

ROBB EVANS & ASSOCIATES LLC
Temporary Receiver of
Longboat Global Funds Management, LLC, et al.
11450 Sheldon Street
Sun Valley, California 91352-1121
Telephone No.: (818) 768-8100
Facsimile No.: (818) 768-8802

Commodity Futures Trading Commission v. Longboat Global Funds Management, LLC
CASE No. 05-CV-2142 PJH

**Notice of Motion and Motion of Temporary Receiver for Order Approving
Payment of Administrative Fees and Expenses Incurred for the Period
August 19, 2005 Through September 30, 2005; Memorandum of Points
and Authorities; Declaration of Brick Kane**

Filed October 19, 2005

**ORIGINAL
FILED**

OCT 19 2005

**RICHARD W. WIEKING
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

1 **ROBB EVANS & ASSOCIATES LLC**
2 **11450 SHELDON STREET**
3 **SUN VALLEY, CA 91352**
4 **TELEPHONE: (818) 768-8100**
5 **FACSIMILE: (818) 768-8802**

6 **TEMPORARY RECEIVER**

7
8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

By Fax

10
11 **COMMODITY FUTURES TRADING
COMMISSION,**

12 **Plaintiff,**

13 **v.**

14 **ROBERT JOSEPH BEASLEY AND**
15 **LONGBOAT GLOBAL FUNDS
MANAGEMENT, LLC,**

16 **Defendants.**

CASE NO. 05-CV-2142-PJH

**NOTICE OF MOTION AND MOTION
OF TEMPORARY RECEIVER FOR
ORDER APPROVING PAYMENT OF
ADMINISTRATIVE FEES AND
EXPENSES INCURRED FOR THE
PERIOD AUGUST 19, 2005
THROUGH SEPTEMBER 30, 2005;
MEMORANDUM OF POINTS &
AUTHORITIES; DECLARATION OF
BRICK KANE**

Date: November 30, 2005

Time: 9:00 a.m.

**Place: Courtroom 3, 17th Floor
450 Golden Gate Ave.
San Francisco, CA 94102
(Hon. Phyllis J. Hamilton)**

[ORAL ARGUMENT NOT REQUIRED]

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23 **TO THE HONORABLE PHYLLIS J. HAMILTON, UNITED STATES**
24 **DISTRICT COURT JUDGE, AND TO ALL PARTIES AND THEIR ATTORNEYS**
25 **OF RECORD:**

26 **PLEASE TAKE NOTICE that on November 30, 2005, at 9:00 a.m. in**
27 **Courtroom 3 of the United States District Court for the Northern District of California**
28

1 located at 450 Golden Gate Avenue, 17th Floor, San Francisco, California 94102, Robb
2 Evans & Associates LLC, Temporary Receiver in the above-captioned case, will present its
3 Motion for an Order approving payment of administrative fees and expenses incurred for
4 the period August 19, 2005 through September 30, 2005 (“Motion”).

5 The Temporary Receiver’s Motion is based on this Notice of Motion, the
6 Memorandum of Points and Authorities; the Declaration of Brick Kane annexed hereto,
7 and the Court’s records and pleadings on file in this action, and all other evidence, both
8 oral and documentary, as may be presented at the time of hearing.

9 The Temporary Receiver’s Motion will request an Order from the Court approving
10 the payment of the administrative fees of the Temporary Receiver and its staff of
11 \$5,170.79 and expenses of \$19.55 for the period August 19, 2005 through September 30,
12 2005.

13 PLEASE TAKE FURTHER NOTICE that this Motion is made pursuant to Local
14 Rule 66-3, and is based upon this Notice of Motion, Motion, the accompanying
15 Memorandum of Points and Authorities, and the Declaration of Brick Kane, and upon
16 such other pleadings and oral and documentary evidence as may be presented at or before
17 the time of the hearing on the Motion.

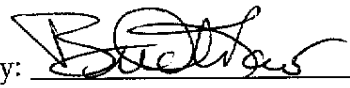
18 Any person or entity opposing this Motion must timely file with the Court and
19 serve upon the Temporary Receiver, whose name and address appear in the upper left-
20 hand corner of the first page of this Motion, a written opposition which complies in all
21 respects with the rules of this Court. Failure to timely file an opposition may be deemed
22 by the Court to be consent to the granting of the Temporary Receiver’s Motion.

23 PLEASE TAKE FURTHER NOTICE that this Motion is posted on the
24 Temporary Receiver’s website at <http://www.robbevans.com/html/longboat.html>, where
25 it may be reviewed in its entirety. A copy of this Motion will be provided to any interested
26 party upon receipt of a request therefore which may be directed to: Robb Evans &
27 Associates LLC, Attn: Judi Ehrlich, 11450 Sheldon Street, Sun Valley, CA 91352
28 telephone: (818) 768-8100, facsimile: (818) 768-8802.

1 PLEASE TAKE FURTHER NOTICE that, if no party objects to the Motion, the
2 Temporary Receiver is willing for the Court to consider it without oral argument.

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4 Dated: October 18, 2005

ROBB EVANS & ASSOCIATES LLC

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6 By: 
7 BRICK KANE
8 CHIEF OPERATING OFFICER

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I.

INTRODUCTION

On August 19, 2005, Robb Evans & Associates LLC (“REA” or “Temporary Receiver”) was appointed as Temporary Receiver in the within action pursuant to a “Consent Order of Preliminary Injunction and Other Equitable Relief” (“Order”). Pursuant to the terms of the Order, REA was appointed as Temporary Receiver for Defendant Longboat Global Funds Management, LLC (“Longboat”) and any affiliates or subsidiaries solely with respect to matters involving Piranha Capital, L.P. (“Piranha”), and all of the funds, properties, premises, accounts and other assets directly or indirectly owned, beneficially or otherwise, by them with the full powers of an equity Receiver, except as limited by the terms of the Order.

This action was commenced on May 25, 2005 by the Commodity Futures Trading Commission (“CFTC”) against the Defendants. The CFTC’s Complaint alleges that the Defendants committed fraud by misrepresenting the condition and status of certain investments held by Piranha, a commodity pool that Defendants operated, and failed to disclose Defendant Beasley’s personal financial interest in those investments, in violation of certain provisions of the Commodity Exchange Act (7 United States Code).

Prior Request for Approval of Fees and Expenses.

No previous requests for approval of fees and expenses of the Temporary Receiver and its staff have been submitted.

II.

**TEMPORARY RECEIVER’S FEES AND EXPENSES FOR THE PERIOD
AUGUST 19, 2005 THROUGH SEPTEMBER 30, 2005**

The Temporary Receiver seeks approval and authority for payment of the fees and expenses of the Temporary Receiver and its staff for the period August 19, 2005 through September 30, 2005. The fees and expenses for which approval is requested are set forth in the summary entitled “Fund Balance and Administrative Expenses” attached hereto as

1 Exhibit "1". The fees and costs of the Temporary Receiver are then itemized by the
2 Temporary Receiver's fees of \$2,827.50 (Exhibit "2" hereto), staff fees for financial
3 reconstruction and asset management of \$1,433.00 (Exhibit "3" hereto), and staff fees for
4 investigation of \$585.00 (Exhibit "4" hereto).

5 As set forth in detail in Exhibits "1" through "4" hereto, including out-of-pocket
6 expenses as itemized on Exhibit "1," the Temporary Receiver has incurred \$5,190.34 in
7 fees and expenses for the period August 19, 2005 through September 30, 2005. At
8 September 30, 2005, the sum of \$106,301.80 existed in the Receivership Estate.

9 **Overview of Services Performed by the Temporary Receiver and its Staff.**

10 During the period August 19, 2005 through September 30, 2005, the Temporary
11 Receiver and its staff engaged in ongoing administrative activities relating to the
12 Receivership Estate, including the following:

13 1. The Temporary Receiver and its staff began to assess the value and best
14 means of liquidation of the assets of the Receivership Estate in order to maximize the
15 return for investors and creditors.

16 2. The Temporary Receiver responded to numerous telephone inquiries from
17 investors seeking information about the receivership and the status of the fund. In
18 addition, the Temporary Receiver contacted Mr. Beasley's attorneys and arranged for
19 turnover of various documents involving property transactions. The Temporary Receiver
20 is also gathering information and documents from other sources, and has requested
21 documents which have not yet been produced by Mr. Beasley's counsel. The Temporary
22 Receiver analyzed those documents produced to date and has arranged a meeting with Mr.
23 Mark Boucher to explore the property transactions in greater detail.

24
25 **III.**

26 **MEMORANDUM OF POINTS AND AUTHORITIES**

27 The August 19, 2005 Consent Order of Preliminary Injunction and Other Equitable
28 Relief ("Order"), at Section IV, Paragraph E, directs as follows:

1 THE PARTIES AGREE AND IT IS FURTHER ORDERED that the Receiver
2 and all personnel hired by the Receiver as herein authorized, including counsel to
3 the Receiver, are entitled to reasonable compensation for the performance of duties
4 pursuant to this Order and for the cost of actual out-of-pocket expenses incurred
5 by them, from the assets now held by, or in the possession or control of, or which
6 may be received by Longboat. The Receiver shall file with the Court and serve on
7 the parties periodic requests for the payment of such reasonable compensation, wit
8 the first such request filed no more than sixty (60) days after the date of this Order.
9 The Receiver shall not increase the hourly rates used as the bases for such fee
10 applications without prior approval of the Court.

11 Local Civil Rule 66-3 states as follows:

12 All motions for fees for services rendered in connection with a receivership must
13 set forth in reasonable detail the nature of the services. The motion must include as
14 an exhibit an itemized record of time spent and services rendered and will be heard
15 in open Court.

16 Local Rule Civil 66-6(e) directs the Receiver to give notice to all interested parties,
17 in accordance with Local Rule 7-2, of the time and place of hearings on motions for fees
18 of the Receiver or of any attorney, accountant or investigator, the notice to state the
19 services performed and the fee requested.

20 **IV.**

21 **CONCLUSION**

22 WHEREFORE, the Temporary Receiver prays that this Court enter an Order as
23 follows:

- 24 1. Approving and confirming the administrative fees and expenses of the
25 Temporary Receiver and its staff for the period August 19, 2005 through September 30,
26 2005, as more particularly set forth herein; and
- 27 2. For such other and further relief as the Court may deem just and proper.

28 Dated: October 18, 2005

ROBB EVANS & ASSOCIATES LLC

By: 

BRICK KANE,
CHIEF OPERATING OFFICER

DECLARATION OF BRICK KANE

I, BRICK KANE, declare as follows:

1. I am the Chief Operating Officer of Robb Evans & Associates LLC, the duly appointed, qualified and acting Temporary Receiver in the within action. I have reviewed the foregoing Motion and know the contents thereof, and the same is true of my own knowledge, except as to those matters which are stated upon information or belief, and as to those matters, I believe them to be true.

2. No previous requests for approval of fees and expenses of the Temporary Receiver and its staff have been submitted.

3. By this Motion, the Temporary Receiver seeks an Order approving and authorizing payment of administrative fees of the Temporary Receiver and its staff of \$5,170.79 and expenses of \$19.55 for the period August 19, 2005 through September 30, 2005.

4. Attached hereto as Exhibit "1" is an accounting entitled "Fund Balance and Administrative Expenses. Attached hereto as Exhibit "2" is an itemization of the Temporary Receiver's fees of \$2,827.50. Attached hereto as Exhibit "3" is an itemization of staff fees for financial reconstruction and asset management of \$1,433.00. Attached hereto as Exhibit "4" is an itemization of staff fees for investigation of \$585.00. As set forth in detail in Exhibits "1" through "4" hereto, including out-of-pocket expenses as itemized on Exhibit "1," the Temporary Receiver has incurred \$5,190.34 in fees and expenses for the period August 19, 2005 through September 30, 2005.

5. During the period August 19, 2005 through September 30, 2005, the Temporary Receiver and its staff engaged in ongoing administrative activities relating to the Receivership Estate, including the following:

A. The Temporary Receiver and its staff began to assess the value and best means of liquidation of the assets of the Receivership Estate in order to maximize the return for investors and creditors.

1 B. The Temporary Receiver responded to numerous telephone inquiries
2 from investors seeking information about the receivership and the status of the
3 fund. In addition, the Temporary Receiver contacted Mr. Beasley's attorneys and
4 arranged for turnover of various documents involving property transactions. The
5 Temporary Receiver is also gathering information and documents from other
6 sources, and has requested documents not yet produced. The Temporary Receiver
7 analyzed those documents that have been produced to date and has arranged a
8 meeting with Mr. Mark Boucher to explore the property transactions in greater
9 detail.

10 6. In light of the extent of the work performed during this period, I believe that
11 the fees and costs of the Temporary Receiver and its staff are reasonable and should be
12 approved and authorized for payment. At September 30, 2005, the sum of \$106,301.80
13 existed in the Receivership Estate.

14 I declare under penalty of perjury under the laws of the United States of America
15 that the foregoing is true and correct. Executed this 18 day of October, 2005, at Sun
16 Valley, California.

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19 _____
20 BRICK KANE
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EXHIBIT "1"

Robb Evans & Associates LLC, Temporary Receiver of Longboat Global Funds Management, LLC et al.
Funds Balance and Administrative Expenses
From Inception (August 19, 2005) to September 30, 2005

Funds Transferred from Piranha	106,301.80
Accrued but Unpaid Expenses	
Fees	
Receiver's Fees	2,827.50
Senior Staff	1,433.00
Investigation Staff	585.00
Support Staff	325.29
Total Fees	<u>5,170.79</u>
Postage & Messenger Service	19.55
Total Fees and Expenses	<u>5,190.34</u>
Fund Balance	<u><u>101,111.46</u></u>

EXHIBIT "2"

Robb Evans & Associates LLC
Temporary Receiver of Longboat Global Funds Management, LLC et al.
Receiver's Fees
August 19, 2005 to September 30, 2005

Name	Rate	Hours	Amount
B. Kane	225	4.50	1,012.50
A. Jen	150	6.00	900.00
K. Johnson	150	6.10	915.00
Total		16.60	2,827.50

EXHIBIT "3"

Robb Evans & Associates LLC
Temporary Receiver of Longboat Global Funds Management, LLC et al.
Senior Staff Fees
August 19, 2005 to September 30, 2005

Name	Rate	Hours	Amount
E. Lanna	110	12.20	1,342.00
L. Lee	130	0.70	91.00
Total		12.90	1,433.00

EXHIBIT "4"

Robb Evans & Associates LLC
Temporary Receiver of Longboat Global Funds Management, LLC et al.
Investigation Staff Fees
August 19, 2005 to September 30, 2005

Name	Rate	Hours	Amount
J. Ehrlich	75	7.80	585.00
Total		7.80	585.00

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PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California; I am over the age of 18 years and am not a party to the within action or proceeding. I am employed by Robb Evans & Associates, LLC, located at 11450 Sheldon Street, Sun Valley, CA 91352-1121, Telephone: (818) 768-8100; Facsimile: (818) 768-8802.

On October 18, 2005, I served the foregoing document described as: MOTION FOR ORDER APPROVING PAYMENT OF TEMPORARY RECEIVER'S ADMINISTRATIVE FEES AND EXPENSES INCURRED FOR THE PERIOD AUGUST 19, 2005 THROUGH SEPTEMBER 30, 2005 on the interested parties in said action, as follows:

Allison Lurton, Esq.
Gretchen L. Lowe, Esq.
Karen Kenmotsu, Esq.
Commodity Futures Trading Commission
1155 21st Street NW
Washington DC 20581
Attorneys for Plaintiff

Timothy James Carey, Esq.
David William Porteous, Esq.
Gardner Carton & Douglas
191 N. Wacker Drive, Suite 3700
Chicago, IL 60606
Attorney for Defendants

Robert S. Lawrence, Esq.
Collette & Erickson LLP
235 Pine Street, Suite 1300
San Francisco, CA 94104
Attorneys for Defendants

- (By Mail) I caused such envelope with postage thereon, fully prepaid, to be placed in the United States mail. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal service on that same day with postage thereon fully prepaid at Sun Valley, California, in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit. Executed on October 18, 2005, at Sun Valley, California.
- (Federal) I declare that I am an employee in the offices of the Receiver, an officer of this Court at whose direction the service was made.



JUDI S. EHRLICH