

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 0:15-CV-60082-DIMITROULEAS/SNOW

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

FREDERIC ELM f/k/a FREDERIC ELMMALEH,  
ELM TREE INVESTMENT ADVISORS LLC,  
ELM TREE INVESTMENT FUND LP,  
ELM TREE 'E'CONOMY FUND LP, AND  
ELM TREE MOTION OPPORTUNITY LP,

Defendants,

and

AMANDA ELM f/k/a AMANDA ELMMALEH,

Relief Defendant.

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**RECEIVER'S MOTION TO EMPLOY LEGAL COUNSEL**

Grisel Alonso, not individually, but solely in her capacity as Court-appointed Receiver (the "Receiver") for Elm Tree Investment Advisors LLC, Elm Tree Investment Advisors LLC, Elm Tree Investment Fund LP, Elm Tree 'e'conomy Fund LP, and Elm Tree Motion Opportunity LP (the "Elm Tree Entities"), respectfully files this Motion to employ legal counsel in Canada in order to provide legal advice, counsel, and assistance to the Receiver with regard to third parties in Canada who received funds from Defendant Frederic Elm, Relief Defendant Amanda Elm, and/or the Elm Tree Entities which appear to derive from investors in the Elm Tree Entities and thus may rightfully belong to the Receivership Estate.

*The Securities and Exchange Commission does not object to the relief sought herein.*

**BROAD and CASSEL**

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1. This action was initiated by the Securities and Exchange Commission ("SEC") on January 15, 2015. On January 16, 2015, the Court entered its Order Appointing Receiver which named Grisel Alonso, Esq. as Receiver for the Elm Tree Entities. [D.E. 13].

2. Pursuant to the Receivership Order, the Receiver is authorized to, among other things, "[t]ake immediate possession of all property, assets and estates of every kind of the Elm Tree Entities, whatsoever and wheresoever located . . . and to administer such assets as is required in order to comply with the directions contained in this Order." [D.E. 13 ¶ 1]. Further, the Order also requires that the Receiver investigate the manner and the affairs of the Elm Tree Entities and institute such legal proceedings for the benefit and on behalf of the Elm Tree Entities as the Receiver deems necessary. [D.E. 13 ¶ 2].

3. In order to assist the Receiver in her efforts, the Receivership Order allows the Receiver to appoint one or more special agents, employ legal counsel, actuaries, accountants, clerks, consultants and assistants as the Receiver deems necessary and to fix and pay their reasonable compensation and reasonable expenses. [D.E. 13 ¶ 4]. Accordingly, the Receiver seeks to appoint and retain the law firm of Gowlings in Toronto, Canada (the "Firm") to provide the Receiver with legal advice, counsel and assistance in this matter with regard to third parties in Canada who received funds from Defendant Frederic Elm, Relief Defendant Amanda Elm, and/or the Elm Tree Entities which appear to derive from investors in the Elm Tree Entities and thus may rightfully belong to the Receivership Estate.

4. The Receiver and Gowlings have agreed to terms in principle that will result in the Firm providing services to the Receiver at discounted rates. Specifically, in consideration for the Firm representing the Receiver, the Receiver agrees to pay the Firm attorneys' fees based on the time expended by lawyers and paralegals of the Firm. Gowlings attorney Malcom N. Ruby

will serve as lead counsel at the Firm for the Receiver. Mr. Ruby's services, as well as other partners and of-counsel of the Firm, will be billed at a discounted hourly rate of \$500.00. Firm associates and Paralegals have hourly rates that range between \$150.00 and \$300.00. The Gowlings firm has agreed to cap their initial services at \$20,000. To the extent litigation may be required, the hourly rates will apply thereafter.

The Receiver has considered the economic cost and benefit to the Estate in making this recommendation and believes the Estate will receive a benefit from the retention of Gowlings.

The Receiver has conferred with the SEC, which has advised that it has no objection to the relief requested herein.

### **CONCLUSION**

Based on the above, the Receiver respectfully requests that the Court enter an Order, a proposed form of which is attached, granting this Motion and authorizing the Receiver to retain Gowlings as legal counsel for the Receiver in Canada, and granting such other relief as the Court deems just and proper.

Respectfully submitted,

#### **BROAD AND CASSEL**

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on February 8, 2015, a true and correct copy of the foregoing was served via electronic transmission on all counsel or parties of record on the Service List below.

*s/Daniel S. Newman*  
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 Daniel S. Newman, P.A.

**SERVICE LIST**

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