of this case.

15 This Motion is made and based on this Notice of Motion and Motion, served
16 pursuant to the Court's Order Limiting Notice entered on July 14, 2004,¹ on the
17 memorandum of points and authorities and declaration of Brick Kane in support
18 thereof, on such pleadings, records and files of this Court in this action as to which
19 the Receiver requests the Court take judicial notice, and on such further oral and
20 documentary evidence and arguments of counsel as may be presented at or prior to
21 the hearing on the Motion.

22 PLEASE TAKE FURTHER NOTICE that this Motion is served in
23 accordance with the Order Limiting Notice. Pursuant to the Order Limiting Notice,
24

25 ¹ The order is entitled "Order Granting Motion by Receiver for Second
26 Omnibus Order: (1) Approving Sale of Coin Collection by Private Sale and
27 Modifying Sale Procedures of 28 U.S.C. sections 2001 and 2004 in Connection
28 Therewith; (2) Approving Sale of All Ownership and Other Claims and Interests in
Pyro Shield, Inc., and Related Compromises and Modifying Sale Procedures of 28
U.S.C. sections 2001 and 2004 in Connection Therewith; (3) Approving and
Authorizing Payment of Receivership Expenses [January 6, 2004 through April 30,
2004]; and (4) Limiting Notice" (the "Order Limiting Notice").

1 this Motion has been posted on the Receiver's website at www.facreceiver.com
2 where it may be reviewed in its entirety. This Motion has also been mailed to those
3 creditors and other interested parties who have made requests for notice in
4 accordance with the procedures specified in the Limited Notice Order. Hard copies
5 of the Motion will be provided upon written request for copies submitted to the
6 Receiver's office at: Robb Evans & Associates, 11450 Sheldon Street, Sun Valley,
7 California 91352-1121, Attn: Lillian Lee, Deputy to the Receiver.

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DATED: May 30, 2008

McKENNA LONG & ALDRIDGE LLP
GARY OWEN CARIS
LESLEY ANNE HAWES
ANGELA E. FONES

By: /s/ Gary Owen Caris
GARY OWEN CARIS
Attorneys for Receiver, ROBB EVANS

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9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

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12 SECURITIES AND EXCHANGE
13 COMMISSION,

14 Plaintiff,

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16 v.

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18 JAMES P. LEWIS, JR., individually
19 and doing business as FINANCIAL
20 ADVISORY CONSULTANTS,
21 INCOME FUND, LTD. AND
22 GROWTH FUND, LTD.,

23 Defendants.

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27 Robb Evans as Receiver of the assets of James P. Lewis, Jr., individually and
28 doing business as Financial Advisory Consultants, Income Fund, Ltd. and Growth
Fund, Ltd. (“Receiver”) hereby submits this memorandum of points and authorities
in support of its Motion for Approval of Receiver’s Settlement with Settling
Parties.

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30

CASE NO. CV 03-9354 ABC (VBKx)

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR APPROVAL OF
RECEIVER’S SETTLEMENTS
WITH SETTLING PARTIES**

[Filed concurrently with Notice of
Motion and Motion for Approval of
Receiver’s Settlements; Declaration of
Brick Kane in support thereof; Exhibit]

DATE: June 23, 2008
TIME: 10:00 a.m.
PLACE: Courtroom 680

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Receiver was originally appointed as temporary receiver pursuant to this Court’s Order Appointing Temporary Receiver Over the Assets of James P. Lewis, Jr., Individually and Doing Business as Financial Advisory Consultants, Income Fund, Ltd., and Growth Fund, Ltd. filed January 6, 2004. The Receiver learned of his appointment as temporary receiver on January 8, 2004 and commenced work as temporary receiver the following day. Thereafter, the Receiver was appointed as permanent receiver pursuant to this Court’s Preliminary Injunction Order and Orders: (1) Freezing Assets; (2) Prohibiting the Destruction of Documents; (3) Granting Expedited Discovery; (4) for Accountings; and (5) Order Appointing a Permanent Receiver (“Permanent Receivership Order”). The Permanent Receivership Order provided that Robb Evans was appointed as permanent receiver over the assets of defendant James P. Lewis, Jr., individually and doing business as Financial Advisory Consultants (“FAC”), Income Fund, Ltd. (“Income Fund”) and Growth Fund, Ltd. (“Growth Fund”), and their subsidiaries and affiliates (individually and collectively, “Lewis”), with full powers of an equity receiver, including but not limited to, full power over all funds, assets, collateral, premises, choses in action, books, records, papers and other property belonging to or in the possession of or control of Lewis.

On June 14, 2004, the Court conducted a hearing on the Receiver’s motion for authority to commence litigation against approximately 450 investors in Defendant Lewis’ Ponzi scheme who were paid amounts in excess of the amounts they invested (“Winning Investors”).¹ The Court granted the motion, and by order entered June 17, 2004, the Receiver has been authorized to assert claims and

¹ Through further review and refinement of the financial records, the Receiver now estimates the number of Winning Investors to be approximately 400 taking into account those who are deceased or who otherwise cannot be located.

1 commence litigation to recover the fictitious “profits” paid to the Winning
2 Investors. The Receiver estimates the amounts paid to Winning Investors in excess
3 of their investment (the “Excess Payments”) total approximately \$71 million after
4 further review and analysis of Lewis’ records.

5 On October 15, 2004, the Court conducted a hearing on a motion for
6 instructions by the Receiver pursuant to which the Receiver sought and obtained
7 authority to establish procedures to address the rights of all investor/creditors of the
8 receivership estate who, prior to the institution of the receivership, received
9 payments totaling less than the amount such persons invested with Lewis (the
10 “Losing Investors”) through a Claimant Distribution Agreement and Opt-Out
11 Procedure (“Distribution Agreement”). Pursuant to the motion, which was granted
12 by this Court’s order entered October 18, 2004, all Losing Investors were notified
13 in writing of the Receiver’s proposed Distribution Agreement and were provided an
14 opportunity to affirmatively elect to “opt out” of participation in the Distribution
15 Agreement. None of the Losing Investors elected to opt out. Pursuant to the
16 Court’s order, the Receiver is obligated to move for Court approval of proposed
17 settlements of receivership estate claims and to provide notice of the settlement
18 motions in accordance with the Order Limiting Notice² entered on July 14, 2004 in
19 this case. The Losing Investors who are participating in the distributions from the
20 estate in accordance with the Distribution Agreement and the Court’s October 18,
21 2004 order are deemed to agree that they will not assert claims against any third
22 party who is the subject of pending or potential claims by the Receiver in
23 connection with this receivership estate and that they will be bound by the terms of

24
25 ² The order is entitled “Order Granting Motion by Receiver for Second Omnibus
26 Order: (1) Approving Sale of Coin Collection by Private Sale and Modifying Sale
27 Procedures of 28 U.S.C. sections 2001 and 2004 in Connection Therewith;
28 (2) Approving Sale of All Ownership and Other Claims and Interests in Pyro
Shield, Inc., and Related Compromises and Modifying Sale Procedures of 28
U.S.C. sections 2001 and 2004 in Connection Therewith; (3) Approving and
Authorizing Payment of Receivership Expenses [January 6, 2004 through April 30,
2004]; and (4) Limiting Notice” (the “Order Limiting Notice”).

1 all settlements between the Receiver and any third party, including the Winning
2 Investors whose settlements are the subject of this Motion (individually and
3 collectively the “Settling Parties”), so long as the settlement is approved by the
4 District Court after notice and an opportunity for hearing.

5 **A. Proposed Settlements With Settling Parties**

6 On January 3, 2006, the Receiver filed lawsuits against Winning Investors to
7 recover excess payments made on approximately 140 accounts. Prior to filing the
8 lawsuits, the Receiver sent demand letters to Winning Investors, which set forth the
9 claim amount the Receiver contends the receivership estate is entitled to recover
10 based on the Receiver’s calculation of the Excess Payment amount for each of those
11 Winning Investors. The Receiver has conducted extensive settlement negotiations
12 in response to the demand letters sent by the Receiver and the litigation
13 subsequently commenced against many of the Winning Investors. These settlement
14 negotiations are ongoing.

15 To date the Receiver has sought and obtained Court approval of an aggregate
16 settlement amount of \$9,153,077.40, pursuant to motions filed by the Receiver on
17 August 27, 2004, June 17, 2005, January 13, 2006, September 1, 2006, December
18 28, 2006, October 12, 2007 and April 11, 2008. This Motion seeks approval of five
19 settlements with Settling Parties providing for a recovery of another \$750,388.40,
20 as reflected in the schedule attached as Exhibit 1 to the Declaration of Brick Kane.
21 Accordingly, the combined aggregate of settlements to date, if this Motion is
22 granted, is now \$9,903,466.20.

23 The Receiver has determined that judicial and cost efficiency considerations
24 warrant the Receiver’s seeking approval of numerous settlements in a single
25 motion. As new settlements are finalized, the Receiver will seek approval of
26 additional groups of settlements in similar motions in the future.

27 As set forth in the declaration of Brick Kane, Deputy to the Receiver, in
28 support hereof, the Receiver has established and followed certain procedures to

1 evaluate and settle his claims against the Settling Parties. These procedures
2 include: (a) reviewing the financial records of Lewis to calculate the amount of
3 Excess Payments the Receiver believes the Settling Parties received, and therefore
4 the amount of the Receiver's potential claim against such party; (b) obtaining
5 written financial statements and/or other information to verify the financial
6 condition of the Settling Parties; (c) investigating the collectability of the claim,
7 source of income and the ability of the Settling Parties to repay the claim as well as
8 any other personal circumstances that might bear on the collectability and recovery
9 by the estate, such as the health and age of the Settling Parties; (d) analyzing the
10 probable time delay and estimated expense and risks of litigation and other similar
11 factors affecting the realizable claim recovery; and (e) evaluating proposed
12 settlements of the claim by taking into account the amount of the claim, any
13 defenses, and the information revealed through the Receiver's investigation into the
14 financial, collectability and other considerations analyzed by the Receiver during
15 the course of his investigation and settlement negotiations regarding the claim.

16 The Receiver has not attached copies of the financial and other information
17 provided by Settling Parties used by the Receiver in evaluating the proposed
18 settlements based on privacy considerations. In addition, while the Receiver has
19 outlined the settlement methodology used by the Receiver in negotiating and
20 evaluating settlements, the precise considerations upon which the Receiver has
21 determined to settle with each of the Settling Parties is not set forth in the motion
22 and supporting papers in the interests of maximizing recoveries for the receivership
23 estate as to the remaining Winning Investors who have not yet settled.³

24 The percentage settled upon with each party varies based on the settlement
25 methodology described above. As to L. Tan ("Tan"), the Receiver demanded
26 payment of \$1,120,200.00. Various members of Tan's extended family were also

27 ³ There remain approximately 40 Winning Investors who are still litigating,
28 counting those with joint and several liability as one unit.

1 investors in Lewis' fraudulent investment scheme. A number of those family
2 members were receiving distribution payments from the receivership estate because
3 they were Losing Investors. Tan and the Receiver participated in a settlement
4 conference in front of Magistrate Judge Kenton and agreed to settle the matter for
5 \$200,000.00 and a waiver of any future distribution payments to four Tan family
6 members who were Losing Investors. Based upon the Receiver's independent
7 analysis of Tan's financial condition, the Receiver determined that settlement in the
8 amount of \$200,000.00 and the waiver of claims by other family members was
9 reasonable in light of his financial circumstances.⁴ Further, Magistrate Judge
10 Kenton recommended approval of this settlement.

11 In addition, as to H. Tanner, M. Tanner and M.R. Tanner Development, the
12 Receiver had three separate claims against the defendants for an aggregate amount
13 totaling \$1,483,077.92. The Receiver demanded payment from M. Tanner and H.
14 Tanner, individually in the amount of \$390,283.51. In addition, the Receiver
15 demanded payment from M. Tanner as trustee in the amount of \$442,794.41.
16 Further, the Receiver demanded payment from M.R. Tanner Development in the
17 amount of \$650,000.00. The Receiver agreed to settle all three matters combined
18 for \$435,000.00.

19 As to M. Smith, the Receiver agreed as part of the \$12,388.40 settlement to
20 have a \$2,388.40 sanctions award issued against her deemed satisfied. The
21 sanctions were issued in connection with a successful motion to compel discovery
22 brought by the Receiver.

23 The chart attached to the Declaration of Brick Kane identifies those
24 settlements which also include proposed mutual releases of claims between the
25 Receiver and the Settling Parties as those claims related to or arise out of the
26 _____

27 ⁴ The other family members had allowed claims totaling \$411,498.17. Therefore,
28 for each distribution of 1% allowed to claimants, this settlement will provide
additional value to the receivership estate of approximately \$4,115.

1 Settling Parties' transactions with Lewis and the receivership estate. Those
2 settlements which have been documented by written agreements are noted in the
3 chart.

4 The proposed settlements also each contemplate that the Receiver will obtain
5 an order that bars further claims by the Receiver or any other person against the
6 Settling Parties arising out of or relating to the Settling Parties' transactions with
7 Lewis and/or investment in the fraudulent investment scheme operated by Lewis.
8 Such an order is consistent with the terms of the Distribution Agreement and the
9 October 18, 2004 Order as described above. In the case of each proposed
10 settlement, the Receiver believes that the proposed settlement payment and terms, if
11 any, provide a fair and reasonable settlement that maximizes the net recovery to the
12 estate and should be approved.

13 **II. THE COURT SHOULD APPROVE THE PROPOSED**
14 **SETTLEMENTS**

15 The leading treatise on receivership law states:

16 The only justification for the compromise of claims is that
17 it is done for the best interests of the receivership and the
18 estate under the control and possession of the court.

19 3 *Clark on Receivers* § 655 (3d ed. 1959)

20 The court appointing a receiver must use its discretion in
21 determining whether it is for the best interests of the
22 estate that the receiver be authorized to compromise a
23 claim, and when the appointing court has not abused its
24 discretion in giving instructions to the receiver, its orders
25 will not be disturbed or reviewed in the appellate court.

26 3 *Clark on Receivers* § 770 (3d ed. 1959)

27 Pursuant to Local Rule 66-8, a receiver is directed to administer receivership
28 estates "as nearly as possible in accordance with the practice in the administration

1 of estates in bankruptcy.” Under Rule 9019 of the Federal Rules of Bankruptcy
2 Procedure, the court in a bankruptcy case may approve a proposed compromise of
3 controversies after notice and an opportunity for hearing. Ninth Circuit decisions in
4 *In re A & C Properties*, 784 F. 2d 1377 (9th Cir. 1986) and *In re Woodson*, 839 F.
5 2d 610 (9th Cir. 1988) establish four factors the court must consider in ruling on the
6 approval of compromises in bankruptcy:

7 “(a) The probability of success in the litigation; (b) the
8 difficulties, if any, to be encountered in the matter of
9 collection; (c) the complexity of the litigation involved,
10 and the expense, inconvenience and delay necessarily
11 attending it; (d) the paramount interest of the creditors
12 and a proper deference to their reasonable views in the
13 premises.”

14 *In re A & C Properties*, 784 F. 2d at 1381. *See also In re Woodson*, 839 F. 2d at
15 620.

16 The Receiver has evaluated each of the proposed settlements under the
17 factors identified in the Ninth Circuit cases cited above and the other considerations
18 outlined above as part of the Receiver’s settlement methodology. As to the
19 settlements with Settling Parties, the settlements provide a fair and reasonable
20 recovery on the Receiver’s claim taking into account the amount of the demand, the
21 costs, time delays and risks of litigation, the collectability of the claims and other
22 circumstances which might mitigate against recovery of the demand.

23 **III. CONCLUSION**

24 Based upon the foregoing, the Receiver respectfully requests that the Court
25 grant this Motion, (a) approve the proposed settlements with the Settling Parties
26 identified in the Notice of Motion and Motion, (b) authorize the Receiver to enter
27 into the written settlement agreements and mutual releases as noted and (c) grant
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1 the order barring claims against the Settling Parties as requested in the Notice of
2 Motion and Motion.

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DATED: May 30, 2008

MCKENNA LONG & ALDRIDGE LLP
GARY OWEN CARIS
LESLEY ANNE HAWES
ANGELA E. FONES

By: /s/ Gary Owen Caris
GARY OWEN CARIS
Attorneys for Receiver, ROBB EVANS

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7 Attorneys for Receiver
ROBB EVANS

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UNITED STATES DISTRICT COURT

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CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

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SECURITIES AND EXCHANGE
COMMISSION,

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Plaintiff,

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v.

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JAMES P. LEWIS, JR., individually
and doing business as FINANCIAL
ADVISORY CONSULTANTS,
17 INCOME FUND, LTD. AND
18 GROWTH FUND, LTD.,

18

Defendants.

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CASE NO. CV 03-9354 ABC (VBKx)

**DECLARATION OF BRICK KANE
IN SUPPORT OF MOTION FOR
APPROVAL OF RECEIVER'S
SETTLEMENTS WITH SETTLING
PARTIES**

[Filed concurrently with Notice of
Motion and Motion for Approval of
Receiver's Settlements; Memorandum
of Points and Authorities in support
thereof; Exhibit]

DATE: June 23, 2008
TIME: 10:00 a.m.
PLACE: Courtroom 680

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DECLARATION OF BRICK KANE

I, Brick Kane, declare as follows:

1. I am the Chief Operating Officer of Robb Evans & Associates LLC and am a Deputy to Robb Evans. I have been one of the deputies to the Receiver with primary responsibility for the day-to-day supervision and management of the receivership estate of the assets of James P. Lewis, Jr., individually and doing business as Financial Advisory Consultants, Income Fund, Ltd. and Growth Fund, Ltd. (individually and collectively, "Lewis"), since the Receiver was first appointed as temporary receiver on January 6, 2004. I have personal knowledge of the matters set forth in this declaration, and if I were called upon to testify as to these matters, I could and would competently testify based upon my personal knowledge.

2. Robb Evans was first appointed as temporary receiver in this matter by Court order dated January 6, 2004. The Receiver is acting as permanent receiver pursuant to this Court's Preliminary Injunction Order and Orders: (1) Freezing Assets; (2) Prohibiting the Destruction of Documents; (3) Granting Expedited Discovery; (4) For Accountings; and (5) Order Appointing a Permanent Receiver ("Preliminary Injunction Order") filed January 22, 2004. Under Section VIII.A. of the Preliminary Injunction Order, the Receiver is authorized, empowered and directed to take custody, control and possession of all of Lewis' assets, with full power to liquidate all such assets.

3. On June 14, 2004, the Court conducted a hearing on the Receiver's motion for authority to commence litigation against approximately 450 investors in Defendant Lewis' Ponzi scheme who were paid amounts in excess of the amounts they invested ("Winning Investors"). The Court granted the motion, and by order entered June 17, 2004, the Receiver has been authorized to assert claims and commence litigation to recover the fictitious "profits" paid to the Winning Investors. The Receiver estimates the amounts paid to Winning Investors in excess of their investment (the "Excess Payments") total approximately \$71 million, based

1 on the ongoing review and analysis of Lewis' records. Through further review and
2 refinement of the financial records, the Receiver now estimates the number of
3 Winning Investors to be approximately 400 taking into account those who are
4 deceased or who otherwise cannot be located.

5 4. On October 15, 2004, the Court conducted a hearing on a motion for
6 instructions by the Receiver pursuant to which the Receiver sought and obtained
7 authority to establish procedures to address the rights of all investor/creditors of the
8 receivership estate who, prior to the institution of the receivership, received
9 payments totaling less than the amount such persons invested with Lewis (the
10 "Losing Investors") through a Claimant Distribution Agreement and Opt-Out
11 Procedure ("Distribution Agreement"). Pursuant to the motion, which was granted
12 by the Court's order entered October 18, 2004, the Receiver sent notices in writing
13 to all Losing Investors advising them of the Receiver's proposed Distribution
14 Agreement and of their opportunity to affirmatively elect to "opt out" of
15 participation in the Distribution Agreement. None of the Losing Investors elected
16 to opt out.

17 5. Pursuant to the Court's October 18, 2004 order, the Receiver is
18 required to move for Court approval of proposed settlements of receivership estate
19 claims and to provide notice of the settlement motions in accordance with the Order
20 Limiting Notice in this case. The Losing Investors who are participating in the
21 distributions from the estate in accordance with the Distribution Agreement and the
22 Court's October 18, 2004 order are deemed to agree that they will not assert claims
23 against any third party who is the subject of pending or potential claims by the
24 Receiver in connection with this receivership estate and that they will be bound by
25 the terms of all settlements between the Receiver and any third party, including the
26 Settling Parties as defined in the Motion, so long as the settlement is approved by
27 the District Court after notice and an opportunity for hearing.

28

1 6. On January 3, 2006, the Receiver filed lawsuits against Winning
2 Investors to recover excess payments made on approximately 140 accounts. Prior
3 to filing the lawsuits, the Receiver sent demand letters to Winning Investors, which
4 set forth the claim amount the Receiver contends the receivership estate is entitled
5 to recover based on the Receiver's calculation of the Excess Payment amount for
6 each of those Winning Investors. The Receiver has conducted extensive settlement
7 negotiations in response to the demand letters sent by the Receiver and the litigation
8 subsequently commenced against many of the Winning Investors. These settlement
9 negotiations are ongoing.

10 7. To date the Receiver has sought and obtained Court approval of an
11 aggregate settlement amount of \$9,153,077.40, pursuant to motions filed by the
12 Receiver on August 27, 2004, June 17, 2005, January 13, 2006, September 1, 2006,
13 December 28, 2006, October 12, 2007 and April 11, 2008. This Motion seeks
14 approval of five settlements with Settling Parties providing for a recovery of
15 another \$750,388.40, as reflected in the schedule set forth in the Motion. For the
16 Court's convenience, a copy of the chart with the settlements for which the
17 Receiver seeks approval in this Motion is also attached hereto as Exhibit 1.
18 Accordingly, the combined aggregate of settlements to date, if this Motion is
19 granted, is now \$9,903,466.20.

20 8. The Receiver and his deputies have established and followed certain
21 procedures to evaluate and settle his claims against the Settling Parties. These
22 procedures include: (a) reviewing the financial records of Lewis to calculate the
23 amount of Excess Payments or Transfers the Receiver believes the Settling Parties
24 received, and therefore the amount of the Receiver's potential claim against such
25 party; (b) obtaining written financial statements and/or other information to verify
26 the financial condition of the Settling Parties; (c) investigating the collectability of
27 the claim, source of income and the ability of the Settling Parties to repay the claim
28 as well as any other personal circumstances that might bear on the collectability and

1 recovery by the estate such as the health and age of the Settling Parties;
2 (d) analyzing the probable time delay and estimated expense and risks of litigation
3 and other similar factors affecting the realizable claim recovery; and (e) evaluating
4 proposed settlements of the claim by taking into account the amount of the claim,
5 any defenses, and the information revealed through the Receiver's investigation
6 into the financial, collectability and other considerations analyzed by the Receiver
7 during the course of his investigation and settlement negotiations regarding the
8 claim.

9 9. The Receiver has not attached copies of the financial and other
10 information provided by Settling Parties used by the Receiver in evaluating the
11 proposed settlements based on privacy considerations. In addition, while the
12 Receiver has outlined the settlement methodology used by the Receiver in
13 negotiating and evaluating settlements, the precise considerations upon which the
14 Receiver has determined to settle with each of the Settling Parties is not set forth in
15 the Motion and supporting papers in the interests of maximizing recoveries for the
16 receivership estate as to the remaining Winning Investors who have not yet settled.

17 10. The percentage settled upon with each party varies based on the
18 settlement methodology described above. As to L. Tan ("Tan"), the Receiver
19 demanded payment of \$1,120,200.00. Various members of Tan's extended family
20 were also investors in Lewis' fraudulent investment scheme. A number of those
21 family members were receiving distribution payments from the receivership estate
22 because they were Losing Investors. Tan and the Receiver participated in a
23 settlement conference in front of Magistrate Judge Kenton and agreed to settle the
24 matter for \$200,000.00 and a waiver of any future distribution payments to four Tan
25 family members who were Losing Investors. Based upon the Receiver's
26 independent analysis of Tan's financial condition, the Receiver determined that
27 settlement in the amount of \$200,000.00 and the waiver of claims by other family
28 members was reasonable in light of his financial circumstances. Tan's other family

1 members had allowed claims totaling \$411,498.17. Therefore, for each distribution
2 of 1% allowed to claimants, this settlement will provide additional value to the
3 receivership estate of approximately \$4,115. Further, Magistrate Judge Kenton
4 recommended approval of this settlement.

5 11. As to H. Tanner, M. Tanner and M.R. Tanner Development, the
6 Receiver had three separate claims against the defendants for an aggregate amount
7 totaling \$1,483,077.92. The Receiver demanded payment from M. Tanner and H.
8 Tanner, individually in the amount of \$390,283.51. In addition, the Receiver
9 demanded payment from M. Tanner as trustee in the amount of \$442,794.41.
10 Further, the Receiver demanded payment from M.R. Tanner Development in the
11 amount of \$650,000.00. The Receiver agreed to settle all three matters combined
12 for \$435,000.00.

13 12. As to M. Smith, the Receiver agreed as part of the \$12,388.40
14 settlement to have a \$2,388.40 sanctions award issued against her deemed satisfied.
15 The sanctions were issued in connection with a successful motion to compel
16 discovery brought by the Receiver.

17 13. The chart attached hereto as Exhibit 1 identifies those settlements
18 which also include proposed mutual releases of claims between the Receiver and
19 the Settling Parties as those claims related to or arise out of the Settling Parties'
20 transactions with Lewis and the receivership estate. Those settlements which have
21 been documented by written agreements are noted in the chart.

22 14. The proposed settlements also each contemplate that the Receiver will
23 obtain an order that bars further claims by the Receiver or any other person against
24 the Settling Parties arising out of or relating to the Settling Parties' transactions
25 with Lewis and/or investment in the fraudulent investment scheme operated by
26 Lewis.

27 15. In the case of each proposed settlement with Settling Parties, the
28 Receiver believes that the proposed settlement payment and terms, if any, provide a

1 fair and reasonable settlement that maximizes the net recovery to the estate and
2 should be approved. The Receiver believes that each of the proposed settlements
3 meets the standards cited in the Motion to approve the settlements.

4 I declare under penalty of perjury that the foregoing is true and correct and
5 that this declaration was executed this day of May 28, 2008 at Sun Valley,
6 California.

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10 BRICK KANE
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Exhibit 1

**Settlement Agreements Entered into Since Motion to Approve Settlements
Filed April 2008**

Defendants	Amount Sued	Settlement Amount	Settlement Terms	Settlement Document
L. Tan	\$1,120,200.00	\$200,000.00 and waiver of any future distribution payments to V. Tan, V. O. Tan, V. Tan and V. Tan	All cash	Yes – with mutual releases
M. Smith	\$188,875.36	\$12,388.40	All cash	Yes – with mutual releases
M. Keller	\$197,280.24	\$90,000.00	All cash	Yes – with mutual releases
J. Schoney, S. Schoney & Cedar Wood Financial	\$175,581.23	\$13,000.00	\$13,000 to be paid upon execution of agreement.	Yes – with mutual releases
H. Tanner, M. Tanner & M.R. Tanner Development	\$1,483,077.92 combined	\$435,000.00 combined	\$435,000.00 to be paid no later than June 15, 2008	Yes – with mutual releases
TOTAL:	\$3,165,014.75	\$750,388.40		