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16 UNITED STATES BANKRUPTCY COURT  
17 DISTRICT OF ARIZONA

18 In re:  
19 MATHON FUND, L.L.C., et al,  
20  
21 Debtors.

Chapter 11 Proceedings  
Case No: 05-27993 PHX GBN  
(Jointly Administered with Case Nos.  
05-27994 PHX-SSC and  
05-27995 PHX- JMM)

THIS FILING APPLIES TO:

- ALL DEBTORS
- SPECIFIED DEBTORS

**OBJECTION TO APPLICATION OF  
QUARLES & BRADY STREICH LANG,  
LLP, COUNSEL FOR THE OFFICIAL  
COMMITTEE OF MATHON INVESTORS  
(STATE COURT) FOR ALLOWANCE OF  
FINAL COMPENSATION AND  
REIMBURSEMENT OF EXPENSES**

James C. Sell, the Court Appointed Conservator, on behalf to the Conservatorship Estate, and on behalf of the Debtors (“Sell” or “Receiver/Conservator”), hereby objects to the *Application of Quarles & Brady Streich Lang, Counsel for the Official Committee of Mathon Investors (State Court) for Allowance of Final Compensation and Reimbursement of Expenses (the “Application”).* Sell’s objection is based upon the following Memorandum of Points and Authorities.

JABURG & WILK, P.C.  
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1 DATED this 29<sup>th</sup> day of November, 2006.

2 **JABURG & WILK, P.C.**

3 /s/ 006510

4 \_\_\_\_\_  
5 Lawrence E. Wilk  
6 Jonathan P. Ibsen  
7 *Special Counsel for Debtor*

8 **MEMORANDUM OF POINTS AND AUTHORITIES**

9 **I. FACTUAL BACKGROUND**

10 In April, 2005, the Arizona Corporation Commission (the “ACC”) commenced an action,  
11 under it’s police powers, in the Superior Court for Maricopa County, Arizona against Mathon  
12 Fund I, LLC, Mathon Fund, LLC, Duane Slade and Guy Williams and related entities (“Mathon  
13 Fund I, LLC, Mathon Fund, LLC and related entities are collectively referred to as the  
14 “Defendant Entities”) seeking, *inter alia*, the appointment of a Receiver over the assets of the  
15 Defendant Entities based on alleged violations of the Arizona Securities laws (the “ACC  
16 Action”). On April 1, 2005, the ACC obtained an order (the “Receivership Order”) appointing  
17 James C. Sell as Receiver<sup>1</sup> for Mathon Fund, LLC and numerous other entities (collectively  
18 referred to as “Mathon Entities”). The ACC Action alleged *inter alia*, that Duane Slade and Guy  
19 Williams (the “Principals”) had violated the Arizona Securities Laws by masterminding a scheme  
20 to defraud Mathon Investors. The Receivership Order resulted from a regulatory proceeding  
21 commenced by the ACC seeking to protect the public from a purported ponzi scheme which  
22 bilked investors out of millions of dollars. The Receiver was put in place in an effort to protect  
23 the public and alleviate any further sales of unregistered securities and any further violations of  
24 the Arizona Securities laws.

25 After numerous meetings between the Receiver/Conservator, his counsel and Bob Lloyd  
26 (an active Mathon investor), the Receiver/Conservator was able to impress upon Mr. Lloyd the  
27 need for the formation of a “State Court Committee” to aid the Receiver/Conservator in  
28 disseminating information to the numerous investors, and to aid in the orderly and efficient

\_\_\_\_\_ <sup>1</sup> The title of Mr. Sell was subsequently changed from Receiver to Conservator, but his rights, powers and duties remained the same.

1 management and liquidation of the Mathon Entities. The order approving the appointment of the  
2 Committee was clear, and unambiguous, as to the understanding of the parties.

3 Unlike a bankruptcy proceeding, the State Court Committee was not a creature of statute.  
4 The State Court Committee's sole authority came directly from, and was limited by, the language  
5 of the order approving the Committee, (the "Enabling Order"). In accordance with the agreement  
6 of the parties, the Enabling Order defined the Committee's role as follows:

- 7 (i) prepare and adopt by-laws;  
8 (ii) expand the Committee as prudent and necessary;  
9 (iii) employ counsel to assist, advise and represent the Committee  
10 in the administration of the case;  
11 (iv) assist and advise the Conservator in the investigation of  
12 defendants' assets, liabilities and other financial information;  
13 (v) work with the Conservator and his counsel to organize and  
14 disseminate information to the body of investors in the case; and,  
15 (vi) take other steps as necessary and prudent to assist the  
16 Conservator to maximize the distribution to investors. (emphasis  
17 added)

18 The State Court Committee was created with the clear understanding that the  
19 Receiver/Conservator maintained a well defined role in the State Court proceeding and that the  
20 State Court Committee's role was to act as a liaison to the investors.

21 This role should have been clearly articulated to the State Court Committee by its  
22 Counsel and thoroughly explained so as to define the parameters for the future actions taken by  
23 the State Court Committee and its Counsel. Accordingly, the reasonableness of any fees to be  
24 recovered by the State Court Committee's Counsel must be analyzed in light of the Enabling  
25 Order appointing the Committee. Actions undertaken by the State Court's Committee's Counsel  
26 outside the scope of the Enabling Order are not entitled to payment. Additionally, since the State  
27 Court Committee's Counsel was never appointed by the Bankruptcy Court, the State Court  
28 Committees' Counsel's fees are not entitled to an administrative expense priority; especially in  
light of the fact that these efforts have not benefited the Bankruptcy Estates in any manner.  
Indeed, the Committee's efforts actually hindered the recoveries of funds to the detriment of all  
investors. Such efforts should not be rewarded by this Court.

1 As a significant portion of the objection arises out of actions taken by Counsel outside the  
2 scope of the Enabling Order, this Objection does not concentrate on “line items” but more  
3 appropriately addresses categories of work not entitled to payment under the Enabling Order.

4 **II. INTRODUCTION**

5 Pursuant to the Application, Quarles & Brady Streich Lang (“QBSL”) seeks allowance as  
6 an administrative expense of professional compensation in the amount of \$318,360.50 and  
7 reimbursement of actual and necessary expenses in the amount of \$10,843.39. Such  
8 compensation relates to unnecessary attorney fees and is not reasonable under the circumstances.

9 The gravamen of this Objection is inextricably intertwined with the unique procedural  
10 nature of these Bankruptcy Cases and Quarles & Brady Streich Lang’s (“QBSL”) equally unique  
11 role in these cases. As this Court is well aware, QSLB is not Counsel for the Official Committee  
12 of Unsecured Creditors in these Cases – that role is occupied by Stinson Morrison. Similarly,  
13 QBSL’s services were neither sought by the Debtors, nor approved by this Court.

14 Rather, QBSL comes to this Court as an outsider. Before it would be entitled to any  
15 priority to payment, it must first establish an entitlement under the Bankruptcy Code. This would  
16 include not only proof of a priority entitlement, but also proof of an allowed claim. Assuming  
17 any entitlement, the Debtors hereafter specifically object to certain fees requested by QBSL as  
18 follows.

19 **III. THE COMMITTEE WAS IMPROPERLY A PAWN OF SPECIAL INTEREST**  
20 **GROUPS**

21 From the outset of the case it was clear that the principals who formulated the investment  
22 scheme that resulted in the regulatory proceeding wanted the removal of the  
23 Receiver/Conservator. The animosity between the principals and Mr. Sell escalated when the  
24 initial report filed with the State Court by the Receiver/Conservator outlined the alleged illegal  
25 activities undertaken by the Principals. As is common in these types of cases, the investors were  
26 reluctant to admit their investment mistake, and continued to believe that the Principals would not  
27 have orchestrated this type of fraud upon them. At this point, it was imperative for counsel for  
28 the State Court Committee to remain impartial and to maintain a semblance of order among its  
members. Instead, the initial response of the investors was to condemn the State for having

1 brought an action seeking the appointment of a Receiver. It was immediately clear that counsel  
2 began to lose control of the State Court Committee’s actions. Combining the investors’  
3 mentality, with the additional fact that the investment was an affinity fraud perpetuated by  
4 members of a church – against other church members - provides one with a clear understanding  
5 why the State Court Committee became susceptible to a strong undercurrent of control by the  
6 Principals. The State Court Committee members remained in constant contact with the Principals  
7 continually seeking their input. The undercurrent quickly manifested itself in the State Court  
8 Committee’s immediate action to seek a replacement for Sell.

9 Such conduct was well beyond the scope of QBSL’s authority under the Enabling Order  
10 and directly in opposite to the underlying enforcement action in the State Court proceedings.  
11 While it was incumbent upon Counsel for the State Court Committee to advise the State Court  
12 Committee of its limitations, and that such conduct was beyond the scope of its powers –  
13 Committee Counsel abdicated this role. Instead, Counsel allowed the group to become a “rogue”  
14 Committee which assumed that they had unlimited power and served at the pleasure and whim of  
15 the Principals and other insiders.

16 IV. THE WEINSTEIN GROUP

17 Nowhere does the lack of constraint by the State Court Committee appear more obvious  
18 than in its relentless pursuit of the retention of the Weinstein Group as Sell’s replacement. At the  
19 insistence of certain investors, some of which were sales representatives who were handsomely  
20 compensated from proceeds of the investors, the State Court Committee sought to replace the  
21 Receiver/Conservator with the Weinstein Group out of Washington State. Instead of seeking the  
22 Receiver/Conservator’s input into generating a mutual agreement to work together with the  
23 Weinstein Group to maximize the value of the Estate’s assets, the State Court Committee created  
24 an adversarial “beauty contest”, in an effort to remove the Receiver/Conservator. The resultant  
25 expense caused by both the delay and substantial attorney fees which were required to be incurred  
26 was inexcusable.

27 In addition, the State Court Committee ignored the interests of the ACC, who adamantly  
28 supported the retention of the Receiver/Conservator. The State Court Committee ignored its

1 inherent limitations. Indeed, nowhere within the four corners of the Enabling Order was the  
2 Committee authorized to interview replacements for the Receiver/Conservator and/or to  
3 aggressively seek his removal.

4 V. LITIGATION EXPENSES

5 Despite the obstructive tactics undertaken by the State Court Committee, the  
6 Receiver/Conservator sought the input of the State Court Committee in the liquidation and  
7 distribution of assets. Discussions were ongoing as to the sales of assets. Despite the  
8 discussions, the State Court Committee was insistent that no asset should be sold until the  
9 Weinstein Group was in place. When it became apparent that this was not going to occur, the  
10 State Court Committee revised its position and objected to sales until Alvarez and Marsal could  
11 be put in place. This effort also failed following the Bankruptcy Court's refusal to authorize the  
12 employment of Alvarez and Marsal. Approximately \$9,660 of fees were expended pursuing the  
13 employment of Alvarez and Marsal.

14 In furtherance of his fiduciary duties, the Receiver/Conservator negotiated with potential  
15 purchasers and sought court approval of sales. These efforts were constantly thwarted by the  
16 Committee's steadfast position to not work with, or aid, the Conservator in these sales.  
17 Ironically, the Committees' positions always coincided with the Principals and insiders at the  
18 expense of the body of general creditors and investors. Not only were sales not consummated,  
19 the attendant cost of this obstructive position resulted in costly litigation.<sup>2</sup>

20 Nowhere in the Enabling Order is the State Court Committee authorized to incur the  
21 litigation expenses now being sought. Consequently this Court cannot justify these fees and  
22 expenses being paid as a priority expense of these Bankruptcy cases.

23  
24  
25 <sup>2</sup> A perfect example of wasted litigation was the sale of New Stansbury. The Receiver/Conservator repeatedly  
26 requested the aid of the State Court Committee in negotiating the sale of the New Stansbury property in Wyoming.  
27 Despite this request, the State Court Committee objected and took the position that the property should not be sold  
28 until Weinstein was in place. Accordingly, needless expenses were incurred in litigating a sale which was not  
consummated. Subsequent to the filing of the bankruptcy proceedings, the Official Committee of Unsecured  
Creditors, working in conjunction with the Receiver/Conservator, negotiated a sale with New Stansbury which  
increased the sales price by approximately \$1 million. Had the State Court Committee cooperated, this sale could  
have been consummated six months prior, without the needless cost of litigation.

1 VI. COMMITTEES PRE-PACKAGE PLAN

2 In the State Court Committees' zealousness to remove Mr. Sell, they attempted to file a  
3 pre-packaged plan, under the guise that the new Bankruptcy Code would allow the State Court  
4 Committee to pre-solicit votes prior to approval of a disclosure statement under 11 U.S.C.  
5 §1125(g). It was, and still is, the Receiver's/Conservator's position, that the amended statutory  
6 framework of the Code allows for only the Debtor to pre-package a plan and to solicit votes prior  
7 to approval of the disclosure statement. The issue became moot when the Bankruptcy Court  
8 failed to entertain the State Court Committee's Plan.

9 The State Court Committee expended in excess of \$66,000 to generate a plan and  
10 disclosure statement which was not approved by the investors, was not authorized by the  
11 Receiver/Conservator, was filed in violation of exclusivity provisions of the Bankruptcy Code,  
12 was entirely of no value and was arbitrarily dismissed. The State Court Committee's Plan was  
13 initiated without any input from the Receiver/Conservator and with the clear intent to remove the  
14 Receiver/Conservator. The misguided Plan provided no benefit to these Debtors' Estates.

15 Not only was the pre-packaged plan ill-advised, it resulted in actions being undertaken  
16 that violated the ACC's Conservatorship Order and resulted in contempt actions being instituted  
17 against the Principals. The documents that brought about the contempt proceeding appear to have  
18 been drafted with the consent of the State Court Committee and by its Counsel. The intent of the  
19 documents was to transfer the interests of the Principals to an entity outside the control of the  
20 Receiver/Conservator<sup>3</sup> and thereby empowered the Principals with apparent authority to appoint  
21 third parties (other than the Conservator) to control the Debtor Entities.

22 <sup>3</sup> The Receivership Order provides:

23 Except by leave of this Court or the Bankruptcy Court as appropriate, during  
24 pendency of the Receivership ordered herein, the Defendants, and all other  
25 persons and entities be and hereby are stayed from taking any action to establish  
26 or enforce any claim, right, or interest for, against, on behalf of, in, or in the  
27 name of, any of the Receivership Defendants, any of their subsidiaries, affiliates,  
28 partnerships, assets, documents, or the Receiver or the Receiver's duly authorized  
agents acting in their capacities as such, including, but not limited to, the  
following actions:

d. Doing any act or thing whatsoever to interfere with the Receiver taking  
custody, control, possession, or management of the assets or documents subject  
to this receivership, or to harass or interfere with the Receiver in any way, or to

1           Such conduct exceeded the State Court Committee’s authority under the Enabling Order,  
2 violated the Receivership/Conservatorship Orders and favored the interests of the Principals over  
3 the Creditors and Investors.

4 VII. FAILURE OF THE STATE COURT COMMITTEE TO BE RECOGNIZED IN THE  
5 BANKRUPTCY

6           Unlike the State Court Committee, the Bankruptcy Court Committee is a creature of  
7 statute and was solicited by the U.S. Trustees Office and noticed to the twenty largest creditors.  
8 The result of this solicitation was an official Committee of unsecured Creditors (the “Official  
9 Committee”) comprised of a more representative investor group, free from personal agendas. The  
10 refusal of the U.S. Trustee to maintain the State Court Committee in place was intentional. The  
11 State Court Committee created a deadlock which severely impacted the orderly administration of  
12 the case. The fact that there is now a confirmed Joint Disclosure Statement and Plan, that sales  
13 have been jointly negotiated and put before the court and approved, and dissent amongst the  
14 Committee and the Debtors has been all but alleviated, is not a coincidence. Hidden personal  
15 agendas have now been dispensed with and an orderly reorganization process is in place. The  
16 process which was adversarial from the outset with the prior committee, has been orderly and  
17 economical with the new committee. Unfortunately, this was only accomplished after incurring  
18 needless enormous expense of dealing with a rogue committee without appropriate leadership.

19           Simply put, there is no basis in the Bankruptcy Code for the allowance of QBSL’s  
20 attorneys’ fees and costs as an administrative expense. QBSL was not employed by or on behalf  
21 of the Bankruptcy Estates and its employment was never approved by the Bankruptcy Court.  
22 Based on the Application, QBSL incurred approximately \$53,555.50<sup>4</sup> in fees and \$3,833.92 in  
23 expenses on or after the petition date of November 13, 2005. Based on the failure of QBSL to  
24 obtain Bankruptcy Court approval of its employment, such post-petition fees and costs are not  
25 allowable or compensable. To the extent they are allowable at all, they may only be allowed as  
26 an unsecured claim.

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27   interfere in any manner with the exclusive jurisdiction of this Court over the  
28   assets or documents of the Receivership Defendants. (emphasis added)

<sup>4</sup> Of this amount approximately \$32,255.50 is duplicative of the litigation and plan and disclosure statement expenses objected to above, leaving a balance of \$21,300 which is separately objected to herein.

1 VIII. CONCLUSION

2 Counsel for the Receiver/Conservator and the Receiver/Conservator are reluctant to object  
3 to professional fees unless there has been a clear abuse. A review of the State Court proceedings,  
4 including, but not limited to, those areas specifically addressed herein, evidences such an abuse.  
5 The State Court Committee is hard pressed to justify their actions under the Enabling Order, and  
6 more importantly, to establish that their actions in any way enhanced the Estate. Absent  
7 establishing such a benefit, it is difficult to ascertain the reasonableness of the fee.

8 Counsel seeks \$73,102.50 in fees for litigation, \$66,228.50 in fees for the proposed Plan  
9 and Disclosure Statement, \$9,660 for fees incurred in connection with the failed effort to employ  
10 Alvarez and Marsal, \$21,300 for post-petition services rendered, and \$3,833.92 for expenses paid  
11 post-petition.<sup>5</sup> The role of this State Court Committee was not to advocate the position of special  
12 interest groups or to advocate unnecessary and untenable positions. The cost of advocating those  
13 special interests should be borne directly by those groups, not the Estates. The fees sought by  
14 QBSL clearly reflect fees incurred by QBSL in its ill-fated attempt to advocate the interests of the  
15 few, rather than the best interests of the majority of the creditors and investors of these  
16 Bankruptcy Estates. Neither of the requests for litigation fees or plan fees are reasonable in light  
17 of the foregoing discussion, and the Court should therefore deny recovery of these amounts.

18 To the extent that the Court should determine QBSL's entitlement to any fees, they should  
19 be determined to be an unsecured claim subject to distribution in accordance with the terms of the  
20 confirmed Plan of Reorganization.

21 DATED this 29<sup>th</sup> day of November, 2006.

22 **JABURG & WILK, P.C.**

23 /s/ 006510

24 \_\_\_\_\_  
25 Lawrence E. Wilk  
26 Jonathan P. Ibsen  
27 *Special Counsel for Debtor*

28 <sup>5</sup> QBSL seeks approval of \$329,203.89 in fees and expenses incurred. While the Debtor's believe that QBSL is not entitled to a priority for any fees, they additionally object to fees and expenses totaling approximately \$174,124.92.

1 COPY of the foregoing mailed  
 2 this 29<sup>th</sup> day of November, 2006.

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27 */s/Janet Forster*  
 28 \_\_\_\_\_