



**I.**  
**FACTUAL BACKGROUND**

1. On March 27, 2009, the United States Securities and Exchange Commission (“SEC”) initiated this lawsuit and, in connection therewith, requested the appointment of a Receiver. On the same day, the Court issued an Order Appointing Receiver, naming Richard B. Roper, III Receiver for the above-named Defendants and Relief Defendants.

2. After his appointment as Receiver and pursuant to the responsibilities with which he is charged, the Receiver took control and possession of certain real and personal property owned by the Defendants and Relief Defendants, including an aircraft which is personal property that constitutes a Receivership Asset within the meaning of this Court’s March 27, 2009 Order Appointing Receiver.

3. As part of his duties, and pursuant to 28 U.S.C. § 2004 and 28 U.S.C. § 2001, the Receiver requests that he be allowed to market and sell the aircraft.

**II.**  
**ARGUMENT AND AUTHORITY**

4. It is well-settled that the primary goal of a receivership is to provide a conduit through which assets can be held, liquidated and distributed to the particular beneficiaries of the receivership. *See, e.g., SEC v. Safety Finance Service, Inc.* 674 F.2d 369, 371 (5th Cir. 1982). In this case, the beneficiaries of the Receivership are the numerous investors and creditors of Millennium Bank and other named Defendants who the SEC claims orchestrated and operated a Ponzi scheme that divested investors of millions of dollars.

5. As stated above, the Receiver seized an aircraft, identified as a Challenger 601-1A, Registration Number N105UP and Serial Number 3066, and named “Spirit of Millennium” (“the Aircraft”). This personal property asset was purchased by Millennium Aviation, Inc. in

April 2007, and is a Receivership Asset within the meaning of this Court's March 27, 2009 Order Appointing Receiver. The Aircraft is currently hangared in Atlanta, Georgia, where it is being maintained.

6. The Aircraft was appraised on April 22, 2009 by Aviation Management Consulting, Inc. at a current market range of value of \$5,600,000 to \$5,800,000, given the various asset and market factors considered. *See Appraisal attached as Exhibit A.*

7. District courts have broad powers and wide discretion to determine the appropriate relief in an equity receivership, including liquidation of receivership assets. *See SEC v. Safety Finance Service, Inc.* 674 F.2d 369, 371 (5th Cir. 1982) (holding that the court overseeing the receivership is given "wide discretionary power" in light of "the concern for orderly administration").

8. To assist courts in this purpose, 28 U.S.C. § 2004 governs the sale of personal property, stating:

Any personalty sold under any order or decree of any court of the United States shall be sold in accordance with section 2001 of this title [28 USCS § 2001], unless the court orders otherwise.

9. 28 U.S.C. § 2001 governs the procedure for conducting sales of real property. As it pertains to public (rather than private) sales, 28 U.S.C. § 2001(a) states:

(a) Any realty or interest therein sold under any order or decree of any court of the United States shall be sold as a whole or in separate parcels at public sale at the courthouse of the county, parish, or city in which the greater part of the property is located, or upon the premises or some parcel thereof located therein, as the court directs. Such sale shall be upon such terms and conditions as the court directs. Property in the possession of a receiver or receivers appointed by one or more district courts shall be sold at public sale in the district wherein any such receiver was first appointed, at the courthouse of the county, parish, or city situated therein in which the greater part of the property in such district is located, or on the premises or some parcel thereof located in such

county, parish, or city, as such court directs, unless the court orders the sale of the property or one or more parcels thereof in one or more ancillary districts.

10. As the statute pertains to private sales, 28 U.S.C. § 2001(b) provides, in relevant part:

After a hearing, of which notice to all interested parties shall be given by publication or otherwise as the court directs, the court may order the sale of such realty or interest or any part thereof at private sale for cash or other consideration and upon such terms and conditions as the court approves, if it finds that the best interests of the estate will be conserved thereby.

11. When structuring the sale of personal property, the Court has discretion under the relevant statutes to establish procedures or approve proposed procedures that are well-tailored to suit the needs and circumstances of a particular case. 28 U.S.C. § 2004.

12. Given that there is a limited market for items such as the Aircraft, the Receiver contends that the most reasonable manner of marketing and selling the Aircraft is to permit Sovereign Bank to facilitate the sale. Joe Dini, Senior Vice President at Sovereign Bank, has been in the aircraft financing business for 40 years and is experienced and knowledgeable in the valuation and marketing of aircraft. A copy of his resume is attached as Exhibit B to this motion.

13. Sovereign Bank currently has a lien on the Aircraft for approximately \$4,300,000, to be satisfied from the proceeds of the sale of the Aircraft.

14. The Receiver and Sovereign Bank have agreed that Sovereign Bank will continue to take necessary steps to maintain, store and market the Aircraft, in order to most fully preserve the asset's value (as the value of the Aircraft will decrease significantly if it is not properly and regularly maintained). The costs of these activities will be reimbursed to Sovereign Bank from the sales proceeds.

15. The Receivership Estate will receive the remainder of the sales proceeds from the Aircraft after the lien held by Sovereign Bank is satisfied from the sales proceeds, and the costs of maintenance, storage and marketing are reimbursed to Sovereign Bank. The remaining sales proceeds will be deposited into the Receivership Account.

16. Receiver proposes permitting Sovereign Bank to market the Aircraft for sale. Mr. Dini will proceed expeditiously and at the direction of the Receiver to appropriately value and list the Aircraft for sale through a professional listing service similar to that typically used for real estate sales.

17. Allowing the Receiver to liquidate the Aircraft seized from the Defendants via the services of Sovereign Bank will most expeditiously further the goals of the Receivership. *SEC v. Wencke (Wencke II)*, 783 F.2d 829, 837 n.9 (9th Cir. 1986). Furthermore, this process will allow the Receiver to focus on other important tasks while the Aircraft is liquidated.

18. While sales of real estate are ordinarily subjected to a bid process under 28 U.S.C. § 2001, the market for used aircraft is particularly limited, especially in the current economy. Therefore, in order to maximize the value available to the Receivership Estate, the Receiver requests that the Court permit him to entertain any offer made for purchase of the Aircraft made in excess of at least 2/3 of the Aircraft's appraised value or at least \$3,733,333.

WHEREFORE PREMISES CONSIDERED, the Receiver prays that, upon final hearing and consideration of this Motion, the Court authorize him to sell the Aircraft described herein through the services to be provided by Sovereign Bank. The Receiver also prays that the Court approve the procedures described herein for the sale of the Aircraft and disposition of proceeds from same, and for such other and further relief, general or special, at law or in equity, to which he may show himself justly entitled.

Respectfully submitted,

**THOMPSON & KNIGHT, LLP**

/s/ Jessica B. Magee

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**CERTIFICATE OF SERVICE**

On May 22, 2009, I electronically submitted the foregoing document to the Clerk of the Court for the United States District Court for the Northern District of Texas using the electronic case filing system of the Court.

/s/ Jessica B. Magee

Jessica B. Magee