

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

TIMOTHY BARTON, et al.

Defendants.

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No. 3:22-cv-2118-X

APPENDIX IN SUPPORT OF RECEIVER’S VERIFIED MOTION COMPEL
DOCUMENTS AND INFORMATION FROM ATTORNEYS, REQUEST FOR
SANCTIONS, AND BRIEF IN SUPPORT

Respectfully submitted,

By: /s/ Charlene C. Koonce

Charlene C. Koonce
State Bar No. 11672850
charlene@brownfoxlaw.com

Timothy B. Wells
State Bar No. 24131941
tim@brownfoxlaw.com

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8111 Preston Road, Suite 300
Dallas, TX 75225
Tel. 214.327.5000
Fax. 214.327.5001

Attorneys for Receiver Cort Thomas

INDEX OF APPENDIX

Exhibit A	Letter from Charlene Koonce, counsel to Receiver, dated January 24, 2023	APP001-003
Exhibit B	February 7, 2023 email from Charlene Koonce to Hunton Andrews Kurth LLP	APP004-008

EXHIBIT A



BROWN FOX

Charlene Koonce
214.367.7503
charlene@brownfoxlaw.com

January 24, 2023

Via Email (medney@huntonak.com)

Michael Edney
Hunton Andrews Kurth LLP
2200 Pennsylvania Avenue, NW
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Via Email (richard.roper@klaw.com)

Richard Roper
Holland & Knight
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Dallas, TX 75201

Via Email (k.walji@waljilaw.com)

Khudabuksha K. Walji
Guenley Walji PC
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Sugar Land, TX 77478

Via Email (vance@mcmurrylaw.com)

Vance McMurry
McMurry Law, PLLC
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Richardson, TX 75080

Via Email (joyce@joycelindauer.com)

Joyce W. Lindauer
Joyce W. Lindauer Attorney, PLC
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Via Email (smetzger@pmklaw.com)

Steven C. Metzger
Metzger LAW PLLC
3626 N. Hall Street, Suite 800
Dallas, TX 75219

Via Email(randy@themarkxfirm.com)

Randy P. Marx
The Marx Law Firm
127 Howell Street
Dallas, TX 75207-7103

RE: No. 3:22-cv-2118-X; *Securities and Exchange Commission v. Timothy Barton, et al.*; pending in the United States District Court for the Northern District of Texas, Dallas Division

Dear Counsel:

As you are aware, this law firm represents Cort Thomas, who was appointed by the Court in the above referenced matter as the Receiver of certain entities and assets. A copy of the Order Appointing Receiver (the "Order") was previously provided to you.

Please note that the Order transferred ownership of all Receivership Entity assets, of any kind or nature, to the Receiver and directed any person with notice of the Order to preserve such asset and identify the asset to the Receiver. *See* Order, ¶¶ 1, 18. Moreover, in the underlying lawsuit, the Securities and Exchange Commission alleges that approximately \$26 million was

raised from the Wall Investors. However, when the Receiver took control of the Receivership Entities, the Receivership Entities' bank accounts contained less than 1% of that amount. You are receiving this letter because the Receiver has discovered that prior to his appointment, you received funds from one or more of the Receivership Entities.

In *Federal Trade Commission v. Assail, Inc.*, 410 F.3d 256 (5th Cir. 2005), the Court held that an attorney has a duty to investigate the source of the funds with which a client pays his fees to insure that the funds are not tainted or subject to an order of the Court freezing the funds in a receivership. "[A]n attorney must 'audit' a client sufficiently so as to avoid becoming part of a criminal scheme that includes disposing of ill-gotten gains." 410 F.3d at 264. Thus, a lawyer cannot make himself willfully ignorant of the circumstances surrounding the source of his fees in a situation in which assets are required to be turned over to a receiver. "[W]hen an attorney is objectively on notice that his fees may derive from a pool of frozen assets, he has a duty to make a good faith inquiry into the source of those fees. Failure to make such an inquiry in the face of this duty will result in disgorgement of the funds." 410 F.3d at 265; *see also FTC v. Network Services Depot, Inc.*, 617 F.3d 1127, 1144 (9th Cir. 2010) (notice that source from which fees were paid was potentially subject to constructive trust arising from client's fraud, even absent asset freeze, triggered attorney's duty of inquiry as to the source of the funds).

Thus, in accordance with the provisions of the Order referenced above, the Receiver requests that within seven (7) days from the date of this letter you either (1) confirm that you have not provided any services to Defendant Timothy Barton or any entity controlled by Timothy Barton since the Receiver's appointment on October 18; or (2) comply with the following requests:

- Provide an accounting of all assets or security interests you or your firm received from Defendant Barton or for the benefit of Defendant Barton to fund your retainer, pay accrued fees, or for other purposes;
- Identify the source of the monies and collateral;
- Explain the due diligence you and your firm conducted to insure that the monies or security interests you were received were not subject to the asset turnover provision of the Order; and
- Provide copies of any documents evidencing such payments or security agreements, and the origin of all such payments.

If you have any questions, please feel free to contact me. Thank you for your prompt attention to this matter.

Sincerely,



Charlene Koonce

EXHIBIT B

Charlene Koonce

From: Charlene Koonce
Sent: Tuesday, February 7, 2023 3:10 PM
To: Edney, Michael; Huffman, Ted
Cc: Roper, Richard B (DFW - X31210); Kimberley O'Rourke; Tim Wells
Subject: FW: letter to lawyers
Attachments: No. 3:22-cv-2118-X; Securities and Exchange Commission v. Timothy Barton, et al.

Categories: Filed to ND
FilingIndicator: -1

Counsel – to date, I have not received any response from you regarding the requested information in the attached letter. As you know from the Receivers' status reports and several motions or responses to motions, the Receiver is aware of millions of dollars flowing to Barton entities within the last two years from the sale of properties into which Receivership Assets have been traced. Nonetheless, to date he has neither discovered the location of those funds or how they were used. Because the Receivership Order obligates the Receiver to locate and recover all Receivership Assets, I am asking again, that you fully respond and provide the requested information. Your failure to comply will result in a request for the Court's assistance in obtaining the requested information.

Thanks,



CHARLENE KOONCE
📞 214.367.7503
BROWNFOXLAWS.COM

Kimberley O'Rourke

From: Kimberley O'Rourke
Sent: Tuesday, January 24, 2023 11:57 AM
To: Edney, Michael; Roper, Richard B (DFW - X31210); k.walji@waljilaw.com; vance@mcmurrylegal.com; joyce@joycelindauer.com; smetzger@pmklaw.com; randy@themarxfirm.com
Cc: Charlene Koonce; Cort Thomas; Tim Wells
Subject: No. 3:22-cv-2118-X; Securities and Exchange Commission v. Timothy Barton, et al.
Attachments: 2023.01.24 Ltr to Counsel.pdf

Tracking:	Recipient	Delivery
	Edney, Michael	
	Roper, Richard B (DFW - X31210)	
	k.walji@waljilaw.com	
	vance@mcmurrylegal.com	
	joyce@joycelindauer.com	
	smetzger@pmklaw.com	
	randy@themarxfirm.com	
	Charlene Koonce	Delivered: 1/24/2023 11:57 AM
	Cort Thomas	Delivered: 1/24/2023 11:57 AM
	Tim Wells	Delivered: 1/24/2023 11:57 AM

Counsel,

Please see the attached letter from Charlene Koonce, counsel to the Receiver in the above-referenced matter.

Sincerely,



KIMBERLEY O'ROURKE

8111 Preston Road
Suite 300
Dallas, Texas 75225

214.327.5000
214.396.5962

BROWNFOXLAWS.COM

This email message and any attachments are confidential and may be privileged. If you are not the intended recipient, please notify Brown Fox PLLC immediately (by replying to this message or calling 214.327.5000) and immediately destroy all copies of this message and any attachments. Thank you.



BROWN FOX

Charlene Koonce
214.367.7503
charlene@brownfoxlaw.com

January 24, 2023

Via Email (medney@huntonak.com)

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Via Email (k.walji@waljilaw.com)

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Via Email(randy@themarkxfirm.com)

Randy P. Marx
The Marx Law Firm
127 Howell Street
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- Provide copies of any documents evidencing such payments or security agreements, and the origin of all such payments.

If you have any questions, please feel free to contact me. Thank you for your prompt attention to this matter.

Sincerely,



Charlene Koonce