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8 GEOFF WINKLER

9 UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA  
11 WESTERN DIVISION

12 SECURITIES AND EXCHANGE  
COMMISSION,

13 Plaintiff,

14 v.

15 RALPH T. IANNELLI and ESSEX  
16 CAPITAL CORP.,

17 Defendants.

Case No. 2:18-cv-05008-FMO-AFM

MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
APPLICATION OF RECEIVER, GEOFF  
WINKLER, FOR PAYMENT OF FEES  
AND REIMBURSEMENT OF  
EXPENSES INCURRED DURING HIS  
SERVICE AS COURT-APPOINTED  
MONITOR

[October 1, 2018 - December 20, 2018]

[Notice of Application; Application;  
Declaration of Geoff Winkler; and  
[Proposed] Order submitted concurrently  
herewith]

Date: September 19, 2019

Time: 10:00 a.m.

Ctrm: 6D

Judge Hon. Fernando M. Olguin

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION.**

3 Pursuant to this Court's October 1, 2018 Order Regarding Preliminary  
4 Injunction (the "Monitor Order") (ECF No. 53), Geoff Winkler (the "Receiver"), the  
5 Court-appointed permanent receiver<sup>1</sup> for Defendant Essex Capital Corporation  
6 ("Essex") and its subsidiaries and affiliates (collectively, the "Receivership Entities"  
7 or "Entities"), hereby submits this Memorandum of Points and Authorities in  
8 support of the concurrently filed Application for Payment of Fees and  
9 Reimbursement of Expenses Incurred During his Service as Court-Appointed  
10 Monitor (the "Fee Application"). As discussed below, the Receiver believes that the  
11 fees and expenses incurred during his service as Monitor, from October 1, 2018  
12 through December 20, 2018 (the "Monitorship Period"), in connection with pursuing  
13 his duties under the Monitor Order, are appropriate and have benefited the estate of  
14 the Receivership Entities (the "Estate"). On this basis, the Receiver respectfully  
15 requests that the Court approve 100% of his fees and expenses<sup>2</sup>, and authorize the  
16 Receiver to pay himself, in full, for those fees and expenses.

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19 \_\_\_\_\_  
20 <sup>1</sup> On December 6, 2018, as required by Paragraph X of the Monitor Order, the  
21 Receiver, in his capacity as Court-appointed Monitor, submitted his Report of  
22 Preliminary Accounting of Defendant Essex Capital Corporation and  
23 Recommendations ("Initial Report") (ECF No. 60), wherein he recommended  
24 that the then-existing monitorship be converted to a permanent receivership.  
25 Subsequently, on December 21, 2018, the Court issued its Order Regarding  
26 Preliminary Injunction and Appointment of a Permanent Receiver (the  
27 "Appointment Order") (ECF No. 66), pursuant to which the Receiver was  
28 appointed as permanent receiver for the Entities.

<sup>2</sup> During the Monitorship Period, the Receiver incurred a total of \$94,259.70 in  
fees, which is in excess of the \$75,000-fee cap instituted in Paragraph XIX of the  
Monitor Order. However, the circumstances surrounding the monitorship  
required more work to be performed than was initially anticipated, which work  
was necessary for the benefit of the Receivership Entities. Moreover, while  
rendering these essential services resulted in the incurrence of additional fees  
beyond the \$75,000-fee cap, the Receiver has applied a discount of \$19,259.70  
for the benefit of the Estate, and is therefore not seeking to recover fees in excess  
of \$75,000. Accordingly, the Receiver only seeks approval of his post-discount  
fees and expenses, and authorization for payment thereon.

1 **II. RELEVANT FACTUAL BACKGROUND.**

2 A full recitation of the procedural history of the above-captioned receivership  
3 matter is unnecessary for the purposes of the Fee Application, particularly given that  
4 the Monitorship Period pre-dates the Receiver's appointment. That said, the facts  
5 relevant to the Fee Application are as follows:

6 The above-captioned action was commenced on June 5, 2018. (See ECF  
7 No. 1.) The Plaintiff Securities and Exchange Commission's (the "Commission")  
8 Complaint alleged that Defendant Ralph Iannelli, by and through certain entities  
9 under his control, committed a number of fraudulent violations of the federal  
10 securities laws, in furtherance of a Ponzi-like investment scheme. (Id.)

11 Thereafter, on October 1, 2018, the Court entered the Monitor Order, pursuant  
12 to which the Receiver was appointed as Monitor for the Entities. (See ECF No 53.)  
13 In connection therewith, the Receiver, in his capacity as Court-appointed Monitor,  
14 was empowered to, among other things: (1) obtain access to Essex's books and  
15 records; (2) obtain access to Essex's principals, managers, directors, employees,  
16 agents, and consultants; (3) oversee and monitor Essex's activities; and (4) conduct  
17 investigations to locate and account for Essex's assets and liabilities. (Id.) Acting as  
18 Monitor, the Receiver commenced significant efforts to understand and document  
19 the business and financial activities of the Receivership Entities. To that end, and in  
20 accordance with the Monitor Order, the Monitor prepared and submitted the Initial  
21 Report, which provided a detailed overview of Essex's business operations, set forth  
22 a comprehensive interim accounting of Essex's assets and liabilities, and  
23 recommended the monitorship be converted to a permanent receivership.

24 As reflected in the Fee Application, the Receiver diligently pursued his duties,  
25 as established in the Monitor Order, and now requests that the Court authorize the  
26 payment of his fees and reimbursement of his expenses incurred during the  
27 Monitorship Period, as detailed herein and in the Fee Application. The Receiver,  
28 acting as Monitor, and pursuant to the budget established under Paragraph XIX of

1 the Monitor Order, set aside \$80,000.00 as a retainer (the "Retainer") to pay the fees  
2 and expenses incurred during the Monitorship Period, which Retainer amount is not,  
3 and has never been, included as an asset of the Receivership Entities ("Receivership  
4 Assets" or "Assets") for purposes of the Receiver's Standardized Fund Accounting  
5 Reports during the receivership.

6 **III. ARGUMENT.**

7 **A. The Fee Application Is Reasonable And Appropriate, And**  
8 **Payment Should Be Authorized.**

9 "As a general rule, the expenses and fees of a receivership are a charge upon  
10 the property administered." Gaskill v. Gordon, 27 F.3d 248, 251 (7th Cir. 1994).  
11 These expenses include the fees and expenses of the Receiver and his Professionals.  
12 Decisions regarding the timing and amount of an award of fees and expenses to the  
13 Receiver and his Professionals are committed to the sound discretion of the Court.  
14 See SEC v. Elliot, 953 F.2d 1560 (11th Cir. 1992) (rev'd in part on other grounds,  
15 998 F.2d 922 (11th Cir. 1993)). Further, "the district court has wide discretion in  
16 distributing receivership assets." Quilling v. Trade Partners, Inc., 572 F.3d 293 (6th  
17 Cir. 2009).

18 1. The Fees and Expenses Requested in the Fee Application are  
19 Reasonable.

20 A receiver's fees must be reasonable. See In re San Vicente Med. Partners  
21 Ltd., 962 F.2d 1402, 1409 (9th Cir. 1992). In determining the reasonableness of  
22 fees and expenses requested in this context, the Court should consider the time  
23 records presented, the quality of the work performed, the complexity of the  
24 problems faced, and the benefit of the services rendered to the Estate. SEC v. Fifth  
25 Ave. Coach Lines, Inc., 364 F. Supp. 1220, 1222 (S.D.N.Y. 1973). In a practical  
26 sense, the Court should begin by multiplying the number of hours expended by the  
27 identified hourly rates charged for comparable services in other matters. Sw. Media,  
28 Inc. v. Rau, 708 F.2d 419, 427 (9th Cir. 1983) (superseded on other grounds by

1 statute as stated in In re Hokulani Square, Inc., 460 B.R. 763, 768 (9th Cir. BAP  
2 2011)).

3 Here, the Fee Application describes the nature of the services that have been  
4 rendered. The Receiver, in his capacity as Monitor, endeavored to staff matters as  
5 efficiently as possible in light of the level of experience required and the complexity  
6 of the issues presented. In general, the Fee Application reflects the Receiver's  
7 customary billing rates and the rates charged for comparable services in other  
8 matters, less all agreed-upon discounts and any reductions specifically identified in  
9 the Fee Application.

10 The Receiver has reviewed the Fee Application, and believes the fee and  
11 expense requests are fair and reasonable, and reflect an accurate representation of  
12 the work performed. (See concurrently submitted Declaration of Geoff Winkler  
13 ("Winkler Decl.") ¶ 3.) The Receiver likewise believes that the Estate has benefited  
14 from the services identified. (Id.) Further, the Receiver's fees and expenses are  
15 within the Court's budget, as detailed in Paragraph XIX of the Monitor Order.

16 2. The Fees and Expenses Requested in the Fee Application have  
17 been Submitted to the Commission, Without Objection.

18 Courts give great weight to the judgment and experience of the Commission  
19 relating to receiver compensation. "[I]t is proper to [keep] in mind that the  
20 [Commission] is about the only wholly disinterested party in [this] proceeding and  
21 that ... its experience has made it thoroughly familiar with the general attitude of the  
22 Courts and the amounts of allowances made in scores of comparable proceedings."  
23 In re Philadelphia & Reading Coal & Iron Co., 61 F. Supp. 120, 124 (E.D. Pa.  
24 1945). Indeed, the Commission's perspectives are not "mere casual conjectures, but  
25 are recommendations based on closer study than a district judge could ordinarily  
26 give to such matters." Finn v. Childs Co., 181 F.2d 431, 438 (2d Cir. 1950) (internal  
27 quotation marks omitted). In fact, "recommendations as to fees of the  
28 [Commission] may be the only solution to the 'very undesirable subjectivity with

1 variations according to the particular judge under particular circumstances' which  
2 has made the fixing of fees seem often to be 'upon nothing more than an ipse dixit  
3 basis.'" Id. Thus, the Commission's perspective on the matter should indeed be  
4 given "great weight," as observed by the court in Fifth Ave. Coach Lines, Inc., 364  
5 F. Supp. at 1222.

6 In order to ensure that the fees and expenses requested in the Fee Application  
7 are appropriate, the Receiver submitted his invoices to the Commission for review.  
8 The Commission has not objected to the requested fees and expenses, and has  
9 indicated that it does not object to the fee and cost requests reflected in the Fee  
10 Application. The Commission's satisfaction with the subject invoices therefore  
11 merits significant deference. As the Philadelphia & Reading Coal & Iron Co. court  
12 observed, the Commission is "thoroughly familiar with ... the amounts of  
13 allowances made in scores of comparable proceedings." 61 F. Supp. at 124. Indeed,  
14 the Commission is likely in the best position to measure the fees and expenses  
15 requested in the instant receivership against those incurred in other, similar  
16 proceedings, and cases of similar complexity. The Receiver thus respectfully  
17 request that the Court approve all requested fees and expenses reflected in the Fee  
18 Application.

19 **B. The Receiver Should Be Authorized To Pay Allowed Fees And**  
20 **Expenses From Cash On-Hand.**

21 The Receiver presently holds the Retainer in the amount of \$80,000.00 from  
22 Essex, which was paid during the Monitorship Period, and which the Receiver  
23 respectfully requests permission from this Court to apply to the reimbursement of  
24 fees and expenses requested herein. Accordingly, of the \$81,872.00 total fees and  
25 expenses incurred during the Monitorship Period, the Receiver submits that  
26 \$80,000.00 will be covered by the Retainer. (Winkler Decl. ¶ 4.) In the aggregate,  
27 the Receiver holds funds, in the form of cash for the benefit of the Estate of the  
28 Receivership Entities, in excess of those requested in the Fee Application to cover



1 the remaining \$1,872.00 of fees and expenses not paid for via the Retainer (Id.). The  
2 Receiver, therefore, respectfully requests the Court's permission to pay the  
3 outstanding requested fees and expenses incurred during the Monitorship Period, not  
4 covered by the Retainer, from this cash on-hand available from the accounts of the  
5 Receivership Entities.

6 **IV. CONCLUSION.**

7 For the foregoing reasons, the Receiver therefore respectfully requests that  
8 this Court enter an order:

- 9 1. Granting the Fee Application, in its entirety;
- 10 2. Approving the Receiver's fees, in the amount of \$75,000.00, and  
11 expenses, in the amount of \$6,872.00; and
- 12 3. Authorizing the Receiver to pay himself 100% of his fees incurred  
13 during the Monitorship Period, after application of the aggregate discount noted  
14 above, in the amount of \$75,000.00, and 100% of his expenses incurred during the  
15 Monitorship Period, in the amount of \$6,872.00. Payment of the fees and expenses  
16 incurred during the Monitorship Period shall first be paid from the Retainer held by  
17 the Receiver, as detailed above and in the Fee Application, and the remainder shall  
18 be paid from the assets of the Receivership Entities.

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20 Dated: August 14, 2019

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By:           /s/ Joshua A. del Castillo

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JOSHUA A. DEL CASTILLO  
Attorneys for Receiver  
GEOFF WINKLER

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**PROOF OF SERVICE**

*Securities and Exchange Commission v. Ralph T. Iannelli and Essex Capital Corporation*  
USDC, Central District of California – Case No. 2:18-cv-05008-FMO-AFM

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 865 S. Figueroa Street, Suite 2800, Los Angeles, California 90017-2543.

On **August 14, 2019**, I caused to be served the document entitled: **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF APPLICATION OF RECEIVER, GEOFF WINKLER, FOR PAYMENT OF FEES AND REIMBURSEMENT OF EXPENSES INCURRED DURING HIS SERVICE AS COURT-APPOINTED MONITOR [October 1, 2018 thru December 20, 2018]** on all the parties to this action addressed as stated on the attached service list.

- OFFICE MAIL:** By placing in sealed envelope(s), which I placed for collection and mailing today following ordinary business practices. I am readily familiar with the firm's practice for collection and processing of correspondence for mailing; such correspondence would be deposited with the U.S. Postal Service on the same day in the ordinary course of business.
- OVERNIGHT DELIVERY:** I deposited in a box or other facility regularly maintained by express service carrier, or delivered to a courier or driver authorized by said express service carrier to receive documents, a true copy of the foregoing document(s) in sealed envelope(s) or package(s) designed by the express service carrier, addressed as indicated on the attached service list, with fees for overnight delivery paid or provided for.
- HAND DELIVERY:** I caused to be hand delivered each such envelope to the office of the addressee as stated on the attached service list.
- ELECTRONIC MAIL:** By transmitting the document by electronic mail to the electronic mail address as stated on the attached service list.
- E-FILING:** By causing the document to be electronically filed via the Court's CM/ECF system, which effects electronic service on counsel who are registered with the CM/ECF system.
- FAX:** By transmitting the document by facsimile transmission. The transmission was reported as complete and without error.

I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on **August 14, 2019** at Los Angeles, California.

/s/ Martha Diaz  
Martha Diaz

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**SERVICE LIST**

*Securities and Exchange Commission v. Ralph T. Iannelli and Essex Capital Corporation*  
USDC, Central District of California – Case No. 2:18-cv-05008-FMO-AFM

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Via First Class Mail