

an Indiana corporation; Treds Financial Trust; and Mary Ann Bauce, Defendants Solely for Purposes of Equitable Relief, pending before the United States District Court for the Northern District of Texas, Dallas Division, the Honorable Joe Kendall presiding.

2. Texas Coastal Bank is a state chartered bank organized and existing pursuant to the laws of the State of Texas, with its primary offices at 6731 Spencer Highway, Pasadena, Harris County, Texas 77508, and may be served with process through its President, Billy Holcomb.

3. Billy Holcomb is an individual resident and citizen of the State of Texas and may be served with process at 6731 Spencer Highway, Pasadena, Harris County, Texas 77508.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this action because the actions stated herein constitute Receivership Assets within the meaning of the Order Appointing the Receiver. The Order Appointing the Receiver expressly states that all actions to determine disputes relating to Receivership Assets shall be filed in this Court.

5. Venue for this action is proper in the Northern District of Texas because (1) the SEC Action referenced below is pending in this District and this action is ancillary to it; (2) the Receiver was appointed in this District; and (3) this action involves Receivership Assets within the meaning of the Order Appointing the Receiver. The Order Appointing the Receiver expressly states that all actions to determine disputes relating to Receivership Assets shall be filed in this Court.

BACKGROUND FACTS

6. On November 13, 1998, the United States Securities and Exchange Commission ("SEC") instituted Civil Action No. 3:98-CV-2689-X, styled *Securities and Exchange Commission v. Funding Resources Group, Quentin Hix, Gene Coulter, Steven C. Roberts, MVP Network, Inc., FMCI Trust, Funders Marketing Company, Inc., Raymond G. Parr, Willard Vearl Smith, Earl D.*

McKinney, Fortune Investments, Ltd., Robert Cord, Winterhawk West Indies, Inc., IGW Trust, Carolyn Don Hicks and Carl LaDane Weaver; and Howe Financial Trust and Treds Financial Trust (the "SEC Action"), pursuant to which the SEC alleged various counts of securities fraud by a number of individuals and entities and, in connection therewith, sought the appointment of the Receiver.

7. On November 13, 1998, in the SEC Action, the Court appointed Michael J. Quilling ("Receiver") as the receiver as to all named defendants and equity relief defendants. The receivership applies to, among others, Robert Cord, Winterhawk West Indies, Ltd.¹ and Steven C. Roberts d/b/a Funding Resources Group and FRG Trust.²

8. Robert Franklin Schoonover, Jr. a/k/a Robert Cord ("Cord"), is an individual who has devoted his life to illegal financial scams and has been convicted for criminal fraud on several previous occasions. Shortly after his escape from prison in mid-1996, Cord began establishing the groundwork for his latest fraud, which forms the basis for the SEC Action. In that regard, he began doing business under the assumed name of First Federal Assurance ("First Federal") and established a bank account at Community Bank in Vidor, Texas. In addition, he caused Winterhawk West Indies, Ltd. ("Winterhawk") to be created under the laws of Antigua and Barbuda. Winterhawk had no separate or legitimate business purpose and was instead the alter ego of Cord, which he used to further his fraudulent schemes.

9. Although the investment programs offered by Cord to investors had variants, in essence, he promised that investor funds would be pooled and put into safe but high yield investment

¹ Although the SEC action references Winterhawk West Indies, Inc., the Receiver's investigation has revealed that the actual corporate name is Winterhawk West Indies, Ltd.

² Although the SEC Action references Funding Resource Group a/k/a FRG Trust as being separate entities from Steven C. Roberts, the Receiver's investigation has revealed that Funding Resource Group and FRG Trust are not separate corporate entities but instead are each assumed names for Steven C. Roberts.

programs which would pay exorbitant rates of return over relatively short periods of time. Investors were also promised that their funds would be backed by surety bonds or the financial guarantee of First Federal. In actuality, however, the high yield investment program was nothing but a huge Ponzi scheme. After each investor signed a joint venture agreement with Winterhawk, they were then required to wire the funds into the particular account chosen by Cord.

10. Initially, monies raised from investors were wired to First Federal's account at Community Bank from which they were systematically diverted for Cord's own purposes. After a few months, Vidor became concerned by the large transfers flowing in and out of First Federal's account and the dramatic fluctuations in account balances. While Community Bank could not prove Cord was engaged in illegal acts, Community Bank's officers knew that these transfers and fluctuations demonstrated, at a minimum, that Cord was not a desirable customer. As a result, in the summer of 1996, after only a few months of having Cord as a customer Community Bank instructed Cord to take his business somewhere else.

11. The "somewhere else" was Texas Coastal Bank ("TCB") in Pasadena, Texas, where Cord received much more understanding treatment from TCB's president, Billy Holcomb ("Holcomb"), a man with over 40 years of banking experience. Indeed, over the next few months, Holcomb's involvement in Cord's scam grew from a purposefully ignorant bank president to an active participant in, and beneficiary of, Cord's scheme to defraud Winterhawk's investors.

12. In August 1996, after Holcomb heard Community Bank's vice president express concern about Cord during a "hand off" telephone conversation, a conversation that would have put any legitimate banker on notice that Cord was not a legitimate businessman, TCB allowed Cord to transfer \$200,000 of investor money from Community Bank into a Winterhawk account at TCB. Cord also established a personal account in his name at TCB.

13. While opening these accounts, Cord provided TCB and Holcomb with what Cord claimed was his social security number, but was actually an IRS personal identification number. When Holcomb advised Cord that this number did not check out, Cord simply provided Holcomb with another, completely fabricated, number.

14. Under the circumstances, any prudent banker would have checked this second social security number given by Cord, but Holcomb did not. If he had performed this modest due diligence, Holcomb would have discovered that this number was also bogus.

15. Prior to opening these accounts at TCB, Cord explained his "investment program" to Holcomb and at all material times TCB and Holcomb knew that virtually all deposits in the Cord/Winterhawk accounts were investor funds. In order to facilitate his investment scam, Cord asked Holcomb to provide a positive reference when investors called to verify the Winterhawk program. TCB and Holcomb gladly accepted this vital role in Cord's scheme so that Cord and his large deposits would remain at TCB.

16. Indeed, based on the agreement of Cord, TCB and Holcomb, the written joint venture agreements executed by the investors bore TCB and Holcomb's names, along with TCB's wiring instructions. This information was meant to deceive investors, give them a false sense of security, and encouraged them to call Holcomb, who had agreed to provide Cord and Winterhawk with a glowing, unqualified reference.

17. Once Cord and "brokers" working with him had recruited interested investors, Cord suggested that the investors call Holcomb to verify the validity of the investment program and Cord's integrity. Holcomb, actively participating in Cord's scheme, told the investors that Winterhawk and Cord's business relationship with TCB was at all times satisfactory, that Robert

Cord was a man of high integrity, and actively encouraged investors to invest with Winterhawk and Cord.

18. Once the investors wired their money to Winterhawk's account, in many instances Cord and Winterhawk, with TCB and Holcomb at their side and facilitating the process, purchased certificates of deposit ("CDs") in Winterhawk's name. Cord, Winterhawk and Holcomb then acted together to immediately convert these CDs into collateral — for TCB "loans" to Winterhawk. For instance, the records of Winterhawk reflect the following transactions:

- On January 29, 1997, \$183,000 was wired into Winterhawk's account. The following day, TCB sold Winterhawk a \$160,000 CD and made a \$160,000 loan to Winterhawk secured by that CD.
- On May 14, 1997, \$280,000 was wired into Winterhawk's account. The following day, TCB sold Winterhawk a \$280,000 CD and made a \$266,000 loan to Winterhawk secured by that CD.
- On May 16, 1997, \$280,000 was wired into Winterhawk's account. Four days later, TCB sold Winterhawk a \$280,000 CD and made a \$266,000 loan to Winterhawk secured by that CD.
- On May 21, 1997, \$280,000 was wired into Winterhawk's account. The following day, TCB sold Winterhawk a \$280,000 CD. On May 23, 1997, TCB made a \$266,000 loan to Winterhawk secured by that CD.
- On June 24, 1997, TCB sold Winterhawk a \$280,000 CD and made a \$266,000 loan to Winterhawk secured by that CD.

19. The manipulations of investor funds from cash to CD to "loan" to cash, as any banker with 40 years of banking experience would immediately know, served absolutely no legitimate business purpose. Instead, this money laundering was performed to hide TCB's involvement in Cord's scam, while allowing Cord free access to the investor funds.

20. Additionally, because of Winterhawk's CDs at TCB, TCB and Holcomb could justify advising prospective investors that Winterhawk had substantial assets, knowing full well that

Winterhawk's "assets" were entirely pledged to secured Winterhawk's "loans." However, TCB and Holcomb never bothered to tell prospective investors about the "loans" or the pledged CDs.

21. With Holcomb and TCB's full knowledge, once the loan proceeds were deposited into Winterhawk's account, Cord immediately used the loan proceeds to purchase expensive cars, boats, real estate, jet skis and pay for extensive foreign travel. TCB and Holcomb knew the monies were not being used for investment purposes of any kind.

22. TCB and Holcomb knew that Cord never made safe, high yield investments, as Cord had promised investors. In fact, TCB and Holcomb knew, or should have known, that Winterhawk never paid any return to most of Winterhawk's investors. The exceptions to this rule are notable, and actionable.

23. During the life of his investment scam, Cord converted investor funds to purchase real estate for his personal use and enjoyment, using Re/Max Gulf Coast as his broker. Re/Max Gulf Coast is an assumed name of the Hojen Corporation, which is owned and officered by Holcomb and his wife Dorothy Holcomb.

24. Thus the Holcombs, through Hojen Corporation, received significant brokerage fees on Cord's real estate purchases, even though Holcomb knew that the money to purchase this property, and pay realtor commissions, was being withdrawn from Winterhawk's account comprised entirely of investor funds — and was entirely inappropriate. However, since and Dorothy Holcomb were the financial beneficiaries of these misuses of investor funds, it apparently did not present a problem in the mind of Holcomb.

25. In fact, Holcomb knew that Cord was living extravagantly, driving a Mercedes, playing with high powered jet skis, and motoring on his 38' yacht, all paid for with investor funds. In order to fund these purchases, sometimes TCB and Holcomb would cut cashier's checks directly

out of the Winterhawk account to pay for Cord's toys, while on other occasions Holcomb transferred money from Winterhawk's account to Cord's personal account, from which Cord purchased his toys.

26. Although Holcomb knew the money in Winterhawk's account was investor funds, Holcomb readily assisted in these improper transfers, without altering his consistently upbeat reports to potential investors, who naively believed the bank president's positive recommendation. At no time whatsoever did TCB or Holcomb ever advise investors as to what Cord was really doing with their money.

27. In January 1997, Holcomb, Cord and Wayne Melson (Cord's office manager/associate financial consultant), officially became business partners and decided to move Cord's fraudulent business schemes away from American law enforcement and oversight by applying to establish an offshore bank in Belize. Holcomb, with his 40 years of banking experience, was the mastermind behind this scheme. The proposed bank license was sought in the name of Belize City Bank International, Ltd. with Holcomb, Cord and Melson named as directors, officers, shareholders and trustees of the entity.

28. In an effort to establish this business venture, Cord and Holcomb took three trips to Belize and Melson went twice. Although Holcomb, Cord and Melson have all admitted that these "business trips" were exclusively related to the partners' new banking business, and in no way were meant to benefit Winterhawk or its defrauded investors, Holcomb, Cord and Melson each knew that Winterhawk's investors paid all the expenses incurred during these "business trips" to Belize. Indeed, on one of Holcomb's "business trips" to Belize, Winterhawk's investors also paid for Dorothy Holcomb and her daughter to go along. Once again, although these extravagant trips were

not intended to, nor were they going to, benefit Winterhawk or its defrauded investors, Holcomb knew that Winterhawk paid for all of his family's expenses.

29. As a reward to Holcomb for all of his "hard work" in investigating and preparing the business plan for this new banking venture, Cord paid Holcomb a \$25,000 "consulting fee." Once again, Holcomb knew his \$25,000.00 "consulting fee" came directly out of Winterhawk's account at TCB containing nothing but investor funds, and that this offshore banking venture was not intended to benefit Winterhawk or the defrauded investors.

30. In fact, Holcomb actually knew the Belize venture could not possibly benefit Winterhawk because in August 1996, Cord provided TCB and Holcomb with Winterhawk's articles of incorporation, which expressly prohibited Winterhawk from conducting business activities relating to international banking.

31. Holcomb submitted the proposed business plan to the Central Bank of Belize on February 19, 1997. Although the proposed business plan expressly called for Holcomb, Cord and Melson to infuse \$750,000 into this venture, Holcomb testified under oath that he never planned to put any money into the offshore bank and that, instead, Cord was going to be responsible for all of the cash infusions, presumably using funds stolen from Winterhawk investors.

32. Cord and his partner, Holcomb, have testified that the Belize banking venture did not materialize — either because of a passport scam which erupted when Belize authorities discovered forged passports for Cord, Holcomb and Melson (Holcomb's story), or because Holcomb refused to pay bribes to Belize officials (Cord's story).

33. Eventually, disgruntled investors began contacting the criminal authorities. By no later than March 1997, TCB and Holcomb knew the FBI was investigating Winterhawk and Cord's activities. Even so, Holcomb continued to report, falsely, that Winterhawk was a legitimate

customer of TCB, and had significant positive account balances. In fact, even after TCB and Holcomb knew of the criminal investigation, TCB and Holcomb continued to make "loans" to Winterhawk, supposedly secured by CDs purchased with what TCB and Holcomb knew to be investor funds.

34. On March 2, 1998, Cord was indicted for mail fraud (18 U.S.C. § 1341), wire fraud (18 U.S.C. § 1343) and money laundering (18 U.S.C. § 1957) in criminal cause number H-98-101 before the United States District Court for the Southern District of Texas, Houston Division. Thereafter, Cord pled guilty to mail fraud and was incarcerated.

35. In connection with pursuing criminal proceedings against Cord, the United States of America instituted asset forfeiture proceedings against Cord and all known assets traceable to his fraudulent schemes, same being cause number H-97-2625 originally filed in the United States District Court for the Southern District of Texas, Houston Division ("Forfeiture Proceedings"). Subsequent to his appointment, the Receiver successfully sought to have all assets which were the subject of the Forfeiture Proceedings turned over to him for disposition in connection with the SEC Action and to have the Forfeiture Proceedings transferred to the Northern District of Texas, Dallas Division, for further consideration in connection with the SEC Action.

36. Among the assets turned over to the Receiver from the Forfeiture Proceedings were the monies on deposit in the accounts of Cord, Winterhawk and Saber Industries, Ltd.³ at the time of the asset seizure (the "Deposit Monies"). The total amount of Deposit Monies turned over to the Receiver was \$992,674.85. Although the Receiver believes that TCB is required to turn over the CDs, TCB has refused to do so, instead claiming a security interest in the CDs.

³ Saber Industries is a related Cord alter ego discussed below.

37. Steven C. Roberts ("Roberts") is an individual who acted as a broker/investment advisor and raised large amounts of money from individuals which he pooled for investment purposes. In connection with his business activities, he did business under the assumed names of Funding Resource Group and FRG Trust. At some point in time, Roberts became acquainted with Cord and soon thereafter, became convinced of the validity of Cord's high-yield investment scam. In an effort to conduct due diligence regarding Cord and Winterhawk, Roberts contacted TCB and spoke to Holcomb. During these discussions Roberts was given the same glowing recommendations and integrity testimonials which TCB and Holcomb routinely gave to interested investors.

38. Based upon the representations made by TCB and Holcomb, Roberts decided to invest a substantial portion of the investor funds which he had pooled with Winterhawk. Specifically, Roberts caused at least the following wire transfers of investor funds to be deposited into Winterhawk's account at TCB:

<u>Date</u>	<u>Amount</u>
3/3/97	\$ 183,000.00
4/22/97	\$ 183,000.00
5/5/97	\$ 50,000.00
5/14/97	\$ 280,000.00
5/21/97	\$ 280,000.00
6/5/97	\$ 280,000.00
7/23/97	<u>\$ 750,000.00</u>
	\$2,006,000.00

39. Other investors were also duped by Cord, with the assistance of TCB and Holcomb, into believing the validity of the Winterhawk scam and the integrity of Cord, as a result of which

they wire-transferred funds to Winterhawk's account at TCB. Specifically, at least the following individuals and entities wired funds as follows:

<u>Name</u>	<u>Date</u>	<u>Amount</u>
Diana Haskell	11/14/96	\$200,000.00
Don Metz	11/14/96	\$250,000.00
New World	1/29/97	\$183,000.00
Wurst Family L.P.	2/7/97	\$183,000.00
Archie Baily	2/18/97	\$75,000.00
Genexus	2/20/97	\$91,500.00
Atlantic Capital	3/5/97	\$366,000.00
Acquisition Funding	3/21/97	\$183,000.00
Atlantic Capital	3/27/97	\$183,000.00
Don Metz	4/22/97	\$250,000.00
Gary Bennett	5/16/97	\$280,000.00
Founder's Trust	5/20/97	\$183,000.00
Jack Little	7/8/97	\$280,000.00
Dennis Cates	7/11/97	\$100,000.00
Kairos Financial	7/15/97	\$250,000.00
Tom Boren	7/23/97	\$200,000.00
Martin Steinbis	7/23/97	<u>\$300,000.00</u>
		\$8,217,321.44

As a result of the fraudulent scheme perpetrated by Cord with the assistance of TCB and Holcomb, virtually all of the foregoing investor monies have been lost.

40. In May 1997, Cord concocted another scam to be conducted under the name of Saber Industries, Ltd. ("Saber Industries"), a Nevada corporation which he acquired for his special purpose of defrauding investors. Saber Industries had no legitimate business purpose and was the alter ego

of Cord. In connection with acquiring the stock of Saber Industries, Cord enlisted the aid of Carolyn Hersman ("Hersman") to help accomplish the fraud.

41. Among other things, Hersman created marketing brochures touting the assets and experience of Saber Industries which were completely phony and fabricated. Pursuant to the phony brochures, Saber Industries was to own and develop precious metal mines and had access to over 400 mines. Not surprisingly, TCB and Holcomb were contacted to gain their wholehearted assistance and support of the bogus affairs of Saber Industries. Again, driven by greed and the promise of large deposits, TCB and Holcomb eagerly pledged their support.

42. Armed with the phony brochures and the support and participation of TCB and Holcomb, Cord and his cronies set about to find gullible investors. In particular, Saber Industries sought "lenders" who would execute a so-called Medium Term Note agreement pursuant to which Saber Industries would agree to repay the loan after fourteen months with interest at the rate of 12% paid quarterly. Each lender/investor was to have an individual fully insured account at TCB and after receipt TCB was to put the funds into a certificate of deposit for each individual so as to fully secure each individual loan. Funds were to be sent by each investor directly to TCB whereupon TCB would issue a Receipt for Funds Deposited. Holcomb assisted with the wording of the agreement to be signed by each investor and both TCB and Holcomb were fully aware of how the Saber Industries investment opportunity was being marketed to investors. As usual, however, the program did not work as represented and as usual, TCB and Holcomb ignored the fraud so long as their fees and transactional charges were timely paid and the investor deposits were received.

43. During May and June 1997, with the assistance of TCB and Holcomb, Cord and his cronies raised the following investments/loans under the auspices of the Saber Industries scam:

<u>Name</u>	<u>Amount</u>
Richard & Naomi Tippetts	\$75,000.00
Robert & Judy Berckman	\$58,000.00
Margaret I. Sanders	\$30,000.00
Chlodine Dott Smith	\$25,000.00
Laverna Huff	\$20,000.00
Catherine Kirehn	\$25,000.00
Thelma R. Hardin	\$25,000.00
Bessie Wachter Trust	\$20,000.00
Robert M. Zaring	\$46,342.29
James & Neva Bohannan	\$270,000.00
Michael & Susan Balzer	\$43,000.00
Michael Hubbard	<u>\$31,000.00</u>
	\$643,324.29

44. Thereafter, on June 27, 1997, with the assistance of Holcomb, Hersman opened an account at TCB in the name of Saber Industries and deposited the foregoing funds. Shortly thereafter, TCB issued its Receipt for Funds Deposited to each of the investors. Despite TCB issuing its Receipt for Funds Deposited, individual fully insured accounts were not established and no certificates of deposit were issued. In late July 1997, Cord apparently learned that he was about to be besieged with legal problems so he caused Holcomb to return each Saber Industries investor their investment plus modest interest. In that the Saber Industries account at TCB did not contain enough funds to accomplish such a thing, Cord and Holcomb moved funds from the Winterhawk account to cover the shortage. TCB and Holcomb knew or should have known that such a transfer was improper.

45. In connection with making its CD secured "loans" to Winterhawk, thereby assisting Cord in his fraudulent schemes, TCB claims a security interest in the following CDs:

<u>Number</u>	<u>Amount</u>
20003631	\$160,000.00
20003681	\$280,000.00
20003687	\$280,000.00
20003690	\$280,000.00

In addition, TCB claims that it properly offset CD no. 20003711 in the amount of \$280,000.00 against one of its loans in July 1997. The Receiver believes that because of the conduct of TCB and Holcomb that the entire "loan" process should be declared fraudulent and void and that all CDs (still existing and previously offset) should be turned over to the Receiver and TCB should be declared to be, at best, an unsecured creditor of the receivership estate.

46. In connection with making its CD secured "loans" to Winterhawk, thereby assisting Cord in his fraudulent schemes, TCB claims that it has a superior right to all Deposit Monies now in the possession of the Receiver because the Deposit Monies are somehow needed to cover any shortages which may exist between the amount owed under the "loans" and the amount of the CDs. TCB further asserts that it is owed various unspecified costs and other charges for the services which it performed in connection with administering the Cord, Winterhawk and Saber Industries accounts. The Receiver believes that because of the conduct of TCB and Holcomb, TCB should be declared to have no superior claim to the Deposit Monies and should be declared to be, at best, an unsecured creditor of the receivership estate.

COUNT ONE - DECLARATORY JUDGMENT
(AS TO TCB ONLY)

47. The Receiver incorporates paragraphs 1 through 46 set forth above as if set forth verbatim hereat.

48. An actual controversy exists between the Plaintiff and TCB regarding the rights of the parties pursuant to the CDs and the validity of the loans by TCB to Winterhawk. An additional actual controversy exists between the parties as to the priority of TCB's claim to the Deposit Monies.

49. The Receiver seeks a declaration of this Court pursuant to 28 U.S.C. §§ 2201 and 2202 interpreting and declaring the rights and other legal relations of the Receiver to the CDs and the Deposit Monies.

50. In connection with bringing this cause of action, the Receiver seeks to recover his attorneys' fees and costs of court.

COUNT TWO - DISALLOWANCE OR SUBORDINATION OF CLAIMS
(AS TO TCB ONLY)

51. The Receiver incorporates paragraphs 1 through 46 set forth above as if set forth verbatim hereat.

52. The conduct of TCB and Holcomb in assisting Cord with his fraudulent schemes mandates that in an equitable proceeding such as the receivership estate that any claim of TCB, be it secured or unsecured, be disallowed in its entirety or, in the alternative, that it be subordinated to the claims of all other creditors of the receivership estate. Pursuant to principles of equity, the Receiver requests that the Court disallow any claim of TCB or, in the alternative, that all claims of TCB be subordinated to the claims of all other creditors.

53. In connection with bringing this cause of action, the Receiver seeks to recover his attorneys' fees and costs of court.

COUNT THREE - UNJUST ENRICHMENT
(AS TO TCB ONLY)

54. The Receiver incorporates paragraphs 1 through 46 set forth above as if set forth verbatim hereat.

55. By virtue of the conduct of TCB and Holcomb, the defrauded investors of Winterhawk received nothing and the corporate assets of Winterhawk were denuded. TCB's continued retention of the CDs and the Deposit Monies would constitute unjust enrichment and, therefore, in equity and good conscience TCB should be required to release any claim to the CDs and the Deposit Monies to the Receiver.

56. In connection with bringing this cause of action, the Receiver seeks to recover his attorneys' fees and costs of court.

COUNT FOUR - AIDING AND ABETTING CORPORATE WASTE
(AS TO TCB AND HOLCOMB)

57. The Receiver incorporates paragraphs 1 through 46 set forth above as if set forth verbatim hereat.

58. The actions of Cord and his cronies in systematically diverting investor funds for improper purposes as soon as they were deposited in the accounts of Winterhawk constitutes corporate waste.

59. Cord and his cronies were aided and abetted in their efforts by the actions and inactions of TCB and Holcomb.

60. As a result of TCB and Holcomb aiding and abetting Cord and his cronies, TCB and Holcomb became jointly and severally liable for the damages caused by the corporate waste. As a result of the corporate waste accomplished by Cord and his cronies with the assistance of TCB and

68. The conduct of Holcomb, individually and as the president of TCB constitutes fraud as to Roberts and the multitude of investors who pooled their money with Roberts. Holcomb misrepresented the nature and activity of Winterhawk's account and Cord's relationship with TCB and he failed to disclose numerous material facts known to him. As a result of Holcomb's conduct, Roberts caused investor money to be deposited in Winterhawk's account at TCB and Roberts has been damaged thereby in the amount of at least \$2,000,000.00 for which amount the Receiver hereby sues.

69. In connection with bringing this cause of action, the Receiver seeks to recover his attorneys' fees, costs of court and pre- and post-judgment interest at the highest rate allowed by law.

COUNT SEVEN - NEGLIGENCE
(AS TO TCB AND HOLCOMB)

70. The Receiver hereby incorporates paragraphs 1 through 46 set forth above as if set forth verbatim hereat.

71. As a result of administering the Winterhawk and Saber Industries accounts at TCB and as a result of allowing TCB's name to be displayed prominently throughout Cord's written agreements with investors, TCB and Holcomb owed a duty of care to Winterhawk and the defrauded investors.

72. The conduct of TCB and Holcomb breached their duty of care and constituted negligence. In all respects, TCB and Holcomb failed to follow normal and prudent banking practices in connection with their dealings with Cord, Winterhawk and Saber Industries.

73. As a result of the negligent conduct of TCB and Holcomb, Winterhawk and Roberts have been damaged in an amount of at least \$10,000,000.00, for which amount the Receiver hereby sues.

74. In connection with bringing this cause of action, the Receiver also seeks to recover his attorneys' fees, costs of court and pre- and post-judgment interest at the highest rate allowed by law.

COUNT EIGHT - UNJUST ENRICHMENT
(AS TO HOLCOMB ONLY)

75. The Receiver incorporates paragraphs 1 through 46 set forth above as if set forth verbatim hereat.

76. Winterhawk received nothing of value with respect to Holcomb's knowing acceptance of at least \$25,000.00 of investor funds and the costs of travel for Holcomb and his family to Belize. Holcomb's continued retention of the \$25,000.00 and the value of the travel expenses would constitute unjust enrichment and, therefore, in equity and good conscience, Holcomb should be required to pay the Receiver the \$25,000.00, the value of the travel costs and all other amounts he or his family ever received from any of the Cord, Winterhawk and/or Saber Industries accounts at TCB.

77. In connection with bringing this cause of action, the Receiver seeks to recover his attorneys' fees, costs of court and pre- and post-judgment interest at the highest rate allowed by law.

COUNT NINE - FRAUDULENT TRANSFER
(AS TO HOLCOMB ONLY)

78. The Receiver incorporates paragraphs 1 through 46 set forth above as if set forth verbatim hereat.

79. The transfer by Winterhawk of at least \$25,000.00 to Holcomb and the payment of his family's travel expenses to Belize is a violation of the Uniform Fraudulent Transfer Act (Tex. Bus. & Com. Code § 24.001 *et. seq.*).

80. The transfers to Holcomb were made with the actual intent to hinder, delay or defraud the investors who put their money into Winterhawk or Winterhawk did not receive reasonably equivalent value for the transfers and Cord knew that all the debts of Winterhawk were beyond its ability to pay as they became due.

81. The Receiver seeks a judgment against Holcomb requiring him to pay the Receiver the amount and value of all fraudulent transfers he received from Cord and/or Winterhawk.

82. In connection with bringing this cause of action, the Receiver seeks to recover his attorneys' fees, costs of court and pre- and post-judgment interest at the highest rate allowed by law.

JURY DEMAND

83. The Receiver hereby requests that this action be tried before a jury.

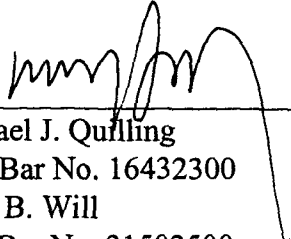
WHEREFORE, PREMISES CONSIDERED, the Receiver hereby prays that upon final trial of this action he recover judgment against Texas Coastal Bank and Holcomb in accordance with the foregoing and for such other and further relief, general or special, at law or in equity, to which he may show himself to be justly entitled.

Respectfully submitted,

QUILLING, SELANDER, CUMMISKEY &
LOWNDS, P.C.

2800 One Dallas Centre
350 North St. Paul Street
Dallas, Texas 75201-4240
(214) 871-2100 (Telephone)
(214) 871-2111 (Facsimile)

By: _____



Michael J. Quilling
State Bar No. 16432300
Clark B. Will
State Bar No. 21502500
Kenneth A. Hill
State Bar No. 09646950
D. Dee Raibourn, III
State Bar No. 24009495

ATTORNEYS FOR RECEIVER