

Sealed

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

FILED by RR D.C.
MAR 06 2017
STEVEN M. LARIMORE
CLERK U. S. DIST. CT.
S. D. of FLA. - MIAMI

Case No. **17-20848**

CV- Gayley

Federal Trade Commission,

Plaintiff,

v.

FILED UNDER SEAL

World Patent Marketing, Inc., a Florida corporation;

Desa Industries, Inc., also doing business as World Patent Marketing, a Delaware corporation; and

Scott Cooper, individually and as an owner and officer of World Patent Marketing, Inc. and Desa Industries, Inc.,

Defendants.

]

**PLAINTIFF'S *EX PARTE* RECOMMENDATION
FOR TEMPORARY RECEIVER**

In connection with its *Ex Parte* Motion for a Temporary Restraining Order, Plaintiff Federal Trade Commission ("FTC") makes the following recommendation regarding the appointment of a temporary receiver over Defendants World Patent Marketing, Inc., and Desa Industries, Inc.:

The FTC proposes that the Court appoint Jonathan Perlman of Genovese Joblove & Battista, a law firm in Miami, Florida, as a temporary receiver over the Defendants in this matter.

Mr. Perlman is qualified to serve as a temporary receiver and has expressed a willingness to do so. A copy of his qualifications and fee schedule is attached as **Attachment A**. As reflected in Attachment A, Mr. Perlman has extensive experience with complex receivership matters.

The receiver's responsibilities likely will involve substantial asset tracing to recover funds derived from Defendants' illegal conduct. The resources and experience of Mr. Perlman makes him qualified to manage such a task.

We are unaware of any conflicts of interests that would prevent Mr. Perlman from acting as a receiver in this matter.

Should the Court desire to consider additional options for temporary receiver, the FTC can provide names of additional highly qualified candidates.

Respectfully submitted,

David C. Shonka
Acting General Counsel



Dated: March 6, 2017

Colleen Robbins, Special Bar # A5500793
James Evans, Special Bar # A5502080
Jody Goodman, Special Bar # A5502288
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Federal Trade Commission*

Attachment A

GENOVESE

JOBLOVE

BATTISTA

P.A.
ATTORNEYS AT LAW

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March 2, 2017

Via E-Mail - jgoodman1@ftc.gov

Jody Goodman, Esq.
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

RE: Receiver Candidate

Dear Jody:

I am writing this letter to express my interest in serving as a court-appointed Receiver in matters initiated by the Federal Trade Commission and agree to faithfully perform the duties of Receiver if appointed. As we discussed, please find below a description of my background and relevant experience, as well as that of my firm, Genovese Joblove & Battista. By separate letter, I will discuss the discounted terms I am willing to serve under, for the benefit of the particular receivership estate for which I am being considered.

I graduated from Duke University (*cum laude*) and the University of Florida College of Law and have been practicing law in South Florida for over 25 years. I am "AV" rated by Martindale-Hubbell. I have served on multiple occasions as an arbitrator chairperson for the Financial Industry Regulatory Authority, and have been recognized as a "Florida Super Lawyer" and "Top Lawyer" in securities by Law & Politics and the South Florida Legal Guide, respectively, as well as a "Legal Eagle" by *Franchise Times* recognizing the top 100 U.S. franchising attorneys.

I am a shareholder of the Genovese Joblove & Battista law firm (the "Firm"), and direct the Firm's securities and class action litigation practice groups. In the securities field, I have represented investors, brokers, and brokerage firms in federal and state courts, before the SEC, self-regulatory organizations, and state banking authorities. I have successfully prosecuted class actions, including against Salomon Smith Barney, Inc., Credit Suisse First Boston Corp., and Lehman Brothers, obtaining millions of dollars for clients. I also regularly represent franchisors, distributors and others in complex civil litigation, and have both brought and defended numerous actions under Section 5 of the FTC Act, in particular its many state analogs including Florida's Deceptive and Unfair Trade Practices Act. I am a frequent speaker for the American Bar Association and International Franchising Association on such matters. I also am a member of the National Association of Federal Equity Receivers and serve on the Board of Directors of the Florida International University Foundation, and of Biscayne Bank, a community bank headquartered in Miami.

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On December 29, 2008, I was appointed by U.S. District Judge Daniel T. K. Hurley upon the recommendation of the Securities Exchange Commission to serve as Receiver over various entities who perpetrated a multi-million dollar Ponzi-scheme, in *SEC v. Creative Capital Consortium, LLC, et al.* (S.D. Fla). At the time of my appointment, the Receivership Entities had \$28,000 in their combined bank accounts. As Receiver, I brought 30 lawsuits against those who received fraudulent transfers or aided the scheme for the benefit of defrauded investors, and successfully prosecuted appeals before the Eleventh Circuit Court of Appeals to reinstate substantial claims against Bank of America and Wells Fargo, followed by a jury trial against Wells Fargo that settled just before the Court was to read the verdict. During the next few weeks, I expect to complete a claims approval process involving approximately 1,700 claims, and pay out to victims \$5-6 million, representing a recovery of 40% of their losses -- an extraordinary result.

In 2011, I was also appointed by Judge Martinez on the recommendation of the Federal Trade Commission and Florida Attorney General to serve as Receiver over VGC Corporation of America, All Dream Vacations Corp., and related entities. Despite taking over an insolvent estate whose principals filed for bankruptcy, we obtained net recoveries (after payment of all obligations including attorneys' fees), of over \$600,000 for the benefit of victims.

On July 1, 2014, I was appointed by Judge Altonaga on the recommendation of the Federal Trade Commission to serve as Receiver over Hispanic Global Way Corp, First Airborne Service Trading Corp, Hispanic Network Connections, LLC, and related entities. To date, we have recovered over \$1.5 million, and are preparing for trial against an entity who was the sole distributor and provided the advertising for the most notorious product peddled by the Receivership Entities.

The lawyers and staff in my Firm are well equipped to assist me as Receiver. We are a 40-lawyer firm with offices in Miami, Fort Lauderdale, and a 15-lawyer affiliate office in Caracas, Venezuela. A large part of our practice is directed to representation of receivers, trustees, committees and defrauded investors. As such, in addition to being adept at operating businesses in receivership/bankruptcy, we have a great deal of experience investigating and pursuing claims and assets in connection with all varieties of deceptive schemes, as well as in the recovery of assets from wherever they are currently located. You can review our firm generally through our website at www.gjb-law.com.

My partners, John Genovese and David Cimo, each have over 25 years experience representing Receivers and Trustees in complex commercial bankruptcies and related litigation. They represented the Trustee on behalf of defrauded investors in the national Ponzi scheme involving Orlando music producer Lou Pearlman, in which we have collected or obtained over \$15 million in settlements.

My partner, Paul Battista, successfully obtained for the Goldman Family the rights and proceeds from O.J. Simpson's book "If I Did It," as partial collection on their \$33.5 million civil jury award against Mr. Simpson.

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My partner, W. Barry Blum, former deputy general counsel of Burger King Corporation, is an experienced federal court trial lawyer, who has successfully tried multi-million dollar claims before a jury on my behalf, as Receiver.

My partner, Theresa Van Vliet, was a federal prosecutor for 16 years in Florida, including as the Chief of Narcotics for the United States Department of Justice. In that capacity, Ms. Van Vliet developed extensive experience and expertise in the identification, location and repatriation of assets internationally and domestically, with a particular emphasis in the area of money laundering through international financial institutions by professional money laundering organizations.

Below are some of our other relevant representations for your consideration:

We represent the Division of Banking, as Receiver, and are seeking to recover from numerous entities responsible for causing or concealing the financial insolvency of SunStar Health Plan, Inc., resulting in over \$40 million in unpaid policyholder and creditor claims. The Firm is prosecuting ten actions in this matter, including suits against SunStar's affiliates, directors, officers, consultants and auditor, for the benefit of policyholders and creditors, and has already recovered approximately \$5 million in litigation.

We represented the Florida Division of Banking, as Receiver, in the matter of Bogdon Financial Group, a failed broker-dealer in St. Lucie County where we prosecuted claims against 16 defendants for perpetrating a Ponzi scheme.

We represented the State court Receiver in the pursuit of litigation claims in connection with a \$20 million Ponzi scheme in Ft. Pierce, Florida involving mortgage fraud.

We represented the Receiver in the Bankest bankruptcy, involving Espirito Bank and a \$170 million fraud. We successfully pursued litigation in Florida, as well as in Georgia and the D.C. area.

We represent the Chapter 7 Trustee in an investment fraud case in the Southern District of Florida. We are presently pursuing litigation claims to recover in excess of \$20 million in monies transferred to various places in Europe.

We represent the Chapter 11 Trustee in the Southern District of Florida in the pursuit of litigation claims involving (i) a \$44 million letter of credit fraud, and (ii) the recovery of in excess of \$130 million in diverted funds.

We currently represent the Chapter 7 Trustee for the substantively consolidated bankruptcy estates *In re Ulrich Felix Anton Engler, Private Commercial Office, Inc. and PCO Client Management, Inc.*, in the U.S. Bankruptcy Court for the Middle District of Florida, Case No. 08-04360; as Special Counsel in this \$350 million Ponzi scheme. To date we have assisted in recovering

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approximately \$12 million with a pending lawsuit against a financial institution for over \$44 million set for trial in August.

We represented as co-counsel all shareholders of Enron both in the securities class action brought in Houston, Texas, and the related bankruptcy cases in New York and Texas. This massive litigation resulted in a \$7.2 billion recovery for the class, the largest securities litigation settlement in U.S. history.

We represented the Trustee with respect to the Ponzi scheme orchestrated by notorious Fort Lauderdale attorney Scott Rothstein and had principal responsibility for obtaining settlements worth in excess of \$100 million to general unsecured creditors.

Other engagements demonstrating our capabilities to handle significant Receivership matters include:

- Chapter 11 Creditors' Committee in Banco Latino, resulting in \$200 million in creditor distributions (100% payment).
- We represented parties in interest in the case of Financial Federated in the Southern District of Florida, a Ponzi scheme involving in excess of \$125 million.
- Represented Creditors Committee in Safety Kleen bankruptcy in Delaware, and obtained \$30 million for unsecured creditors.
- Chapter 11 Creditors' Committee in American Way Service Corp., a holding company with insurance subsidiaries in receivership/rehabilitation proceedings in Arizona, Florida, Michigan and Missouri.
- We represented the creditors committee and subsequently acted as special counsel to the Chapter 7 Trustee for Abraham Gosman, who filed the largest individual Chapter 11 bankruptcy filing in Florida, with assets and liabilities exceeding \$250 million each. We were principally involved in the recovery of fraudulent conveyances in excess of \$40 million and were involved in the location of and litigation involving assets transferred to Swiss bank accounts by a judgment debtor.
- Representation of Chapter 7 bankruptcy Trustee for Cascade International, Inc., a publicly traded clothing retailer, once a Wall Street "darling," which failed amidst allegations of securities fraud and mismanagement.
- Represented Trustee of Bankruptcy Estate in fraudulent transfer suit against Synovus Bank f/k/a Columbus Bank and Trust Complaint involving check kiting scheme involving the circular movement of loan proceeds and other funds between 314 accounts

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at 38 banks, including 78 accounts with Synovus. We settled on July 25, 2016 obtaining \$9 million for the Trustee.

- Representation of Chapter 7 Trustee of TUSA, the failed merger of Tropical and USA car rental companies with business operations throughout mainland United States and Hawaii in recovering multi-million dollar professional liability and avoidance claims.
- We represent the liquidating Trustee in the bankruptcy and pursuit of litigation claims involving a \$220 million investment fraud case in the Southern District of Florida.
- Special counsel appointed by Trustee in bankruptcy of Joseph Charles securities brokerage firm.
- *In re Fontainebleau Las Vegas* - Representing Chapter 7 bankruptcy trustee of privately owned hotel/resort developers in investigating and prosecuting breach of fiduciary duty, professional negligence, and related claims against certain former officers, directors insider affiliates, and independent outside auditors of the Debtors, with total claims against the bankruptcy estate exceeding \$1 billion. Through the direct efforts of GJB, the estate realized over \$125 million in cash and claim waivers pursuant to an approved settlement.
- *In re Rich International Airways* - Represented Chapter 11 bankruptcy trustee of privately owned charter airline in investigating and prosecuting breach of fiduciary duty, breach of contract, and other claims against certain of the Debtor's insider affiliates. Through the direct efforts of GJB, the estate received gross recoveries totaling \$25 million on a damage model of \$41 million against the principal of a joint venture partner.
- *In re Certified HR Services* - Represented Chapter 11 bankruptcy trustee of private employee staffing company in investigating and prosecuting breach of fiduciary duty and professional liability claims against certain former officers, directors, insider affiliates, and outside independent auditors. Through the direct effort of GJB, the estate received gross recoveries exceeding \$15 million.
- *In re Bravo! Brands* - Represented Chapter 7 bankruptcy trustee of former publicly traded beverage company in investigating and prosecuting breach of fiduciary duty, professional liability, and complex bankruptcy avoidance claims against, among others, the Debtor's former officers, directors and outside independent auditors. Through the direct efforts of GJB, the trustee effectuated favorable settlements exceeding \$8.6 million for the benefit of Debtor's estate.
- *In re Arrow Air* - Represented creditors' committee and bankruptcy liquidating trustee of privately owned cargo airline in investigating and asserting breach of fiduciary duty and

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other claims against certain of the Debtors' former officers, directors, and insider affiliates. Through the direct efforts of GJB, the liquidating trustee effectuated a \$2.875 million pre-suit settlement at mediation for the benefit of bankruptcy estate.

- *In re PPOA Holding* - Represented creditors' committee and bankruptcy liquidating trustee of publicly traded protective armor manufacturer in investigating and prosecuting breach of fiduciary duty and other claims against certain of the Debtors' former officers and directors. Through the direct effort of GJB and others, over \$5 million in D&O insurance proceeds was recovered for the benefit of the bankruptcy estate and certain class action plaintiffs.
- *In re Gulfstream Int'l Airlines* - Represented bankruptcy liquidating trustee of publicly traded commuter airline in investigating and prosecuting breach of fiduciary duty and other claims against certain of the Debtor's former officers, directors, and insider affiliates. Through the direct efforts of GJB, the liquidating trustee effectuated a favorable \$1.9 million settlement for the benefit of the bankruptcy estate and other parties in interest.
- *In re Jiangbo Pharmaceuticals* - Representing Chapter 7 bankruptcy trustee of publicly traded Chinese reverse merger pharmaceutical company in investigating and prosecuting breach of fiduciary duty, professional liability, and other claims against the Debtor's former officers, directors, insider affiliates, and outside independent auditors. Through the direct efforts of GJB, the trustee effectuated favorable settlements in the amount of \$1.65 million for the benefit of Debtor's estate, and obtained a Bar Order enjoining all competing claims in connection with the D&O settlement which resulted in a favorable published Bankruptcy Court decision, with such decision recently being affirmed in all respects on appeal by the United States District Court for the Southern District of Florida.
- Represented court appointed assignee for benefit of creditors of publicly traded bi-pharmaceutical company in investigating and prosecuting breach of fiduciary duty and state law avoidance claims against the company's former officers, directors, and outside independent auditors. Through the direct efforts of GJB, the assignee effectuated favorable settlements exceeding \$1.5 million for the benefit of the assignment estate.
- *In re Advanced Interactive Systems* - Currently representing Delaware Chapter 7 bankruptcy trustee of companies that designed and operated military training simulators and live fire training ranges in investigating and asserting breach of fiduciary duty and other claims against certain of the Debtors' former officers and directors. Through the direct efforts of GJB, the trustee recently reached a favorable multi-million dollar pre-suit settlement at mediation for the benefit of the bankruptcy estate.

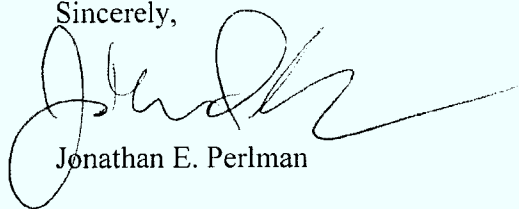
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- *In re Avantair* - Currently representing Chapter 7 bankruptcy trustee of aircraft fractional ownership company in investigating and asserting breach of fiduciary duty and other claims against certain of the Debtors' former officers and directors. Through the direct efforts of GJB, the trustee recently reached a favorable multi-million dollar pre-suit settlement at mediation for the benefit of the bankruptcy estate and multiple competing claimants, with such settlement pending Bankruptcy Court approval.
- *In re Comprehensive Clinical Development* - Currently representing Chapter 7 bankruptcy trustee of privately owned clinical trial company in investigating and prosecuting breach of fiduciary duty and professional liability claims against the Debtors' former officers, directors, insider affiliates, and outside independent auditors, with total claims against the bankruptcy estate exceeding \$23 million.
- *In re SMF Energy* - Currently representing bankruptcy liquidating trustee of publicly traded petroleum product distributor in investigating and prosecuting professional negligence claims against the independent outside auditors of the Debtors, with total claims against the bankruptcy estate exceeding \$60 million.
- *In re Universal Healthcare* - Currently representing Chapter 11 bankruptcy trustee of a privately owned, Tampa-based HMO in prosecuting professional liability claims against the Debtors' outside independent auditors and actuary.

If you have any further questions, please do not hesitate to contact me.

Sincerely,



Jonathan E. Perlman

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