

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

Docket No. 08-E-0053

**In the Matter of the Liquidation of  
Noble Trust Company**

**AFFIDAVIT OF SONEET R. KAPILA IN  
SUPPORT OF PROPOSED PLAN OF LIQUIDATION**

I, Soneet R. Kapila, CPA, CIRA, CFF, CFE hereby depose and say:

1. I am a certified public accountant, and a founding partner of KapilaMukamal LLP ("KM"), a forensic and insolvency accounting and consulting firm with offices in Fort Lauderdale and Miami, Florida. I am also a Certified Insolvency and Restructuring Advisor ("CIRA"), Certified in Financial Forensics ("CFF") and a Certified Fraud Examiner ("CFE"). I and my firm, KM, have extensive experience in numerous significant Ponzi cases. Among other duties and roles, KM has analyzed funds flows to determine Ponzi schemes and prepared in-depth Ponzi analyses which have been instrumental in the recovery of assets and ultimate distribution to defrauded investors. My curriculum vitae is attached hereto as Exhibit A. In addition, my case experience involving Ponzi schemes is attached hereto as Exhibit B.

2. I have served as Bankruptcy Trustee, Examiner, Corporate Monitor (S.E.C. appointment) and State Court Receiver in numerous matters. I have advised and represented debtors and creditors' committees in formulating, analyzing and negotiating plans of reorganization and plans of liquidation. I am a recognized expert in fraudulent conveyance and insolvency issues. I have provided expert testimony and extensive litigation support services to law firms involving complex insolvency issues. Additionally, I have conducted numerous forensic and fraud investigations, and I have worked in conjunction with the S.E.C., the Federal

Bureau of Investigation and the United States Attorney's Office. I am a Chapter 7 trustee on the panel of U.S. Bankruptcy Trustees in the Southern District of Florida. I have been appointed a Bankruptcy Trustee and Examiner in both, the Southern and Middle Districts of Florida. KM and I have also represented SEC and FTC Receivers in several cases.

3. KM (and formerly Kapila & Company until April 30, 2014) was initially retained in this matter by the Bank Commissioner for the State of New Hampshire, in his capacity as liquidator (the "Liquidator") of Noble Trust Company ("Noble Trust") and Aegean Scotia Holdings, LLC ("Aegean Scotia") on December 16, 2009, to provide insolvency consulting services and litigation support.

4. Through our examination and investigation of Noble Trust documents, books and accounts, I concluded that Noble Trust was operated as a Ponzi scheme. Noble Trust utilized fresh investment funds from its clients and the commissions received on account of a fraudulent scheme involving the procurement of a number of high-value life insurance policies to pay fictitious returns to its existing trust clients, to return principal to trust clients and to fund limited recourse loans to pay the premiums on the life insurance policies. Put simply, Noble Trust made payments to its existing trust clients from its collection of new investment funds or commissions, rather than profits or a return of principal from investments entered into by Noble Trust on behalf of its clients.

5. KM has assisted the Liquidator in developing and reviewing the Amended Plan of Liquidation dated August 7, 2014 (the "Plan"). I, with the support of my partner Mary McMickle, am involved in and have participated in the development of the Plan and, in connection therewith, the proposed distribution scheme for the disbursement of funds to the defrauded creditors.

6. I submit this affidavit in support of the Liquidator's Memorandum in Support of Proposed Plan of Liquidation and Motion for Approval of Claims Resolution Procedures (the "Memorandum"). As set forth more fully in the Memorandum, the Liquidator has filed the Plan to ensure an orderly and efficient liquidation for the benefit of creditors.

7. The Plan follows principles common to the liquidation of entities victimized by Ponzi schemes. Specifically, the Plan provides for the pooling of all assets and proceeds in the liquidation estate into a common fund, from which allowed claims will be paid.

8. Liquidation plans in Ponzi cases are based on the premise that anything other than a pro rata distribution of available assets is inequitable. Thus, the Plan calls for all Noble Trust's clients to share pro rata in the pool of assets available for distribution (taking into account the amount that a client already received from Noble Trust in the form of previous withdrawals).

9. As is also common in Ponzi cases in which noncash assets are addressed, all noncash assets held by Noble Trust in custodial accounts, trust accounts, or in some other fiduciary relationship to Noble Trust's clients, are treated no differently than cash. Many of the noncash assets that are part of the liquidation estate are still in their original form only because of an accident of time. The fact that some assets remained in an identifiable noncash form while others did not was in large part a function of the point at which the New Hampshire Banking Department stepped in and halted the Ponzi scheme. To allow any particular client or creditor to retain title to in-kind property that Noble Trust may still hold would inequitably allow some investors to recoup 100% of their investments while reducing or altogether eliminating any recovery for other similarly defrauded clients. To avoid such resulting inequity, the Plan pools even those limited noncash assets in which Noble Trust holds an interest but which might still be traceable to a specific client.

10. For the Client Account Claims (as defined in the Plan), the Plan calls for distributions to be made according to the “rising tide” method rather than by reference to what were generally inaccurate client account statements, in order to accomplish the greatest equity possible for the largest number of claimants by equalizing their recoveries. These account statements often added in an amount for interest earned even though, in most instances, these accounts were not earning interest at all, and often included unsupported and exaggerated assertions of purported account values.

11. As in any Ponzi scheme where investors are paid from a pool of commingled funds, some Noble Trust clients received all or a significant portion of their principal back prior to the liquidation, while others received little or none of theirs. The essential objective of the “rising tide” method is to return money first to those clients who did not receive as much money—measured as a percentage of their principal—as other clients did during the course of Noble Trust’s operations. Once these similarly situated clients “catch up” to clients who previously received greater percentages of their principal, all clients share in any remaining distributions on a *pro rata* basis.

12. The Plan calls for the calculation of Client Account Claims by first verifying the amount of investment put into an account at Noble Trust through bank statements and/or records. If a noncash asset was placed in the account, the Liquidator will use his best efforts to determine the fair market value of such asset at the time the account was established. Interest is treated as an addition to the amount invested only in those instances when Noble Trust received a cash payment representing a true return on investment. Any amount distributed to an individual is treated as a return of a portion of the principal amount invested. A calculation is then performed

to determine what percentage of a client's investment has already been returned and what percentage was lost.

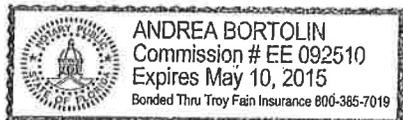
13. Based upon our analysis, the Plan and its incorporation of the "rising tide" distribution method is the most equitable approach for the orderly and efficient liquidation for the benefit of creditors.

Signed under the pains and penalties of perjury this 13<sup>th</sup> day of August, 2014.

  
Soneet R. Kapila, -

STATE OF FLORIDA  
COUNTY OF Broward

Signed before me on August 13, 2014 by Soneet R. Kapila.



  
Notary Public State of Florida  
My Commission Expires:

**SONEET R. KAPILA, CPA\*, CIRA, CFE, CFF**  
skapila@kapilaco.com

Soneet R. Kapila is the founding partner of Kapila & Company. For over twenty years, Kapila & Company has concentrated its efforts in the areas of consulting in litigation support, insolvency, fiduciary and creditors' rights matters.

**Professional Experience**

Mr. Kapila's practice is concentrated in the area of creditors' rights, bankruptcy, and financial transactions litigation. He represents both creditors and debtors in and out of bankruptcy court, and has considerable expertise representing secured creditors. He also regularly advises clients about the insolvency implications involved in business transactions and operation of distressed businesses.

As a fiduciary, he has served as Bankruptcy Trustee, Examiner, Chief Restructuring Officer, S.E.C. Corporate Monitor and Receiver and State Court Receiver in numerous matters in the Southern and Middle Districts of Florida. Mr. Kapila has advised and represented debtors and creditors' committees in formulating, analyzing and negotiating plans of reorganization. He is a recognized expert in fraudulent conveyance and insolvency issues and has provided expert testimony and extensive litigation support services to law firms involving complex insolvency issues and commercial damages. He is a sitting trustee on the panel of U.S. Bankruptcy Trustees in the Southern District of Florida.

Mr. Kapila has conducted numerous forensic and fraud investigations, and has worked in conjunction with the S.E.C., the Federal Bureau of Investigation and the United States Attorney's Office.

Mr. Kapila has also provided a wide variety of tax services to clients throughout his career. Consulting with and offering tax planning strategies and ideas to bankruptcy trustees is also a significant part of his responsibilities.

Mr. Kapila has spoken to various groups including the New York Law School, St. Thomas University Law School, National Conference of Bankruptcy Judges, Receiver's Forum, Association of Insolvency and Restructuring Advisors, Florida Institute of Certified Public Accountants, National Business Institute, and the American Bankruptcy Institute on topics related to insolvency, under-performing businesses and insolvency taxation.

\* Regulated by the State of Florida.



**SONEET R. KAPILA, CPA\*, CIRA, CFE, CFF**  
skapila@kapilaco.com

**Accomplishments**

- Fellow, American College of Bankruptcy - 2013
- Best Trustee - Daily Business Review's *Best of 2012*
- Key Partners Award Honoree – South Florida Business Journal (2010)
- Bronze Award/Medal – 3<sup>rd</sup> highest score, examination of the Association of Insolvency & Restructuring Advisors (1996)
- Published article - Hidden Resources in a Small Business

**Education/Qualifications**

- MBA, Cranfield School of Management Studies, England
- Certified Public Accountant – Florida
- Certified Insolvency & Restructuring Advisor
- Certified Fraud Examiner
- Certified in Financial Forensics
- Institute of Chartered Accountants in England and Wales

**Professional Affiliations**

- Florida Institute of Certified Public Accountants
- American Institute of Certified Public Accountants
- Association of Insolvency & Restructuring Advisors
- Association of Certified Fraud Examiners
- American Bankruptcy Institute
- National Association of Bankruptcy Trustees

**Volunteer Activities (Past and Present)**

- Advisory Board – American Bankruptcy Institute Southeast Regional Conference (2012)
- Advisory Board – American Bankruptcy Institute Caribbean Insolvency Symposium (2010 – 2012)
- Association of Insolvency & Restructuring Advisors - past-Chairman and past-President
- Association of Insolvency & Restructuring Advisors – Board of Directors
- Lecturer to various groups on insolvency and litigation related topics, including insolvency taxation
- Member of the Grievances Committee of The Florida Bar
- Member of the American Arbitration Association's Panel of Arbitrators
- Member of the Board of Directors, Hialeah-Miami Springs-Northwest Dade Chamber of Commerce
- Chairman - Litigation Support Services Committee of the National Training and Experience Sharing Program of The American Group of CPA Firms
- Practice Review Committee – FICPA
- Bankers Cooperation Committee – Connecticut Society of CPAs



*Kapila & Company*  
*Certified Public Accountants*

Exhibit B

Ponzi Case Experience - Soneet R. Kapila

Case Name	Approximate Date	Role/Testimony	Deposition / Trial / Other	Industry	Attorney / Contact Firm Name
Associated Record Distributors		Forensic Accountant - Ponzi, Securities Fraud		Ponzi Securities Fraud	
ATM Financial Services, LLC	2008	Chapter 7 Trustee	D	Insolvency/PONZI scheme	Patrick Scott, Esq. Gray Robinson
Bankwest Capital Corporation	2004	Chapter 7 Trustee	D/T	Factoring	Kenneth Robinson, Esq.
Bayside Ventures I, LLC, et al. - Soneet Kapila as Plan Administrator vs. Bank One, N.A., Morgan Chase Bank, N.A. & Chase Home Finance, LLC	2008	Plan Administrator	D	Investment venture	Rice Puatich Robinson & Schiller Monique Hayes, Esq.
Cash Today USA, Inc.	2005	Expert - Ponzi/advance pay fraud	T	Advance pay scheme	Genovese Joblove & Battista
Certified, Inc. Kapila v. Thomas J. McNamara, Inc.	2012	Expert - Ponzi/Insolvency	D	Commodities	Jeffrey Kay, AUSA U.S. Attorney's Office
Comcoa, Ltd.	1995	Accountants to the SEC Receiver Securities fraud/asset investigation		Wireless telecommunications	Carlos E. Sardi, Esq. Genovese, Joblove & Battista
Creative Capital Consortium, LLC, et al.		Forensic Accountant - Ponzi, Securities Fraud		Ponzi Securities Fraud	David Levine, Esq. Levine, Kellogg, Lehman, Schneider & Grossman
Financial Federated Title & Trust, Inc. a/k/a Asset Security Corp., a/k/a Viatical Asset Recovery Corp., a/k/a Quad B Ltd., a/k/a American Benefits Services, Inc. - Various adversaries	2001	Preferences, fraudulent transfers, insolvency	D/T	Viaticals/ponzi	John W. Kozyak, Trustee Kozyak, Tropin & Throckmorton
Franz Lesli and Petra Richter vs Wells Fargo Bank, N.A. f/k/a Wachovia Bank, N.A. - Endler	2014	Expert - Ponzi / Damages	D	Ponzi	David Mandel, Esq. Robert Elgidev, Esq.
FTC vs. Inspired Ventures, Inc., Jesse Alper and Victor Alper		Forensic Accountant - Ponzi, Securities Fraud		Ponzi Securities Fraud	
Get Answers, Inc.		Forensic Accountant - Ponzi, Securities Fraud		Ponzi Securities Fraud	
Hawa Corporation/ Hawa Communications, Inc.		Forensic Accountant - Ponzi, Securities Fraud		Ponzi Securities Fraud	
Homeland Communications Corporation, Frances M. LaBarre and Joseph Yurkin, et al.		Forensic Accountant - Ponzi, Securities Fraud		Ponzi Securities Fraud	
International Capital Management	1998	Forensic Accountant - Ponzi, Securities Fraud		Ponzi Securities Fraud	
International Capital Management vs. Jose Santiago/MBA	1998	Accountant to SEC Receiver; funds tracing/co-mingling	T	PONZI, securities fraud, foreign exchange currency	Craig Rasile, Esq. Holland & Knight
Internet Capital Consultants, Inc.	1998	Expert - Ponzi scheme and insolvency	D	PONZI, securities fraud, foreign exchange currency	Craig Rasile, Esq. Holland & Knight
Junction Financial Corporation/U.S. Ostrich Corporation	1994	Forensic Accountant - Ponzi, Securities Fraud		Ponzi Securities Fraud	David Levine, Esq. Levine, Kellogg, Lehman, Schneider & Grossman
KS Advisors, Inc. KS Condor Partners, Ltd., Il et al.		Chapter 11 Trustee		Securities fraud	
Louis J. Pearlman	2013	Tax Consultants- Ponzi, Securities Fraud	T	Ponzi Securities Fraud	Samuel A. Miller, Esq. Akerman Senterfitt
Louis J. Pearlman	2007	Testimony - Investor Profiteer Case		PONZI	Denise Dell-Powell, Esq. Burr and Forman
Louis J. Pearlman, Soneet R. Kapila, Trustee vs. Carolina First Bank d/b/a Mercantile Bank	2009	Chapter 11 Trustee	D	PONZI	Gregory M. Garmo, Esq. Genovese, Joblove & Battista
Louis J. Pearlman, Trans Continental Television Productions, Inc. vs. MTV Networks	2011	Rule 30(B)(6) Representative	D	PONZI	James Sammataro, Esq. Kasowitz Benson, Torres & Friedman Gregory M. Garmo, Esq. Genovese, Joblove & Battista

Ponzi Case Experience - Soneet R. Kapila

Case Name	Approximate Date	Role/Testimony	Deposition / Trial / Other	Industry	Attorney / Contact Firm Name
Louis J. Pearlman, Trans Continental Television Productions, Inc. vs. MTV Networks	2010	Records Custodian	D	PONZI	James Sammaturo, Esq. Kasowitz, Benson, Torres & Friedman Gregory M. Gamo, Esq. Genovese, Joblove & Battista
Maxim Enterprises, Inc.		Accountant to Chapter 7 Trustee - Ponzi, Securities Fraud		Ponzi Securities Fraud	
Noble Trust Company Liquidation State of New Hampshire	2012	Expert - Ponzi/Fraud	D	Ponzi	Abbe Shaine, Esq. Bill Gannon, Esq. William S. Gannon, PLLC
Phoenix Investments, Inc. f/k/a Phoenix Financial Groups, Inc.		Forensic Accountant - Ponzi, Securities Fraud		Ponzi Securities Fraud	
Phoenix Diversified Investments Corp.		Forensic Accountant - Ponzi, Securities Fraud		Ponzi Securities Fraud	
Prime Capital Corporation	1996	Chapter 7 Trustee - Expert - insolvency and Ponzi	D	Securities Fraud Accounts receivable/factoring business/Ponzi	Scott Baena, Esq./Blizin Sumberg Baena Price & Axelrod Patricia Redmond, Esq./Stearns, Weaver, Miller, Weissler, Alhadeff & Sifferson
Razorback Funding, LLC. et al vs. Scott W. Rothstein, et al.	2012	Expert - Ponzi/ Damages	D	PONZI	Gail McQuilkin, Esq. Kozvak, Tropin & Throckmorton
SEC v. IDT Group, Inc.		Forensic Accountant - Ponzi, Securities Fraud		Ponzi Securities Fraud	
SEC v. Wealth Pools International, Inc., Robert R. Lane and Recruit for Wealth, et al.		Forensic Accountant - Ponzi, Securities Fraud		Ponzi Securities Fraud	
SEC v. Exchange Commission vs. A. B. Financing & Investment, Inc.	2003	Expert - PONZI			Robert K. Levenson, Esq. Securities & Exchange Commission
Securities & Exchange Commission vs. A. B. Financing & Investment, Inc.	2003	Expert - PONZI			Robert K. Levenson, Esq. Securities & Exchange Commission
Securities & Exchange Commission vs. Carol C. Martino and CMA Noel Ltd., et al.	2003	Receiver			John Nowak, Esq. Securities & Exchange Commission
Securities & Exchange Commission vs. Madco, Inc. & Mark R. Blacher, Defendants & The Hi Lily Company & National Health Services Inc., Relief Defendants.	1997	Expert witness & accountants to the SEC Receiver - securities fraud, tracing of funds & assets.		Securities fraud/Ponzi	David Levine, Esq. Levine, Kellogg, Lehman, Schneider & Grossman
Securities & Exchange Commission vs. Transamerica Wireless Systems, Inc., Intercontinental Telecommunications Corporation and Danny Stark	1994	Expert witness & accountant to the SEC receiver - securities fraud, tracing of funds & assets.	T	Wireless communications	David Levine, Esq. Levine, Kellogg, Lehman, Schneider & Grossman
Securities & Exchange Commission v. Edward S. Digges, Jr., Nexstar Communications, LLC, TMT Equipment Company, LLC, TMT Management Group, LLC, Posa, LLC, Posa TMT, LLC; Televest Communications, LLC; Televest Group, LLC and Sara Duff, LLC	2006	Expert/Forensic Accountant - asset tracing - contempt hearing	D/T		James D. Silver, Receiver Carlton Fields, P.A.
State of Texas vs. Edward S. Digges, Jr.	2009	Expert - PONZI	T		Robert K. Gordon, Esq. U.S. Securities & Exchange Commission
Sunstate FX, Inc.		Forensic Accountant - Ponzi, Securities Fraud		Ponzi Securities Fraud	
Transamerica Wireless Systems, Inc. Intercontinental Telecommunications Co.	1994	Accountants to the SEC Receiver - securities fraud		Securities fraud	David Levine, Esq. Levine, Kellogg, Lehman, Schneider & Grossman
Ulrich Engler - Robert E. Tardif, Trustee vs. Fidelity National Financial, Inc.	2009	Expert - Ponzi/insolvency	D		Robert E. Tardif, Jr., Trustee Robert F. Elgidey, Esq. Genovese, Joblove & Battista

Ponzi Case Experience - Soneet R. Kapila

Case Name	Approximate Date	Role/Testimony	Deposition / Trial / Other	Industry	Attorney / Contact Firm Name
Ulrich Engler - Robert E. Tardif, Trustee vs. Friedrich Herrling	2012	Expert - Ponzi/insolvency	T		Robert E. Tardif, Jr., Trustee Robert F. Elgidey, Esq. Genovese, Joblove & Battista
United States of America vs. Cash Today USA, Inc. and James W. Long World Class Limo		Expert - Ponzi Forensic Accountant - Ponzi, Securities Fraud		Ponzi Ponzi Securities Fraud	