



## PROCEDURAL BACKGROUND

1. On February 27, 2001, the United States Securities and Exchange Commission filed its Complaint for Permanent Injunction and Other Equitable Relief ("Complaint") against Defendant John E. Brinker, Jr., *et al.* Among other things, the Complaint alleged that the Defendants engaged in a Ponzi scheme which promoted the fraudulent sale of securities promising investors annual returns of fifty percent (50%) or more.

2. On February 27, 2001, the Defendants executed a Consent and Stipulation to the SEC's Complaint. Through their execution of the Consent, the Defendants acquiesced to the Court's contemporaneous asset freeze. The Defendants also waived any claim of Double Jeopardy based upon this proceeding, and agreed "not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any allegation in the Complaint or creating the impression that the Complaint is without factual basis." Consent at 4, paras. 9 and 11.

3. On February 27, 2001, this Court issued its Order of Permanent Injunction and other Equitable Relief. The Order froze the Defendants and Relief Defendants' assets.

4. This Court's Order further provided that to fund their obligation to pay certain of the Examiner's professional fees, the Defendants were specifically permitted to sell a Baja Model 272 Mercruiser Boat registered in the name of Julianne Brinker, I.D. #AGC40004F001, motor identification number 0M000376, registration number 312610440H1311ZZ ("Boat").

5. On May 1, 2001, this Court appointed James A. Knauer as Receiver over Relief Defendant Eleven Eighty-Five, LP ("1185").

## FACTS

6. In response to a subpoena issued by the Receiver's counsel, KeyBank, N.A. produced and authenticated account statements and copies of checks related to 1185.

7. The Receiver is in possession of two checks from 1185 to Julianne Brinker, the daughter of Defendant John E. Brinker, Jr.

8. The checks to Julianne Brinker include a \$10,000 check dated June 1, 2000. This check bears the memorandum "for deposit of 272 Baja." Moreover, this check was

endorsed by Julianne Brinker, and was deposited to the account of Captain's Cove Marina West, seller of the Boat.

9. The Receiver is also in possession of a copy of a check to Julianne Brinker dated July 7, 2000 in the sum of \$66,853.64. Upon information and belief, this check represents a transfer utilized to pay the balance owing on the Boat.

10. Counsel for Defendant John E. Brinker, Jr., his spouse Carol Brinker and his daughter Julianne Brinker advised counsel to the Receiver that the Brinkers would assert their Fifth Amendment privilege against self-incrimination if and when they are deposed in this cause.

11. The Boat is presently located at Captain's Cove Marina in Cincinnati, Ohio. Upon the advice of Captain's Cove Marina, the fair market value of the Boat ranges between \$45,000 and \$50,000. Nevertheless, Julianne Brinker rejected a \$48,000 purchase offer for the Boat.

12. Upon information and belief, Julianne Brinker's rejection of the \$48,000 purchase offer was unreasonable. The Boat is less marketable than it might otherwise be, due to its color, which is a "feminine" purple. Moreover, escalating motor fuel costs have depressed the luxury boat market.

13. The Receiver's counsel was advised by Captain's Cove Marina that when Julianne Brinker personally rejected the \$48,000 purchase offer for the Boat, she berated the boat dealer, and threatened to remove the Boat upon payment of an approximate \$1,500 repair bill.

14. Following the conduct described in the foregoing paragraph, the Receiver's counsel Brett R. Fleitz contacted Brinker/1185's counsel Peter Shaeffer (who has not filed an Appearance in these proceedings). Mr. Shaeffer advised that his client's conduct was the product of a misunderstanding, and that Brinker/1185 would not stand in the way of a boat sale.

15. Due to the delay caused by the Defendant and his daughter's conduct, the \$48,000.00 purchase offer was rescinded.

**APPLICATION OF FACTS TO THE LAW**

16. Pursuant to S.D. Ind. L.R. 66.1(e), receivership estates should be rendered "as nearly as maybe in accordance with the practice in the administration of estates in bankruptcy [.]"

17. Pursuant to Bankruptcy Code § 541 (11 U.S.C. 541) estate property includes "all legal or equitable interests of the debtor in property as of the commencement of the case ... wherever located and by whomever held [.]" The Receiver submits that the direct transfer from 1185 (a receivership entity) to Defendant Brinker's daughter for the Boat purchase conclusively demonstrates that the Boat is property of the Estate.

18. Pursuant to Bankruptcy Code § 542 (11 U.S.C. 542) persons or entities are required to deliver property of the estate to the Trustee. As such, Julianne Brinker should be ordered to surrender possession of the Boat and the Boat's title to the Receiver and his counsel or agent.

**REQUEST FOR RELIEF**

Your Receiver respectfully requests that the Court 1) set this Motion for hearing, 2) that the Court thereafter direct Defendant John E. Brinker, Jr.'s daughter Julianne Brinker to surrender possession of the Boat and the Boat's title to the Receiver and his counsel or their agent, 3) that the Court issue an Order deeming the Boat property of the Receivership Estate and granting the Receiver the sole authority to approve its sale upon Court approval, and 4) that the Court provide all other necessary relief.

Respectfully submitted,

JAMES A. KNAUER, RECEIVER

By: 

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CERTIFICATE OF SERVICE

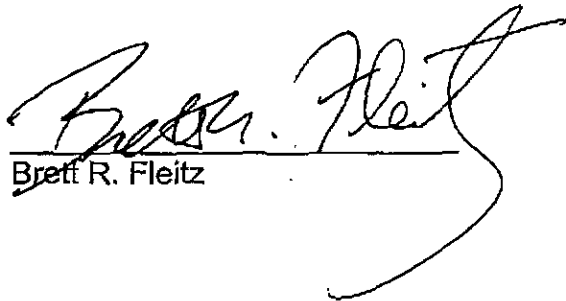
The undersigned hereby certifies that the foregoing has been served upon the following parties by placing a copy of the same in the United States Mail, first class postage pre-paid, on this 29<sup>th</sup> day of June, 2001:

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