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Attorneys for ROBB EVANS, PERMANENT
RECEIVER

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA / SANTA ANA DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

TLC INVESTMENTS & TRADE CO., TLC
AMERICA, INC. dba BREA DEVELOPMENT
COMPANY, TLC BROKERAGE, INC., dba TLC
MARKETING, TLC DEVELOPMENT, INC., TLC
REAL PROPERTIES, RLLP-1, CLOUD &
ASSOCIATES CONSULTING, INC., ERNEST F.
COSSEY, GARY W. WILLIAMS AND THOMAS G.
CLOUD,

Defendants.

Civil Action No. SACV 00-960-DOC (EEEx)

EX PARTE APPLICATION OF ROBB EVANS,
RECEIVER, FOR ORDER AUTHORIZING
PLAN TO FUND INVESTOR HARDSHIP
REQUESTS; MEMORANDUM OF POINTS
AND AUTHORITIES; DECLARATION OF
ROBB EVANS

**FILED UNDER SEAL PURSUANT TO ORDER ENTERED
NOVEMBER 22, 2000**

Date: [No Hearing Scheduled]

Time:

Place: Courtroom 9-D
411 West Fourth Street
Santa Ana, CA 92701

I.
EX PARTE APPLICATION

Robb Evans, Permanent Receiver, respectfully applies to this Court *ex parte* for an Order Authorizing a Plan to Fund Investor Hardship Requests ("Application"). The Receiver's Application is based on the accompanying Points and Authorities, the attached Declaration of Robb Evans, and such other evidence, both oral and documentary, as may be presented at the time of the hearing, if any. In accordance with Local Rule 7.18, the Receiver states the names of counsel for opposing parties and the reason for seeking an Order on an *ex parte* basis, as follows:

Counsel for Parties and Notice of *Ex Parte* Application: Counsel for parties are listed as follows:

NAME

WHO

Alan H. Stokke, Esq.
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Santa Ana, CA 92707

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34th Floor
Los Angeles, CA 90067

Attorneys for Defendant TLC America

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Steward & Miller
34700 Pacific Coast Highway
Suite 205
Capistrano Beach, CA 92624

Attorneys for Defendant Ernest F. Cossey

Gary A. Barnes, Esq.
Gambrell & Stolz, LLP
SunTrust Plaza
303 Peachtree St., Suite 4300
Atlanta, GA 30308

Attorneys for Defendant Thomas G. Cloud,
Cloud & Associates Consulting

The Receiver has not provided the parties with notice or copies of this Application as it is submitted under seal.

Reasons for Seeking of an *Ex Parte* Order: The Receiver seeks an Order on an *ex parte* basis because negotiations to obtain a \$3 million line of credit from City National Bank ("CNB") were recently finalized. As CNB's credit facility is available for a limited time, the Receiver seeks to immediately take such action as may be reasonable and necessary to utilize the line of credit for the benefit of investors of the Receivership Estate who are experiencing financial hardships.

II.
STATEMENT OF FACTS

Robb Evans is the Permanent Receiver ("Receiver") in this matter, having been appointed by the Court pursuant to its November 1, 2000 Order of Preliminary Injunction and Orders: (1) Freezing Assets; (2) Appointing a Receiver; (3) Prohibiting the Destruction of Documents; (4) For Accountings; (5) For Repatriation of Assets; and (6) For Expedited Discovery ("Order"). Under the Order, the Receiver was appointed as Permanent Receiver with the full powers of an equity receiver over TLC Investments & Trade Co.; TLC America, Inc. dba Brea Development

Company; TLC Brokerage, Inc. dba TLC Marketing; TLC Development, Inc.; TLC Real Properties, and their subsidiaries and affiliates ("TLC" or "Receivership Defendants"). The Receiver was empowered to collect, marshal, maintain and take custody, control and possession of all of the assets of the Receivership Defendants, with full power to sue, foreclose, marshal, sell, liquidate, collect, receive, and take into possession all such property.

On November 22, 2000, the Court entered its "Order Approving Temporary Receiver's Initial Status Report and Receiver's Second Status Report as Modified, etc." ("Order"). The Court's Order, at Section I, authorizes the Receiver, in part, as follows:

[T]he Receiver may obtain a line of credit up to \$5 million, under terms substantially similar to those described in the Second Status Report and attached exhibit.

In accordance with the Court's Order of November 22, 2000, the Receiver researched sources for lines of credit to the Receivership Estate. On December 15, 2000, CNB issued a Commitment Letter to the Receiver, a true and correct copy of which is attached hereto as Exhibit "A". Thereafter, the Receiver applied to the Court for an Order authorizing issuance of Receiver's Certificates of Indebtedness to CNB in order to acquire a \$4.5 million Secured Revolving Line of Credit, as described in the section entitled "Facility B" of CNB's December 15, 2000 Commitment Letter. On January 10, 2001, the Court entered its Order Authorizing Execution of Receiver's Certificates of Indebtedness to CNB.

By this Application, the Receiver seeks to acquire a \$3 million Secured Non-Revolving Line of Credit from CNB as such is described in the section entitled "Facility A" of CNB's December 15, 2000 Commitment Letter, in order to establish a Plan to Fund Investor Hardship Requests. The CNB credit facility would bear interest at a variable rate of two percent (2%) above the prevailing CNB Prime Rate of Interest (presently 9%) per annum, maturing twelve (12) months from the date of issuance.

III.

PLAN TO FUND HARDSHIP REQUESTS

1. Plan Overview.

The Receiver has received numerous written and verbal requests to make immediate advances available for TLC investors experiencing financial hardships. Some investors claim to have invested nearly all of their retirement savings with TLC and were using the interest payments for living expenses. In some cases, investors were using the interest payments for institutional board and care, or convalescent care, or for expensive medical procedures such as dialysis.

The Receiver desires to establish a plan to provide advances for hardship requests, provided such advances could be completed as equitable transactions in relation to the other potential claimants. However, without an approved Plan of Distribution and Claim Administration process, normally such advances would not be possible. With no claim forms, there would be no way to evaluate a potential claim, estimate the pro rata distribution that might be available for such a potential claim, and determine the advance was an equitable transaction for the other potential claimants.

The Receiver is in possession of the computer records of the TLC investors and has obtained copies of most of the individual investor files, compared them to the computer records, and made necessary adjustments. As stated in the Declaration of Robb Evans annexed hereto, the Receiver believes the estate has an accurate record of the details of most TLC investors' accounts.

The Receiver estimates that investor claims should total approximately \$132 million before any reduction for offsets or adjustments. The Receiver believes that distributions to victims will total about \$66 million (about 50% of the claim amount), to be paid over the next 24 to 30 months. By reviewing the individual records, the Receiver

would be able to confirm the apparent claim of each TLC investor, reduce it for any possible offsets, and apply the potential distribution payout percentage.

Therefore, the Receiver believes that it is possible to exercise financial and equitable control over a hardship advance program, and such a program would not conflict with the goal of the Receivership Estate to equitably distribute the liquidated assets for the allowed claims of TLC investors. With this foundation the Receiver recommends that the Receivership Estate provide hardship advances to TLC investors, with the following conditions:

A. Applicants must state, under penalty of perjury, that the advance is needed for necessary living or medical expenses, and other financial resources, are nearly or fully exhausted;

B. The total cumulative amount of hardship advances will not exceed three million dollars (\$3,000,000.) The advances will be funded, if needed, by a special \$3,000,000 credit facility offered by City National Bank;

C. Requests for advances will be accepted for three weeks, then reviewed, adjusted if necessary, and totaled;

D. Advances will be limited to the *smaller* of:

The Balance Limit: 50% of the expected distribution amount (not the apparent claim amount); or

The Funding Limit: \$3,000,000 divided by the number of applicants.

E. Advances will bear interest at the borrowing rate of the estate and be subject to a cost-recovery charge of \$75.00. The advances will be repaid from the first three distributions (projected to be 50% of total distributions), unless the investors want to repay sooner.

As an Example:

If 600 of the approximate 2,000 investors were to request an advance for a hardship request, the Funding Limit on each advance would be five thousand dollars (\$5,000). The average individual investment, before offsets, is \$52,144. The Balance Limit on \$52,144 is 50% of the expected dividend, or \$13,036. In this example of 600 applicants, an investor with an account balance of \$52,144 would receive an advance of five thousand dollars (\$5,000).

Additional Example:

If 300 of the approximate 2,000 investors were to request an advance for a hardship request, the Funding Limit on each advance would be ten thousand dollars (\$10,000). An investor with an account balance of \$25,000 would be subject to a Balance Limit of 50% of the expected dividend, or \$6,250. In this example of 300 applicants, an investor with an account balance of \$25,000 would receive an advance of six thousand two hundred fifty dollars (\$6,250).

2. Notice to TLC Investors.

Following Court approval of the above Plan, the Receiver proposes to provide notice to all known investors of TLC. The Receiver believes the most effective method of communicating notice would be by direct mail. The mailing would consist of a request that investors provide the Receiver with written descriptions of their hardships, executed under penalty of perjury, no later than three (3) weeks from the mailing date of the Receiver's notice.

IV.

MEMORANDUM OF POINTS & AUTHORITIES

The November 1, 2000 Order of Preliminary Injunction and Orders (1) Freezing Assets; (2) Appointing a Receiver; (3) Prohibiting the Destruction of Documents; (4) for Accountings; (5) for Repatriation of Assets; and (6) for Expedited Discovery ("Order") at Section VII, vests in the Receiver full power over all funds, assets, collateral, premises (whether owned, leased, occupied, or otherwise controlled), choses in action, books, records, papers and other property of the TLC Defendants. The Order further authorizes, empowers and directs the Receiver, among other things, to do the following:

(F) to make such payments and disbursements from the funds and assets taken into custody, control, and possession or thereafter received by him or her, and to incur, or authorize the making of such agreements as may be necessary and advisable in discharging his or her duties as receiver;

...

(I) to exercise all of the powers of TLC, TLC America, TLC Brokerage, TLC Development, and TLC Real Properties and their officers, directors, employees, representatives, or persons who exercise similar powers and perform similar duties(.

V. CONCLUSION

Based upon the foregoing, the Receiver respectfully requests that this Court grant the Receiver's *ex parte* Application for Order Authorizing a Plan to Fund Investor Hardship Requests in the manner outlined herein.

Dated: January _____, 2001

DRESSLER REIN EVANS & SESTANOVICH,
LLP

BYRON Z. MOLDO, Attorneys for,
ROBB EVANS, PERMANENT RECEIVER

DECLARATION OF ROBB EVANS

I, ROBB EVANS, declare as follows:

1. I am the duly appointed, qualified and acting Permanent Receiver in the within action. I have personal knowledge of the matters set forth in this declaration, and if called as a witness, I could and would competently testify based upon my personal firsthand knowledge to the statements contained herein.

2. I have received numerous written and verbal requests to make immediate advances available for TLC investors experiencing financial hardships. Some investors claim to have invested nearly all of their retirement savings with TLC and were using the interest payments for living expenses. In some cases, investors were using the interest payments for institutional board and care, or convalescent care, or for expensive medical procedures such as dialysis.

3. I desire to establish a plan to provide advances for hardship requests, provided such advances could be completed as equitable transactions in relation to the other potential claimants. However, without an approved Plan of Distribution and Claim Administration process, normally such advances would not be possible. With no claim forms, there would be no way to evaluate a potential claim, estimate the pro rata distribution that might be available for such a potential claim, and determine the advance was an equitable transaction for the other potential claimants.

4. I am in possession of the computer records of the TLC investors and have obtained copies of most of the individual investor files, compared them to the computer records, and made necessary adjustments. I believe the Receivership Estate presently has an accurate record of the details of most of TLC investors' accounts.

5. I estimate that investor claims should total approximately \$132 million before any reduction for offsets or adjustments. I believe that distributions to victims will total about \$66 million (about 50% of the claim amount), to be paid over the next 24 to 30 months. By reviewing the individual records, I would be able to confirm the apparent claim of each TLC investor, reduce it for any possible offsets, and apply the potential distribution payout percentage.

6. Therefore, I believe that it is possible to exercise financial and equitable control over a hardship advance program, and such a program would not conflict with the goal of the Receivership Estate to equitably distribute the liquidated assets for the allowed claims of TLC investors. With this foundation, I recommend that the Receivership Estate provide hardship advances to TLC investors, with the following conditions:

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7. I believe it is in the best interests of the Receivership Estate and its creditors to establish a Plan to Fund Investor Hardship Requests in the manner outlined herein.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this ____ day of January, 2001, at Cambria, California.

ROBB EVANS
