



Richard Roper, in his capacity as the court-appointed Receiver for Millennium Bank, United Trust of Switzerland S.A., UT of S, LLC, Millennium Financial Group, William J. Wise d/b/a Sterling Administration, William J. Wise d/b/a Sterling Investment Services, and William J. Wise d/b/a Millennium Aviation, (the “Receiver”) files this Complaint against Atlanta Northside Aviation, Inc., and states:

## I. INTRODUCTION

1. This case arises out of, and is ancillary to, a lawsuit brought by the Securities and Exchange Commission (“SEC”) against Millennium Bank, United Trust of Switzerland S.A., UT of S, LLC, Millennium Financial Group, William J. Wise d/b/a Sterling Administration, William J. Wise d/b/a Sterling Investment Services, and William J. Wise d/b/a Millennium Aviation and others named above (collectively, the “SEC Defendants”) for claims related to a fraudulent investment scheme created, organized, and operated by William J. Wise and others. That lawsuit is styled *SEC v. Millennium Bank et al.*, No. 7:09-CV-050-0, and is pending in the United States District Court for the Northern District of Texas, Wichita Falls Division (“*SEC v. Millennium Bank, et al.*”). In *SEC v. Millennium Bank, et al.*, the SEC alleges, *inter alia*, that the SEC Defendants engaged in a Ponzi scheme that raised millions of dollars from unwitting investors through the sale of Certificates of Deposit that purported to offer guaranteed interest rates significantly higher than those being offered by domestic, insured financial institutions (the “Ponzi scheme”). The SEC’s complaint in *SEC v. Millennium Bank, et al.* describing the Ponzi scheme is in this Court’s record and is incorporated herein by reference. The Receiver’s investigation has established that at least \$100 million was raised from defrauded investors during the course of the scheme.

2. Atlanta Northside Aviation, Inc. (“Atlanta Northside Aviation”), identified herein as the Ancillary Defendant, conducted business transactions with the SEC Defendants that

included two separate transfers of funds from SEC Defendants to Atlanta Northside Aviation totaling \$800,000 (the “Transfers”). The Receiver brings this Complaint to rescind these Transfers because the funds used were those of innocent, unwitting investors in Millennium Bank’s fraudulent Ponzi scheme.

## II. PARTIES

3. Plaintiff Richard Roper was appointed as Receiver for the SEC Defendants by order of this Court signed March 25, 2009, and superseded by the Amended Orders Appointing Receiver entered on June 22, 2009, (the “Receivership Order”), which are in the Court’s record and incorporated herein by reference. The Receivership Order authorizes the Receiver to, *inter alia*:

institute such actions or proceedings to impose a constructive trust, obtain possession, and/or recover judgment with respect to persons or entities who received assets or records traceable to the Receivership Estate. All such actions shall be filed in this Court.

¶ 5(c), p. 4.

4. Defendant Atlanta Northside Aviation, Inc. is a Georgia corporation with its principal place of business located at 1723 McCollum Parkway, Kennesaw, Georgia 30144. It may be served with process through its registered agent for service of process, Mr. Jeffrey Banks, 1301 Shiloh Road, Kennesaw, Georgia 30144.

## III. JURISDICTION AND VENUE

5. This Court has subject-matter jurisdiction over the matters raised by this lawsuit pursuant to 28 U.S.C. § 1367 because this action is ancillary to *SEC v. Millennium Bank, et al.*. See *Haile v. Henderson Nat’l Bank*, 657 F.2d 816, 822 (6<sup>th</sup> Cir. 1981). Moreover, the \$800,000 in Transfers to Atlanta Northside Aviation as described herein and the resulting claims constitute a Receivership Asset, defined in the Receivership Order as “assets, monies, securities, properties,

real and personal, tangible and intangible, of whatever kind and description, wherever located, and the legally recognized privileges (with regard to the entities) of the Defendants and Relief Defendants and all entities they own or control.” Receivership Order, ¶ 1, p. 2. This Court assumed exclusive jurisdiction through the Receivership Order, which expressly states that all actions or proceedings instituted by the Receiver related to Receivership Assets shall be filed in this Court. Receivership Order, at ¶ 5(c), p. 4.

6. Additionally, this Court has *in rem* and *in personam* jurisdiction over Receivership Property and those who hold it pursuant to 28 U.S.C. §§ 754 and 1692. *Haile v. Henderson Nat. Bank*, 657 F.2d 816, 824 & 826, n. 11 (6<sup>th</sup> Cir. 1981). The Receiver, within 10 days of his appointment or re-appointment, filed the Original Complaint and Order Appointing Receiver or Amended Order Appointing Receiver in the District of Georgia.

7. Venue is proper in this Court because this action is ancillary to *SEC v. Millennium Bank, et al.*, and pursuant to 28 U.S.C §§ 754 and 1692, the Receiver may sue in the district in which he was appointed to enforce claims anywhere in the country. The Receivership Order also states that all actions or proceedings instituted by the Receiver related to Receivership Assets shall be filed in this Court. *See* Receivership Order at ¶ 5(c), p. 4.

#### **IV. FACTS AND PROCEDURAL BACKGROUND**

8. The Receiver relies on, and hereby incorporates by reference, the specific factual allegations made by the SEC in its complaint against the SEC Defendants.

9. From at least 2004, the SEC Defendants engaged in the Ponzi scheme, which included the sale of purported self-styled “certificates of deposit” and raised at least \$100 million from investors located primarily in the United States (the “Defrauded Investors”). The Court made a finding that the SEC Defendants were engaged in a Ponzi scheme in an evidentiary hearing which took place on July 9, 2009. Based on the work of his forensic accountants, the

Receiver currently estimates that more than \$100 million was actually taken in from Defrauded Investors. Atlanta Northside Aviation was not an investor in the Ponzi scheme.

10. Millennium Bank and Atlanta Northside Aviation entered into two loan transactions in late 2008 and early 2009. Both transactions were documented with Guarantee Agreements and Promissory Notes signed by Atlanta Northside Aviation. The first transaction resulted in a \$300,000 transfer of funds from Millennium Bank to Atlanta Northside Aviation on December 16, 2008. The loan agreement provided that the loan matured on December 16, 2009, making full repayment, including 12% *per annum* interest, due and payable at that time.<sup>1</sup> Then, on March 23, 2009, Millennium Bank loaned an additional \$500,000 to Atlanta Northside Aviation. The terms of that agreement provided that the loan matured on May 23, 2009, making full repayment, including 2% fees and 1% monthly interest due and payable on that date.<sup>2</sup> For ease in this motion, the transactions will be referred to collectively as the “Transfers.”

11. Millennium Bank was not a “bank” in the traditional sense. It conducted no ordinary banking operations. It did not regularly make loans. It did not make investments. It is unknown why Atlanta Northside Aviation would have cause to seek or obtain any loan from Millennium Bank, or what events transpired between the parties prior to such loans being made. The mere fact that Millennium Bank did *not* function in any respect as a bank makes this unique loan arrangement suspect.

12. Neither loan has been repaid by Atlanta Northside Aviation.

13. When the Transfers were made, the assets of Millennium Bank were insufficient to fully reimburse all of the Defrauded Investors for the money each invested in the Ponzi

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<sup>1</sup> This Guarantee Agreement and Promissory Note is attached hereto as Exhibit A.

<sup>2</sup> This Guarantee Agreement and Promissory Note is attached hereto as Exhibit B.

scheme. In fact, the second “loan” was made mere days before this Receivership was instituted. Millennium Bank, through the other SEC Defendants, knew or should have known at the time of the Transfers that by making the Transfer, that Millennium would be unable to fully reimburse the Defrauded Investors who had invested in the Ponzi scheme.

14. Millennium Bank made the Transfers in an attempt to prevent the Ponzi scheme from being discovered. Thus, Millennium Bank made the Transfers with actual intent to defraud the Defrauded Investors in the Ponzi scheme. At the same time, Atlanta Northside Aviation, by participating in a suspect business transaction, did not receive the Transfers in good faith.

15. The SEC filed its complaint in the *SEC v. Millennium Bank, et al.* case on March 26, 2009, alleging that the SEC Defendants engaged in the Ponzi scheme.

16. The Court entered an agreed order on March 26, 2009, appointing Richard B. Roper as Receiver for the SEC Defendants, charging him with specific receivership powers and duties.

17. This Court found that the SEC Defendants engaged in a Ponzi scheme in a July 9, 2009 hearing.

18. Despite attempts by the SEC and the Receiver to collect Receivership Assets, there are currently insufficient funds to fully reimburse the Defrauded Investors.

19. Atlanta Northside Aviation is located in Georgia, and it is likely that the events made the basis of this complaint occurred in Georgia. As the Texas Supreme Court has provided, Section 145 of the Restatement (Second) Conflict of Laws governs choice of law disputes in tort actions. *Duncan v. Cessna Aircraft Co.*, 665 S.W.2d 414, 420-21 (Tex.1984). Under § 145, the local law of the state which has the “most significant relationship to the occurrence and the parties” will govern the claim. *Id.*; Restatement (Second) Conflict of Laws §

145(1) (1971). Under the known facts and based on this principle, Georgia law is the most appropriate to govern the instant claims.

## V. CLAIMS

### COUNT ONE

#### ACTUAL FRAUDULENT TRANSFER

##### GA. CODE ANN. § 18-2-74(a)(1)

20. The preceding paragraphs are hereby incorporated as if set forth fully herein.

21. A Ponzi scheme is, by its nature, a fraudulent enterprise. *See In re International Management Associates, LLC*, No. 09-MP-601, 2009 Bankr. Lexis 4240, \*8-9 (Bankr. N.D. Ga. Dec. 1, 2009). Transfers made in furtherance of such an enterprise are presumptively fraudulent. *Id; In re Christou*, No. 08-6405, 2009 WL 6498175, \*1 (Bankr. N.D. Ga. Sept. 29, 2009).

22. Millennium Bank transferred \$300,000 to Atlanta Northside Aviation on December 16, 2008, and another \$500,000 to Atlanta Northside Aviation on March 23, 2009 (just before the Receivership was instituted). Both Transfers were supported by Guarantee Agreements and Promissory Notes, which included interest and fees among the repayment terms. The Transfers were fraudulent as to Millennium Bank's creditors, including the Defrauded Investors, pursuant to the Uniform Fraudulent Transfer Act, Ga. Code Ann. § 18-2-74 *et seq.*

23. The claims of Millennium Bank's creditors, including the Defrauded Investors in the Ponzi scheme, arose before or within a reasonable time after the Transfers.

24. Millennium Bank made the Transfers with the actual intent to hinder, delay, or defraud its creditors, including the Defrauded Investors.<sup>3</sup>

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<sup>3</sup> Millennium Bank engaged in all relevant actions herein through its managers, members, and control persons; specifically the other SEC Defendants.

25. Because Atlanta Northside Aviation knew, suspected, or should have known of the existence of the Ponzi scheme at the times of the Transfers, Atlanta Northside Aviation did not take the \$800,000 in good faith. *See* Ga. Code Ann. § 18-2-78(a).

26. Atlanta Northside Aviation has not repaid the loans upon which the Transfers were based.

27. Therefore, the Transfers should be avoided pursuant to Ga. Code Ann. § 18-2-77(a)(1). Further, a \$800,000 judgment should be entered in favor of the Receiver and against Atlanta Northside Aviation pursuant to Ga. Code Ann. § 18-2-78(b).

## **COUNT TWO**

### **CONSTRUCTIVE FRAUDULENT TRANSFER GA. CODE ANN. § 18-2-74(a)(2)**

28. The preceding paragraphs are hereby incorporated as if set forth fully herein.

29. Without receiving reasonably equivalent value in exchange for the Transfers, Millennium Bank engaged in a transaction for which the remaining assets of Millennium Bank were unreasonably small in relation to its business or the Transfers.

30. Without receiving reasonably equivalent value in exchange for the Transfers, Millennium Bank intended to incur, or believed or reasonably should have believed that it would incur, debts beyond its ability to pay as they became due, including the claims of the Defrauded Investors.

31. Atlanta Northside Aviation has not repaid the loans upon which the Transfers were based.

32. Therefore, the Transfers should be avoided pursuant to Ga. Code Ann. § 18-2-77(a)(1). Further, a \$800,000 judgment should be entered in favor of the Receiver and against Atlanta Northside Aviation pursuant to Ga. Code Ann. § 18-2-78(b).

### **COUNT THREE**

#### **UNJUST ENRICHMENT**

33. The preceding paragraphs are hereby incorporated as if set forth fully herein.

34. Atlanta Northside Aviation was unjustly enriched by the Transfers, based on principles of justice, equity, and good conscience. The Transfers caused Atlanta Northside Aviation to receive money that belonged to Defrauded Investors for no reasonably equivalent exchange. Because of the nature of the Ponzi scheme and the fact that Millennium Bank's assets are insufficient to fully repay all of its creditors, the Defrauded Investors will only receive a fraction of the amount of their investments back from Millennium. It would be fundamentally unfair to allow Atlanta Northside Aviation to receive funds truly belonging to the Defrauded Investors while the Defrauded Investors stand to recover little to none of their original investments.

35. Moreover, the Ponzi scheme involved actual fraud and was the source of the \$800,000 in Transfers to Atlanta Northside Aviation. The Transfers also involved actual fraud on the part of the SEC Defendants. As a third-party beneficiary who obtained \$800,000 through the SEC Defendants' fraud, Atlanta Northside Aviation was unjustly enriched and is not entitled to retain that money.

36. The funds used for the Transfers are directly traceable to funds of the Defrauded Investors in the Ponzi scheme. As such, they constitute Receivership Assets and are impressed with a constructive trust and should be disgorged and paid to the Receiver for ultimate distribution equitably among all Defrauded Investors.

### **COUNT FOUR**

#### **CONSTRUCTIVE TRUST**

37. The preceding paragraphs are hereby incorporated as if set forth fully herein.

38. Because the Transfers constitute a fraudulent transfer under Georgia law, and/or because Atlanta Northside Aviation has been unjustly enriched by \$800,000, the funds used for the Transfers are impressed with a constructive trust and should be disgorged. *See Total Supply, Inc. v. Pridgen*, 598 S.E.2d 805, 807 (Ga. Ct. App. 2004) (“A constructive trust is a trust implied whenever the circumstances are such that the person holding legal title to the property, either from fraud or otherwise, cannot enjoy the beneficial interest in the property without violating some established principle of equity.”).

39. The Receiver has a superior equitable interest to recover the investor funds used for the Transfers. Once the funds are recovered, they will be distributed on a pro rata basis, or as otherwise provided by a distribution plan approved by this Court, to the Defrauded Investors and appropriate Millennium creditors. The Receiver alone is in a position to re-distribute the limited funds available to the Receivership Estate, including those the Receiver should be awarded based on the \$800,000 in Transfers to Atlanta Northside Aviation.

40. Pursuant to the principles of equity, the Receiver seeks the imposition of a constructive trust on the \$800,000 received by Atlanta Northside Aviation, and the immediate turnover of such funds to the Receiver.

41. To the extent the funds used for the Transfers have been used to acquire real or personal property in which Atlanta Northside Aviation claims an interest, the property should be set aside, a constructive trust imposed on such property, and the property should be immediately turned over to the Receiver.

42. To the extent that Atlanta Northside Aviation is unable to return the funds received, the Receiver seeks a money judgment against Atlanta Northside Aviation in an amount equal to the \$800,000 in Transfers.

**VI. RELIEF REQUESTED**

THEREFORE, the Receiver requests that Atlanta Northside Aviation be ordered to return the \$800,000 in funds transferred from the SEC defendants to the Receivership Estate, and that judgment be entered against Atlanta Northside Aviation and in favor of the Receiver for \$800,000. In the case that the funds were spent to acquire any real or personal property, the Receiver requests that a constructive trust be imposed upon the property, and an order that it must immediately be turned over to the Receiver. Further, the Receiver requests that it be granted any other relief, both special and general, to which it may be justly entitled.

Dated this 1st day of March, 2011.

Respectfully submitted,

**THOMPSON & KNIGHT, LLP**

/s/ Jennifer Ecklund \_\_\_\_\_

William L. Banowsky  
State Bar No. 01697125

Jennifer Ecklund  
State Bar No. 24045626

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**COUNSEL TO THE RECEIVER, RICHARD B. ROPER**

# **Exhibit A**



The Financial Services Centre  
P.O. Box 1827, Kingstown  
St. Vincent & The Grenadines, W.I.  
Tel: (784) 451-2100  
Fax: (784) 451-2101  
Email:client-services@mlnbank.com

THIS GUARANTEE AGREEMENT is made this 16th day of December 2008, by Thomas Huff of 529 Lombard Street, Marietta Georgia 30064, USA (the "Guarantor") in favour of MILLENNIUM BANK LIMITED of The Financial Services Centre, Stoney Ground, Saint Vincent and the Grenadines (the "Lender").

#### RECITALS

- A. The Lender has agreed to loan to Atlanta Northside Aviation, Inc., (the "Borrower") the principal sum of Two Hundred Thousand United States Dollars (US\$300,000.00) (the "Loan") which shall be evidenced by a Promissory Note executed by the Borrower payable to the order of the Lender and which shall be repaid by 16<sup>th</sup> December 2009 with interest at the rate of 12 percent per annum (the "Note").
- B. The Guarantor owns directly all the capital stock of the Borrower and it is a condition precedent to the Lender agreeing to make the Loan to the Borrower that the Guarantor enter into this Guarantee Agreement to satisfy such condition precedent.

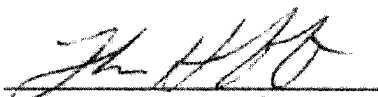
NOW THEREFORE, in order to induce the Lender to make the Loan, and in consideration thereof, the Guarantor unconditionally guarantees and agrees as follows:

1. The Guarantor hereby irrevocably and unconditionally guarantees to the Lender the punctual payment at stated maturity the principal sum of Three Hundred Thousand United States Dollars (US\$300,000.00) together with interest at the rate of 12% per annum under the Note. The Guarantor undertakes with the Lender that if and whenever the Borrower shall be in default in the payment of the Loan under the Note or in connection therewith, the Guarantor will on demand pay such sum, together with interest thereon at the rate specified in the Note on the date such sum becomes payable under this Guarantee. A certificate of the Bank as to any amount due under this Guarantee shall be conclusive and binding on the Guarantor in the absence of manifest error.

2. The Guarantor shall pay all costs and expenses, (including attorney's fees and expenses incurred by the Lender in enforcing any rights under this Guarantee Agreement and in the collection of the Note.
3. The liability of the Guarantor shall be irrevocable, absolute, independent and unconditional and the Guarantor's liability hereunder shall be the immediate, direct, and the primary obligation of the Guarantor and shall not be contingent on the Bank's exercise or enforcement of any remedy it may have against the Borrower.
4. This Guarantee shall be governed by, and construed in accordance with the laws of St Vincent and the Grenadines, and the Guarantor hereby irrevocable submits to the exclusive jurisdiction of the courts thereof.

IN WITNESS WHEREOF, the Guarantor has executed this Guarantee, as of the date first above written.

SIGNED:

  
Thomas Huff

Witness:



Andrew Fagan/Krner

# **Exhibit B**



The Financial Services Centre  
P.O. Box 1827, Kingstown  
St. Vincent & The Grenadines, W.I.  
Tel: (784) 451-2100  
Fax: (784) 451-2101  
Email: client-services@minbank.com

PROMISSORY NOTE

US\$500,000.00

24<sup>th</sup> March 2009


FOR VALUE RECEIVED, we, the undersigned ATLANTA NORTHSIDE AVIATION, INC., a company incorporated and existing under the laws of Georgia and having its registered office at Kennesaw, Georgia 30156, USA, promise to pay to MILLENNIUM BANK LIMITED of The Financial Services Centre, Stoney Ground, Saint Vincent and the Grenadines, the sum of Five Hundred Thousand United States Dollars (US\$500,000.00) with fees of 2% and interest at the rate of 1% per month by 23rd May 2009.

This note shall be governed by the laws of Saint Vincent and the Grenadines.

SIGNED ON BEHALF OF  
ATLANTA NORTHSIDE AVIATION, INC.

  
\_\_\_\_\_  
Thomas Huff  
Director

Witness:

  
\_\_\_\_\_  
Andrew Faulkner