

ROBB EVANS & ASSOCIATES LLC
Temporary Receiver of
Longboat Global Funds Management, LLC, et al.

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

**Temporary Receiver's Response to Memorandum in Opposition to
Receiver's Motion for Transfer of Receivership Property**

Filed February 7, 2006

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RICHARD W. WIERING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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6 Attorneys for
7 Robb Evans & Associates LLC
8 Temporary Receiver

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

13 COMMODITY FUTURES TRADING)
14 COMMISSION,)

Case No.: No. 05-2142 PJH

15 Plaintiff,

**TEMPORARY RECEIVER'S
RESPONSE TO MEMORANDUM
IN OPPOSITION TO RECEIVER'S
MOTION FOR TRANSFER OF
RECEIVERSHIP PROPERTY**

16 vs.

17 ROBERT JOSEPH BEASLEY,
18 LONGBOAT GLOBAL FUNDS
19 MANAGEMENT, LLC,

Date: March 1, 2006
Time: 9:00 a.m.
Place: Courtroom 3, 17th Floor
450 Golden Gate Ave.
San Francisco, CA 94102
(Hon. Phyllis J. Hamilton)

20 Defendants.
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24 The Temporary Receiver, Robb Evans and Associates LLC, hereby files its
25 response to the Opposition of Theodore F. Gradel, Sarah Gradel, Thomas A.
26 Mazza, and James X. Maude (the Illinois Plaintiffs) to the Temporary
27 Receiver's Motion for an Order for Transfer of Piranha Capital L.P. funds to
28

1 the Temporary Receiver. On December 14, 2005, the Temporary Receiver
2 filed a Petition for Instructions and Motion for Transfer of Receivership
3 Property, to wit: a Piranha Capital, L.P. account held at Pershing Investment
4 Management Services LLC with a balance of \$1,000,000.00. The Temporary
5 Receiver requested that this Court permit the Temporary Receiver to file a
6 claim in the case filed by the Illinois Plaintiffs, seeking the turnover of funds
7 subject to a restraining order in that action to the Temporary Receiver. The
8 Temporary Receiver has advised counsel for the Illinois Plaintiffs that the
9 Temporary Receiver is willing to hold such funds in trust pending the
10 outcome of the proceedings against the defendants in this case and further
11 orders of this Court regarding distribution of receivership assets to the
12 investors.

13 Identification, Collection and Distribution of Assets:

14 The Order of Preliminary Injunction dated August 19, 2005, directs and
15 authorizes the Temporary Receiver to:

16 “B. Take exclusive custody, control, and possession of all the funds,
17 property, mail, documents, books, records and other assets of, in the possession of,
18 or under the control of Longboat, that relate to Piranha, wherever situated ... The
19 Receiver shall have full power to sue for, collect, receive and take possession of all
20 goods, chattels, rights, credits, moneys, effects, land, leases, documents, books,
21 records, work papers, and records of accounts, including computer-maintained
22 information, and other papers of the defendants relating to Piranha ...”

23 By this Motion, the Temporary Receiver seeks to take possession of an
24 account belong to Piranha Capital L.P., held by Pershing Investment Management
25 Services LLC (Pershing account). The opposition of the Illinois Plaintiffs to the
26 Temporary Receiver’s proposed action to take custody and control of this asset is
27 contrary to the provisions of the Order of Appointment.
28

1 Payments to Investors:

2 The Illinois Plaintiffs acknowledge that they have received partial returns of
3 their investments. Documents reviewed by the Temporary Receiver show that
4 Piranha made a return of approx 75% of Piranha's liquid assets (\$9 million) on
5 October 5, 2004. This return was done on a pro rata basis and represented an
6 approximate 27% return of capital. Payments to the Illinois Plaintiffs were as
7 follows: Theodore F. and Sarah J. Gradel \$81,212,51; James X. Maude
8 \$156,147.11; Thomas A. Mazza \$156.147.11. Payments were made in January,
9 2005 as follows: Theodore F. and Sarah J. Gradel \$18,515.51; James X. Maude
10 \$35,599.73; Thomas A. Mazza \$35,599.73. Payments were made in February, 2005
11 as follows: Theodore F. and Sarah J. Gradel \$8,046.45; James X. Maude
12 \$15,470.89; Thomas A. Mazza \$15,470.89. Again, these payments were part of a
13 pro rata distribution to all investors. The February 2005 investor list shows that the
14 ending balances for the Illinois Plaintiffs as of February, 2005, were: Theodore F.
15 and Sarah J. Gradel: \$206,136.27; Thomas A. Mazza: \$\$396,337.71; James X.
16 Maude: \$396,337.71. The Illinois Plaintiffs made initial investments of \$250,000.
17 Plaintiffs Maude and Mazza made additional investments of \$250,000 each. The
18 total principal invested was as follows: Theodore F. and Sarah J. Gradel: \$250,000;
19 Thomas A. Mazza: \$500,000; James X. Maude: \$500,000. If the Illinois Plaintiffs
20 are successful and they seek to enforce a judgment against the \$1 million subject to
21 the Illinois Restraining Order, they will essentially obtain a 100% recovery at the
22 expense of the other investors.

23 The Illinois Plaintiffs argue that they are secured creditors, and that the
24 Receiver is seeking to effect the liquidation of the defendants. The Temporary
25 Receiver is not seeking to liquidate Piranha Capital, L.P. or its general partner,
26 Longboat Global Funds Management LLC. It may be that the actions of the
27 defendants will result in the insolvency of the Piranha Capital L.P., particularly if
28 the Promissory Notes due to Piranha Capital L.P. are not paid and the security

1 interests in the underlying assets, to the extent that they exist, are insufficient to
2 repay the notes. However, the Temporary Receiver's proposed action here is simply
3 to take control of a receivership asset that is the subject of a restraining order
4 obtained by the Illinois Plaintiffs. Since those funds are already restrained, the
5 Temporary Receiver's proposed action does not in any way contribute to the
6 possible insolvency of Piranha Capital, L.P. Until such time as all of the investor
7 claims have been identified and all of the assets of the receivership entities have
8 been collected, the Temporary Receiver further submits that it is premature to
9 determine whether the Illinois plaintiffs are secured creditors, and have priority over
10 the other fund investors. The CFTC Amended Complaint sought the appointment of
11 a Receiver to assist in the identification and maintenance of the pool's assets and
12 such other relief as this Court may deem necessary and appropriate. The CFTC is
13 also seeking a restitution order.

14 The Illinois Plaintiffs also argue that the Temporary Receiver has failed to
15 provide any legal authority allowing it to take possession of funds that belong to a
16 non-party and are not in the possession, custody, or control of any of the
17 Defendants. As set out above, the Temporary Receiver is specifically appointed
18 and authorized by this Court to take custody and control of all funds in the
19 possession of, or under the control of, Longboat, that relate to Piranha, wherever
20 situated. The Pershing account was and still is an account under the control of
21 Longboat, which is a defendant and a party to the CFTC action as well as the Illinois
22 action. As stated in the Affidavit of Pamela Patterson, an employee of Longboat
23 Global Funds Management, LLC, filed in the Illinois action, "In its capacity as
24 General Partner for Piranha, Longboat was authorized to, and did, open accounts
25 with broker-dealers, futures commission merchants and commercial banks in the
26 name of and for the benefit of Piranha." The Temporary Receiver's legal authority
27 to proceed against this asset is clear.

1 Although the Temporary Receiver has filed a Motion to Intervene in the
2 Illinois action, no relief has been sought by the Temporary Receiver in Illinois. The
3 Temporary Receiver's action in the Illinois case was simply to notify the Illinois
4 Court of the Temporary Receiver's appointment, and to advise the Illinois Court that
5 the Receiver is seeking instructions from this Court, which is supervising the
6 receivership, before taking any further action in the Illinois proceedings to take
7 control of this receivership asset.

8 For the foregoing reasons, the Temporary Receiver respectfully requests that
9 this Court authorize the Temporary Receiver to intervene in the Illinois action
10 seeking an amendment to the injunction granted by the Illinois Court to allow the
11 transfer of the funds subject to the restraining order to the Temporary Receiver.
12 The Temporary Receiver will hold those funds in trust. If the Illinois Plaintiffs are
13 successful in the Illinois action, they can seek enforcement of their judgment against
14 the funds held by the Temporary Receiver. The Temporary Receiver submits that
15 this court, which supervises the equity receivership, should determine the priority of
16 claims, and the distribution of assets, once all of the assets of the Receivership have
17 been collected, and all the claimants have been identified. The Temporary Receiver
18 is appointed to protect the receivership assets for the benefit of all investors, and the
19 Temporary Receiver's proposed action is to preserve and hold a receivership asset
20 for the benefit of all of the investors.

21
22 Dated this 6th day of February, 2006

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26 Linda J. Candler
27 Attorney for Receiver
28 Robb Evans and
Associates LLC

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 11450 Sheldon Street, Sun Valley, CA 91352.

On February 6, 2006, I served the foregoing document described as **TEMPORARY RECEIVER'S RESPONSE TO MEMORANDUM IN OPPOSITION TO RECEIVER'S MOTION FOR TRANSFER OF RECEIVERSHIP PROPERTY** on the interested parties in this action by placing a true copy thereof enclosed in sealed envelope addressed as follows:

Allison Lurton, Esq. Gretchen L. Lowe, esq. Karen Kenmotsu, Esq. Commodity Futures Trading Commission 1155 21 st Street, NW Washington, DC 20581 alurton@cftc.gov	Timothy James Carey, Esq. David William Porteous, Esq. Gardner Carton Douglas 191 W. Wacker Drive, Suite 3700 Chicago, IL 60606 dporteous@gcd.com
Robert B. Christie, Esq. Henderson & Lyman 175 West Jackson, Suite 240 Chicago, IL 60604 rchristie@henderson-lyman.com	

(BY MAIL) I caused such envelope to be deposited in the mail at Sun Valley, California. 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 the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

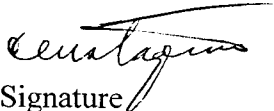
(BY EMAIL DELIVERY) I caused said documents to be emailed to the addressee(s) as listed above.

(BY FEDERAL EXPRESS) I caused an envelope to be hand-delivered to a representative of FEDEX at Sun Valley, California; whereupon said envelope is to be delivered by hand to a representative of the addressee on the next business day. I am readily familiar with the firm's practice of collection and processing correspondence for delivery with FEDEX for overnight delivery by next business day.

Executed on February 6, 2006, at Sun Valley, California.

I declare under penalty of perjury, under the laws of the State of California that the foregoing is true and correct.

Cherrie Eustaquio
Printed Name


Signature