

ROBB EVANS & ASSOCIATES LLC
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

**Receiver's Motion for Approval of Claims Distribution of Pershing
Securities Deposit; and
[Proposed] Order Approving Proposed Distribution and Payment of Claim**

Filed October 18, 2007

1 Linda J. Candler, CA Bar No. 181805
Linda_Candler@robbevans.com
2 Robb Evans and Associates LLC
11450 Sheldon Street
3 Sun Valley, CA 91352
phone: 818-768-8100
4 fax: 818-768-8802

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7 UNITED STATES DISTRICT COURT
8 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION
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10 COMMODITY FUTURES TRADING)
11 COMMISSION,)

12 Plaintiff,

13 vs.

14 ROBERT JOSEPH BEASLEY,)
15 LONGBOAT GLOBAL FUNDS)
16 MANAGEMENT, LLC,)

17 Defendants.
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Case No.: No. 05-2142 PJH

**RECEIVER'S MOTION FOR
APPROVAL OF CLAIMS
DISTRIBUTION OF PERSHING
SECURITIES DEPOSIT**

Date: November 28, 2007

Time: 9:00 a.m.

**Place Courtroom 3, 17th Floor
450 Golden Gate Ave.**

San Francisco, CA 94102

Judge: Hon. Phyllis J. Hamilton

21
22 TO THE HONORABLE PHYLLIS J. HAMILTON, UNITED STATES
23 DISTRICT COURT JUDGE, AND TO ALL PARTIES AND THEIR ATTORNEYS
24 OF RECORD:

25 PLEASE TAKE NOTICE that on November 28, 2007, at 9:00 a.m. in Courtroom 3 of
26 the United States District Court for the Northern District of California located at 450
27 Golden Gate Avenue, San Francisco, California 94102, Robb Evans & Associates LLC,
28 ("REA or Receiver") will present its Motion for an Order approving the Receiver's

1 proposed distribution of a deposit in the amount of \$1 million, plus accrued interest. This
2 amount represents a \$1 million deposit previously held by Pershing Securities, which the
3 Receiver is holding in a segregated account pending the resolution of a claim filed by four
4 plaintiffs in the Northern District of Illinois ("Illinois Plaintiffs"). In support of this
5 Motion, Kenton Johnson, Executive Director of Robb Evans & Associates LLC, submits
6 the attached declaration.

7 This Motion and Proposed Order will be served on all interested parties, and
8 posted on the Receiver's website at <http://www.robbevans.com/html/longboat.html>,
9 where it may be reviewed in its entirety. A copy of the Declaration and accompanying
10 exhibits will be provided to any interested party upon receipt of a request therefore which
11 may be directed to: Robb Evans & Associates LLC, Attn: Cherrie Eustaquio, 11450
12 Sheldon Street, Sun Valley, CA 91352 telephone: (818) 768-8100, facsimile: (818) 768-
13 8802. Any person or entity opposing this Motion must timely file with the Court and serve
14 upon the Receiver, whose name and address appear in the upper left-hand corner of the
15 first page of this Motion, a written opposition which complies in all respects with the rules
16 of this Court. Failure to timely file an opposition may be deemed by the Court to be
17 consent to the granting of the Receiver's Motion. If no party objects to the Motion, the
18 Receiver is willing for the Court to consider it without oral argument.

19 For the reasons set forth in this Motion and the attached declaration of Kenton
20 Johnson, the Receiver respectfully requests an order approving the distribution of an asset
21 held by Piranha Capital, L.P., to wit: an account formerly held at Pershing LLC and now
22 held by the Receiver, with a balance of \$1,000,000.00, plus accrued interest.

23 I.

24 CASE BACKGROUND

25 1. On May 25, 2005, the CFTC filed a Complaint against Robert Joseph
26 Beasley and Longboat Global Funds Management, LLC. Thereafter on August 19, 2005
27 this Court appointed Robb Evans and Associates LLC (REA) as Temporary Receiver for
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1 Beasley and Longboat with respect to matters involving Piranha Capital L.P., with full
2 powers of an equity receiver. The August 19, 2005 Order specifically directed the Receiver
3 to “take exclusive custody, control and possession of all the funds, property, mail
4 documents, books, records and other assets of, in the possession of, or under the control
5 of the Longboat, that relate to Piranha, wherever situated...” The August 19, 2005 Order
6 also stayed all persons from taking any action during the pendency of the CFTC case to
7 establish or enforce any claim, right, or interest for or against any receivership assets.

8 2. On August 27, 2007, Robb Evans and Associates LLC was named the
9 Permanent Receiver of Longboat Global Funds for Piranha Capital, LP (“Piranha”) and
10 for Piranha Capital Investment (Bahamas) (“Piranha Offshore”), and a Consent Order of
11 Permanent Injunction was entered in the CFTC case.

12 3. One of the assets held by Piranha Capital LP is a deposit formerly held at
13 Pershing Securities in the amount of \$1 million, plus interest. These funds, currently held
14 by the Receiver, were the subject of a Writ of Attachment Order of the United States
15 District Court for the Northern District of Illinois, which was pending at the time of the
16 Receiver’s appointment. On December 14, 2005, the Temporary Receiver filed a Petition
17 for Instructions with this Court concerning this asset. On February 24, 2006, this Court
18 entered an Order granting the Temporary Receiver’s petition for instructions and motion
19 for an order seeking transfer of this asset. In that Order, this Court noted that “the
20 interests of the Illinois Plaintiffs as creditors can effectively be taken into account by
21 REA’s proposal to hold the asset in trust, pending resolution of the Illinois district court
22 action. In that event, if the plaintiffs there are successful, they can proceed to recover
23 against the receiver the funds in trust.”

24 4. Following the Court’s February 24, 2006 Order, the Receiver filed a Motion
25 for Transfer in the Northern District of Illinois on April 6, 2006. In the interim, just prior
26 to the filing of the Receiver’s Motion in the Northern District of Illinois, Judge Andersen
27 granted the Illinois plaintiffs’ Motion for Summary Judgment.
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1 5. The action filed by the Illinois plaintiffs was commenced on October 15,
2 2004, prior to the Receiver's appointment. In that action, certain investors in Piranha
3 Capital LP, Thomas F. Gradel, Sarah Gradel, Thomas A Mazza and James X. Maude,
4 (Illinois Plaintiffs) filed a Complaint in the Circuit Court of Cook County (the "Gradel
5 case"), Case No. 04 L 11694, alleging various claims against Longboat, Beasley and
6 Piranha, including a demand for payment on redemption requests made on July 7, 2005.
7 On October 27, 2004, at plaintiffs' request, the Circuit Court entered an *ex parte* order of
8 attachment (the "Attachment Order") against certain assets of Piranha, including the
9 Pershing investment account. On January 6, 2005, defendants filed a Notice of Removal
10 and removed the case to the United States District Court for the Northern District of
11 Illinois, where the case was given Case No. 05 C 0078 and assigned to the Honorable
12 Judge Wayne R. Andersen. On April 7, 2005, Judge Andersen denied a motion brought by
13 Piranha to vacate the Attachment Order. The Plaintiffs subsequently filed a Motion for
14 Summary Judgment on May 13, 2005. This Motion was pending at the time of the
15 Receiver's appointment, and Longboat's former counsel had filed a response. On March
16 22, 2006, Judge Andersen granted the Plaintiff's Motion for Summary Judgment. A copy
17 of this Order is attached to Mr. Johnson's Declaration as Exhibit 1.

18 6. The Receiver filed a Motion to Vacate the Attachment Order and Motion
19 for Transfer in the Northern District of Illinois on April 6, 2006. The Illinois Plaintiffs
20 filed a Motion for Correction of Judgment and Turnover Order on April 3, 2006. On
21 October 20, 2006, Judge Andersen granted the Receiver's Motion to Vacate the
22 Attachment Order. On November 1, 2006, the Receiver received a wire transfer from
23 Pershing in the amount of \$1,019,885.53, which it deposited in an account entitled
24 "Longboat Global Funds Management LLC, et al., Robb Evans & Associates LLC,
25 Temporary Receiver." The current balance is \$1,046,848.28.

26 5. The Illinois Plaintiffs filed a Notice of Appeal in the Seventh Circuit of the
27 Motion to Vacate the Attachment Order, which was pending at the time the funds were
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1 transferred to the Receiver. The Receiver filed a Motion to Dismiss the Appeal as Moot,
2 since the funds had been transferred to the Receiver. On July 25, 2007, the Seventh
3 Circuit ordered that the Attachment Order be reinstated and the funds returned. A copy
4 of the Order of the Seventh Circuit is attached to Mr. Johnson's Declaration as Exhibit 2.

5 7. The Receiver filed a Petition for Rehearing, on the grounds that there had
6 been no finding by the District Court that the Writ of Attachment was a final order giving
7 the Illinois Plaintiffs a secured interest in the Pershing deposit. A copy of the Receiver's
8 Petition for Rehearing is attached to Mr. Johnson's Declaration as Exhibit 3.

9 8. On September 13, 2007 the Seventh Circuit denied the Petition for
10 Rehearing. A copy of that Order is attached to Mr. Johnson's Declaration as Exhibit 4.

11 9. The Seventh Circuit concluded that the transfer of the Pershing deposit to
12 the Receiver did not extinguish the plaintiffs' interest in the property. The Court further
13 held that "without the attachment that the district court has vacated, the judgment the
14 plaintiffs obtained in the district court in Chicago did not create a judgment lien— a lien
15 that would relate back to the date of the attachment and thus potentially give them priority
16 over Piranha's other creditors." (citing *Mardant v Artists Embassy, Inc.*, 166 N.E. 2d 311,
17 314-15 (Ill App. 1960); *United States v Security Trust & Savings Bank*, 340 U.S. 47, 50(1950);
18 and *Bjork v United States*, 486 F.2d 934, 939 n.8 (7th Cir. 1973)). Accordingly, the Seventh
19 Circuit entered an Order Reinstating the Attachment Order and directed the Receiver to
20 return the Pershing deposit, holding that "as between two courts of concurrent and
21 coordinate jurisdiction, the court which first obtains jurisdiction and constructive
22 possession of property ... [namely the \$1 million in the Pershing account] is entitled to
23 retain it without interference and cannot be deprived of its right to do so." The Seventh
24 Circuit noted that the Receiver was not appointed in the California suit until six months
25 after the plaintiffs in the Illinois action had filed a Writ of Attachment. The Seventh
26 Circuit concluded that the final judgment later entered by the district court in Chicago
27 perfected the plaintiffs' judgment lien as of the date of the attachment. No cases were
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1 cited to support this conclusion, although the Seventh Circuit noted that in bankruptcy
2 proceedings, “creditors are not prohibited from executing a judgment lien against a
3 discharged debtor’s property, as long as the judgment was obtained before discharge.”
4 Citing 4 *Collier on Bankruptcy* S 524.02 [1] (Alan N. Resnick et al., eds., 15th ed. Rev. 2007).

5 10. Based on the Seventh Circuit’s decision, the Receiver seeks this Court’s
6 approval to return the \$1 million deposit, plus accrued interest, to Pershing Securities so
7 that the Illinois plaintiffs can enforce their Writ of Attachment against those funds, subject
8 to the appropriate order of the District Court for the Northern District of Illinois. The
9 Receiver’s counsel has advised the Illinois District Court and the Illinois Plaintiffs that the
10 Receiver is seeking this Court’s approval before the Pershing deposit is returned.
11 Alternatively, the Receiver seeks this Court’s approval to pay the funds held in the
12 segregated account to the Illinois plaintiffs, if the United States District Court for the
13 Northern District of Illinois enters an order allowing the Plaintiffs to enforce their writ of
14 attachment against the funds now held by the Receiver. The Court in the Northern
15 District of Illinois has set a status conference in this matter for November 1, 2007.

16 II.

17 CONCLUSION AND RELIEF SOUGHT

18 Based upon the foregoing, the Receiver hereby moves this Court for an Order:

19 (1) Authorizing the Receiver to return the \$1 million deposit and accrued interest,
20 representing funds transferred from Pershing Securities, back to Pershing Securities so that
21 the reinstated Writ of Attachment may be enforced against those funds; or alternatively,
22 permitting the Receiver to pay the Illinois plaintiffs directly from the \$1 million deposit
23 pursuant to an order from the United States District Court for the Northern District of
24 Illinois authorizing such payment.

25 (2) Approving the payment of the Illinois Plaintiffs’ claims in the amounts as
26 Ordered by the Northern District of Illinois in the underlying action in that district.
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(3) For such other relief as is deemed just and proper.

Dated: October 17, 2007

ROBB EVANS & ASSOCIATES LLC

By: *Linda Candler*
LINDA J. CANDLER, ESQ.
ATTORNEY FOR RECEIVER

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

ROBERT JOSEPH BEASLEY AND
LONGBOAT GLOBAL FUNDS
MANAGEMENT, LLC,

Defendants.

CASE NO. 05-CV-2142-PJH

[Proposed] ORDER APPROVING
PROPOSED DISTRIBUTION AND
PAYMENT OF CLAIM

Date: November 28, 2007
Time: 9:00 a.m.
Place: Courtroom 3, 17th Floor
450 Golden Gate Ave.
San Francisco, CA 94102
(Hon. Phyllis J. Hamilton)

The Motion of Robb Evans & Associates LLC, Permanent Receiver in the above-captioned case, for an Order approving payment of a claim of four investors of Piranha Capital, L.P. based on the entry of a Writ of Attachment against a \$1 million deposit formerly held by Piranha Capital LP at Pershing Securities came on regularly for hearing on November 28, 2007 in Courtroom 3 of the above-referenced Court, the Honorable Phyllis J. Hamilton, United States District Judge, presiding. Parties appeared as reflected in the Court's record.

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The Court, having reviewed the Motion and all papers filed in support thereof, and good cause being shown therefore, rules as follows:

IT IS HEREBY ORDERED:

1. The Receiver's Motion for approval of payment of the claims of Theodore and Sarah Gradel, Thomas Mazza and James Maude, subject to a Writ of Attachment and subject to an Order of the United States District Court for the Northern District of Illinois in Case No. 05 C 78 in hereby granted.

2. The Receiver is authorized to return the funds transferred to the Receiver from Pershing Securities in the amount of \$1 million, plus interest, to Pershing Securities so that the Writ of Attachment may be reinstated against those funds.

3. Alternatively, if so ordered by the United States District Court for the Northern District of Illinois, the Receiver is authorized to pay the claims of the Illinois plaintiffs directly to them, in amounts as ordered by the Northern District of Illinois, up to the amount now held in a segregated account by the Receiver that represents the Pershing deposit of \$1 million, plus accrued interest on those funds.

Dated: _____

PHYLLIS J. HAMILTON.
United States District Judge