STEINHILBER, SWANSON, MARES, MARONE & McDERMOTT
ATTORNEYS AT LAW

107 CHURCH AVENUE
POST OFFICE BOX 617
OSHKOSH, WISCONSIN 54903-0617

(920) 426-0456
(920) 235-6690
FAX (920) 426-5530

PAUL G. SWANSON
BRIAN LEE MARES
DOUGLAS K. MARONE
J. THOMAS McDERMOTT
JESSICA J. KING
MICHELLE A. ANGELL
JULIE E. FURMAN STODOLKA

JACK D. STEINHILBER
OF COUNSEL

November 10, 2009

The Honorable William C. Griesbach
Federal District Court for the Eastern District of Wisconsin
Green Bay Division
125 South Jefferson Street
P.O. Box 22490
Green Bay, WI 54305-2490

Re: S.E.C. v. Wealth Management, LLC et al.
Our Clients: James & Sandra Verhoeven

Dear Judge Griesbach:

Thank you for the opportunity to submit letter briefs on the issue of the appropriate plan treatment of investors or members of Gryphon Fund, LLC who made valid redemption requests, and received some payment, prior to the appointment of the Receiver.

Two issues are involved:

1. What is the legal status of these investor/members with regard to the LLC of which they were withdrawing members at the time of the Receiver's appointment? and what are the consequences of that status for the Receiver's plan?

This issue was ably briefed by counsel for the Edwin Wilson M.D. IRA.

2. What are the due process objections to the Receiver's proposed bright line rules for offsetting redemption payments received by some investors like the Verhoevens after May 31, 2009 against distributions from the receivership estate?

The bright line rules are stated in Section V.C. of the Receiver's First Amended Proposed Plan filed November 3, 2009. These provisions treat partial redemptions paid and received after May 31, 2008 as advance payments of distributions to which the investor/members would be entitled from the receiver, reducing amounts paid from the receivership estate's funds.

The rationale for this treatment is stated in the following section. The rationale explicitly rejects the Fund's characterization of retiring members (members in the process of redeeming their interests) as creditors. Without alleging any legal basis, the rationale also states that all investors have an equal right to be repaid, regardless of whether they sought to withdraw from the fund or not prior to about June 2008. It was in June of 2008 that information about the fund managers' kickbacks began to come out. The factual basis for the receiver's bright line is the speculation that "redemptions paid out on or before May 31, 2008, were not motivated by information regarding the acts and omissions described in the SEC Complaint, but that those made after May 31, 2008, are more likely to have been." P. 33 of First Amended Plan (Section V.C.4(a) & (b)).

The initial problem with this re-definition is that it ignores Wisconsin law on the nature of withdrawing members' interests in a Limited Liability Company, as briefed by other counsel

The factual problems with the Receiver's approach show how the bright lines offend due process as well. The Verhoevens' position illustrates the difficulties. Many of the specific facts, including copies of the Offering Memorandum and correspondence in late 2007 and 2008 are stated in the Objection our clients filed on September 30, 2009. What is most relevant is:

A. The Verhoevens' full redemption request was made May 1, 2008 and was accepted by Gryphon on June 30, 2008. The Verhoevens did not learn that it had been accepted until July 3, 2008 and did not learn about the Wealth Management kickbacks until late August.

B. Prior to their full redemption request, the Verhoevens made 2% (of capital balance) quarterly redemption request in February of 2008 for the quarter ending March 31, 2008 and again for the quarters ending June 30 and September 30. They received a 2% ($21,191.00) redemption when each of the following quarters ended, March 31, June 30 and September 30.

C. Since March 2006, the Verhoevens had already been redeeming their investment, at the rate of $15,000 per quarter, to supplement their living expenses.

This history bears no relation to the reasons stated by the Trustee for off-setting redemptions paid after May 31 against any recovery. The Verhoevens' redemption requests were made BEFORE information about acts and omissions became available to some investors in June. The investors who learned about the kickbacks in June did not include the Verhoevens who learned nothing until August. Further, Gryphon required that redemption requests be made at least 30 days before the quarter at the end of which they were paid. Many redemptions paid on June 30 are likely to share the Verhoeven pattern – made prior to the beginning whispers of kickbacks in June of 2008.

Finally the Receiver's formula does not distinguish between distributions in place for years before the funds became troubled and distributions which occurred after trouble began to be known. In the Verhoeven case, two distributions totaling more than $42,000 would be offset against any recovery, in a situation where $15,000.00 quarterly distributions – $30,000.00 of the amount that would be offset – had been in place since March of 2006.

By selecting a bright line which does not reflect either the investor's actual account history, the Receiver breaches ordinary concepts of due process.

The concept of due process is stated most notably in American law in *Mullane v. Central Hanover Bank & Trust Co*.:

> An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. . . . 'The criterion is not the possibility of conceivable injury, but the just and reasonable character of the requirements, having reference to the subject with which the statute deals.'

Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314, 70 S.Ct. 62, 94 L.Ed. 865 (1950) (citations omitted).

More simply: " 'The fundamental requisite of due process of law is the opportunity to be heard.' " *Id.*

The Verhoevens assert that the facts of their situation demonstrate the weakness of the superficially appealing proposal to treat all investor/members of Gryphon as if they were equally situated. The multitude of rules in bankruptcy or other insolvency proceedings, and the elements of the causes of action and the defenses in the law of preferences or fraudulent conveyances, all serve the purpose of equitable and efficient distribution in distressed financial circumstances. It can be burdensome to wade through the resulting paperwork and investigation, but the rules are necessary to assure that dissimilar situations are not treated as identical without a cogent legal justification and the opportunity to provide evidence in opposition. The bright line rules in the Receiver's plan prevent the Verhoevens from asserting their disagreement with the Receiver's positions. While the Court may ultimately rule against them, the Verhoevens and others like them deserve the opportunity to make their case. The Receiver's plan should not be confirmed until their right is incorporated in it.

Very truly yours,

STEINHILBER, SWANSON, MARES,
MARONE & MCDERMOTT

s/ Julie Furman Stodolka

Julie F. Stodolka
Paul G. Swanson