

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
PADUCAH DIVISION**

DAVID GRIFFIN,

Plaintiff,

v.

**CHARLES A. JONES; SARAH C. JONES;
CA JONES MANAGEMENT
GROUP, LLC; INTEGRATED
COMPUTER SOLUTIONS, INC.;
BLACKROCK INVESTMENTS, LLC;
SE BOOK COMPANY, LLC; and
COLLEGE BOOK RENTAL COMPANY,
LLC,**

Defendants.

**Case No. 5:12-cv-00033
JUDGE RUSSELL**

JURY DEMAND

**MEMORANDUM IN SUPPORT OF EXPEDITED MOTION TO APPOINT
RECEIVER OR, IN THE ALTERNATIVE, FOR ENTRY OF A PRELIMINARY
INJUNCTION**

I. INTRODUCTION

Defendant Charles A. Jones (“C. Jones”) asked Plaintiff David Griffin (“Griffin”) to invest in certain businesses in Murray, Kentucky in 2008. After Griffin invested in two businesses in 2008, C. Jones created a web of companies that he controlled and by which he implemented a scheme of undisclosed, self-dealing to funnel significant money for his family’s personal gain that Griffin had invested in the companies for legitimate purposes. Through this scheme, C. Jones created a lavish lifestyle — complete with, among other things, a \$7.5 million house, a lake house, a 30-foot boat, trips on private jets, and numerous civic and charitable donations to promote his family’s stature in the community — that cannot be maintained without his continuing, unfettered control over the businesses and their steady flow of additional money. The Joneses’ continuing control over the businesses will result in further harm to the value and

assets of the businesses to the detriment of Griffin and ultimately to the point the businesses no longer remain viable.

II. FACTUAL BACKGROUND

A. Chuck Jones's Control Over the Companies for Self-Dealing.

C. Jones opened Integrated Computer Solutions, Inc. ("ICS"), an information technology company, in 1993 in Murray, Kentucky. (Exh. 1 to Affidavit of Sanford Wexler ("Wexler Aff.")). In 2008, C. Jones approached Griffin about investing in various Murray-based companies. (Affidavit of David Griffin ("Griffin Aff.") at ¶ 4). Based on representations by C. Jones, Griffin purchased 50% ownership interest of ICS for \$2 million from a third-party shareholder in 2008. (Griffin Aff. at ¶ 5). As a result of that purchase, C. Jones and Griffin each owned 50% of the outstanding shares of ICS. (Exh. 2 to Wexler Aff. at p. 000010¹).

In March 2008, C. Jones formed Blackrock Investments, LLC ("BRI") and convinced Griffin to invest \$100,000 along with C. Jones. (Exh. 3 to Wexler Aff; Exh. 5 to Wexler Aff. at p. 000057). As a result of these investments, BRI has two members, C. Jones and Griffin, each holding a 50% interest. (Exh. 5 to Wexler Aff. at p. 000057). In May 2008, BRI formed and managed Defendant SE Book Company, LLC ("SEB"), as a wholly owned subsidiary, to acquire the assets of a textbook company in Murray.² (Exh. 6 to Wexler Aff.; Exh. 7 to Wexler Aff.). In July 2008, C. Jones, as a member of BRI and thus manager of SEB, amended SEB's Operating Agreement to add ICS as an 8% member of SEB. (Exh. 8 to Wexler Aff.). As a result of his interests in ICS and BRI, Griffin is, in effect, a 50% owner of SEB.

Nearly contemporaneous with the purchase of the equity interest in BRI at the promotion

¹All Exhibits to the Affidavit of Sanford Wexler are numbered sequentially, beginning with "Wexler-000001". The page number only is cited.

² Hereinafter, ICS, BRI and SEB, along with Defendant College Book Rental Company, LLC ("CBR") shall be referred to collectively as the "Companies."

of C. Jones, C. Jones and BRI asked Griffin to make an additional investment in the form of a \$5 million line of credit to BRI for SEB's benefit. (Exh. 9 to Wexler Aff.). Griffin made this investment based on representations by C. Jones about the financial viability of BRI and/or SEB. (Griffin Aff. at ¶ 8). Between June 2008 and February 2009, Griffin invested approximately \$1 million in SEB based on C. Jones's representations of the viability and the future worth of BRI and SEB. (Griffin Aff. at ¶ 9; Affidavit of Denise Morgan ("Morgan Aff.") at ¶ 9).

In or around May 2008, C. Jones formed CA Jones Management Group, LLC ("Management") with C. Jones acting as its sole member. (Exh. A). As of February 2012, Management holds itself out as a large conglomerate of successful businesses and a "private equity firm."³ Management's website identifies SEB and CBR as Management's "divisions" and suggests that Management also owns ICS. (Exh. C). In reality, Management has no ownership interest in ICS, SEB or CBR, but instead is a third-party contractor for the purpose of providing defined management services. Upon information and belief, Management is the primary entity by which C. Jones has siphoned millions of dollars from the Companies.

In December 2008, C. Jones adopted resolutions for BRI that would hire Management to provide management services, backdated to be effective July 1, 2008. (Exh. 10 to Wexler Aff. at p. 00092; 000093-100). C. Jones also adopted similar resolutions and executed similar agreements on behalf of SEB and ICS, causing those companies to hire Management, effective July 1, 2008. (Exh. 9 to Wexler Aff; Exh. 11 to Wexler Aff.; Exh. 12 to Wexler Aff.; Exh 13 to Wexler Aff.). At various times, C. Jones told Griffin that Management was simply providing payroll services, but did not disclose the details of the money flowing from the Companies to

³ Defendant Sarah Jones ("S. Jones") is C. Jones's wife, President of Management and has served as an officer of ICS at all times material to this action. (Exh. B).

Management.⁴ (Griffin Aff. at ¶¶ 10, 17). As part of that resolution, C. Jones also changed BRI from being member-managed to being manager-managed and inserted Management as BRI's manager. (Exh. 10 to Wexler Aff. at p. 000091).

In or around March 2009, C. Jones and Griffin determined that a textbook rental company would be a profitable "sister" company for SEB, and CBR was formed as a manager-managed limited liability company. (Exh. 24 to Wexler Aff.) Purportedly, ICS is an 8% member of CBR, and BRI is a 92% member of CBR.⁵ Since that time, Jones, by and through Management, has assumed the responsibilities of the manager of CBR and has thus controlled all four of the Companies. (Exh. 16; Exh. 28 to Wexler Aff. at p. 000264).

B. Chuck and Sarah Jones Establish a Lavish Lifestyle Using Money Griffin Invested in the Companies.

When the Companies faced an operational cash flow shortfall, Management and/or C. Jones called or emailed Griffin and his employees to request additional investments to cover those expenses. (Griffin Aff. at ¶ 15; Morgan Aff. at ¶ 7). Those requests were made with assurances that revenues were increasing and the future value of the Companies were expected to be substantially more valuable. (Griffin Aff. at ¶ 15). Management and C. Jones concealed, however, the significant sums being transferred to Management and used for the Joneses' personal gain. (Griffin Aff. at ¶¶ 16, 17). When Griffin would send money to cover operational expense shortfalls, such money initially went directly to SEB. (Morgan Aff. at ¶ 8). C. Jones, S. Jones and/or Management then moved the funds around various companies at their discretion

⁴ Those contracts were not made available to Griffin until February 2012 when he demanded to see the books and records of the Companies and his agents reviews those documents. (Exh. D).

⁵ The CBR records provided by C. Jones to Griffin's agents are confusing as to the specific ownership percentages of CBR, which confusion is compounded by references to certain trusts that own or manage CBR for the benefit of C. Jones and Griffin.

without accounting to Griffin.⁶

The Joneses and Management did not limit their self-dealing misappropriation of funds strictly to cash payments. They also used the Companies to create a philanthropic image in the Murray community. Management caused CBR to donate significant sums to local charities in 2010, including \$203,000 to First United Methodist Church. (Exh. 15 to Wexler Aff.). Management also committed CBR to donate over \$485,000 to various charities and civic organizations in 2011. (Exh. 16 to Wexler Aff. at p. 000153). Those charitable donations included: \$150,000 to the local Murray schools, part of which appears to have been used to build the “Chuck and Sarah Jones Tennis and Track Complex” at Murray High School; \$20,000 to the Murray Youth Baseball Softball Association; \$40,000 to the United Way; \$30,000 to the First United Methodist Church; \$10,000 to the Amazon Mission Organization; \$10,000 to local youth centers; and \$10,000 to the Calloway County Skate Park. (Exh. 17 to Wexler Aff.). At one point, when a Management employee questioned whether a specific donation should come from CBR’s funds instead of being paid by the Joneses, C. Jones directed the payment to be made from CBR’s account. (Exh. 18 to Wexler Aff.). Management’s own Chief Financial Officer questioned whether CBR had sufficient funds to cover a \$50,000 check to a local school in August 2011.⁷ (Exh. 19 to Wexler Aff.). Management, C. Jones and S. Jones did not inform Griffin any payments or donations by the Companies. (Griffin Aff. at ¶¶ 16, 17).

C. Jones, S. Jones and Management also paid other companies in which C. Jones has an

⁶ Management’s website identifies several other companies that it purports to own or manage: Bookoodles, Cabling Concepts, Innovative Printing, Internet Anywhere, SEB Logistics, University Book & Bean, Elements and Vintage Rose Emporium.

⁷ Yet, just a few months before that donation, Griffin had invested in CBR (through SEB) millions during this time based on repeated statements by Management that the Companies did not have enough money to cover expenses and that the funds would increase the value of CBR. (Morgan Aff. at ¶ 11; Griffin Aff. at ¶ 15, 20).

ownership interest. Management caused CBR to purchase over \$282,000 in “computer” equipment from ICS in 2010. (Exh. 16 to Wexler Aff. at p. 000151). Management also committed CBR to purchase over \$90,000 in “computer equipment” from ICS in 2011. (Exh. 16 to Wexler Aff. at p. 000151). Management caused CBR to pay over \$55,000 and \$96,000 in 2010 and 2011, respectively, in “rent” to CIK Capital, LLC, another company in which C. Jones has an ownership interest. (Exh. 16 to Wexler Aff. at p. 000151). That “rent” reflected a 75% increase in the “rent” from the amount paid in 2010. Management, C. Jones and S. Jones did not inform Griffin of those payments by CBR. (Griffin Aff. at ¶ 17).

While the charitable donations may be noble in theory, CBR operated at a substantial net *loss* of \$3.5 million by 2011. (Exh. 16 to Wexler Aff. at p. 000146). Moreover, the management fees Management essentially paid itself since 2009 negatively impacted the profitability of the Companies, as depicted by the following table and the attached graph (Exh. F):

	2009			2010			2011		
	Net Income	Mgt Fees	EBIT	Net Income	Mgt Fees	EBIT	Net Income	Mgt Fees	EBIT
BRI	954,699	7,000	1,022,894	-2,074,291	1,000	-1,995,867	68,296		143,951
ICS	188,710	575,427	439,147	235,896	660,615	401,776	211,557	817,433	323,440
SEB	820,929	2,389,063	1,133,117	971,565	4,337,770	1,442,275	757,833	3,743,374	1,245,546
CBR	823,484	251,067	823,484	-1,798,823	2,298,723	-1,682,136	-6,525,019	5,735,309	-6,112,209

(Wexler Aff. at ¶¶ 11-20).

C. Jones, S. Jones and Management also acted in contradiction to the advice they solicited from an independent consultant. In October 2009, C. Jones hired Commonwealth Economics to evaluate SEB and CBR and make recommendations on improving profitability. (Affidavit of John Farris (“Farris Aff.”) at ¶ 4). Despite being given only limited information provided by Management, Commonwealth Economics concluded that the companies’ expenses were too high and made recommendations to decrease expenses. (Farris Aff. at ¶ 5). Based on

assurances from C. Jones about the financial viability of the Companies and his willingness to follow the advice of Commonwealth Economics, Griffin personally guaranteed a \$7.5 million bank loan for CBR in 2010. (Griffin Aff. at ¶ 21; Exh. K). Unfortunately, C. Jones and Management failed to live up to those promises. (Farris Aff. at ¶ 7).

Having grossly mismanaged — but personally profited from — the Companies for almost two years, C. Jones needed more money. In late 2010, C. Jones requested that Griffin invest an additional \$10 million into the Companies. (Griffin Aff. at ¶¶ 19, 20). Having already invested over \$20 million in thirty-three months with no material return, Griffin expressed concerns about the financial viability of the Companies. (Griffin Aff. at ¶ 18; Morgan Aff. at ¶ 10). Commonwealth Economics again provided specific recommendations to C. Jones and Management about ways to increase the profits of the Companies in a manner that would repay to Griffin by 2012 all of the previous amounts he had loaned the Companies and repay the additional \$10 million C. Jones being requested from Griffin. (Farris Aff. at ¶ 9). One of the recommendations involved reduction of the Companies' expenses, including the fees it paid to Management and donations to charities. (Farris Aff. at ¶ 10). C. Jones and Management agreed to take each recommended step in order to repay Griffin by 2012 all amounts he invested in or loaned to the companies. (Farris Aff. at ¶ 11). Based on that agreement, Griffin loaned another \$9,353,000 during the first six months of 2011. (Griffin Aff. at ¶ 20; Morgan Aff. at ¶ 11). Griffin also personally guaranteed an additional bank loan for CBR. (Griffin Aff. at ¶ 21). As shown above, instead of following through with his promises to repay Griffin and feeling the pressure of the Joneses' lavish lifestyle, C. Jones and Management actually *increased* the money that flowed out of the Companies to Management. Moreover, Management caused CBR to give over \$485,000 to charities in 2011 after agreeing to follow the business model provided by

Commonwealth Economics. (Exh. 16 to Wexler Aff. at p. 000153; Farris Aff. at ¶ 10).

As a result of milking Griffin and the Companies of tens of millions of dollars, the Joneses now live a lavish and extravagant lifestyle. Just last year, the Joneses built and furnished a house worth approximately \$7.5 million. (Exh. G). They also purchased a 30-foot boat (the “Relentless”). (Exh. H). C. Jones also used private jet hours which had been secured for business use related to SEB and CBR and instead transported family and friends for personal recreational purposes, even extending the agreement for additional hours of flight time. (Griffin Aff. at ¶ 22). Also, through the donations made out of the accounts of the Companies, the Joneses have created a (artificial) philanthropic image in Murray. In fact, based on the Joneses’ generous donations to local charitable and civic organizations —using money provided by Griffin — the Murray-Calloway County Chamber of Commerce gave C. Jones the “Citizen of the Year” award in 2011. (Exh. I). One would be hard pressed to conclude that the Joneses can maintain their lifestyle without continuing the conduct described above.

III. ARGUMENT

A. The Court Should Appoint a Receiver to Operate the Companies and Management.

While the appointment of a Receiver, pursuant to Federal Rule of Civil Procedure 66, is an extraordinary remedy, the facts of this case more than justify such a remedy.⁸ *See Aviation*

⁸ Kentucky law also provides for appointment of a Receiver:

On the motion of any party to an action who shows that he has, or probably has, a right to, a lien upon, or an interest in, any property or fund, the right to which is involved in the action, and that the property or fund is in danger of being lost, removed or materially injured, the court may appoint a receiver or order the master commissioner to take charge of the property or fund during the pendency of the action, and may order and coerce the delivery of it to him. The order of a court appointing or refusing to appoint a receiver shall be deemed a final order for the purpose of appeal; provided, that such order shall not be superseded.

Supply Corp. v. RSBI Aerospace, Inc., 999 F.2d 314, 316 (8th Cir. 1993). “[F]actors typically warranting appointment are a valid claim by the party seeking the appointment; the probability that fraudulent conduct has occurred or will occur to frustrate that claim; imminent danger that property will be concealed, lost, or diminished in value; inadequacy of legal remedies; lack of a less drastic equitable remedy; and likelihood that appointing the receiver will do more good than harm.” *Id.* at 316-17. Each of these factors supports appointment of the requested Receiver.

1. Griffin has valid claims against the Companies and Management.

Griffin has a valid claim against each of the Companies. Griffin is an owner and/or creditor of each of the Companies, directly or indirectly. (Exh. 2 to Wexler Aff., at 00010; Exh. 5 to Wexler Aff.; Exh. 8 to Wexler Aff.; Exh. 24 to Wexler Aff.). Griffin has invested at least \$28 million in the Companies since April 2009. (Morgan Aff. at ¶ 12). According to its financial statements, ICS owes him over \$611,000 and BRI owes him almost \$4 million. (Exh. 25 to Wexler Aff.; Exh. 26 to Wexler Aff.). SEB and CBR collectively owe Griffin millions of dollars. (Morgan Aff. at ¶ 12). Griffin has also guaranteed millions of dollars of bank loans for SEB and CBR. (Exh. J and K). Without question, Griffin has valid claims against the Companies.

Griffin is a shareholder of ICS and a member of BRI and, through those companies, is an indirect owner of SEB and CBR. (Exh. 2 to Wexler Aff., at p. 00010; Exh. 5 to Wexler Aff.; Exh. 8 to Wexler Aff.; Exh. 24 to Wexler Aff.). Since 2008, Management has acted as the manager for BRI, SEB and CBR since 2009 and provided management services to ICS. (Exh. 9 to Wexler Aff.; Exh. 10 to Wexler Aff.; Exh. 11 to Wexler Aff.; Exh. 12 to Wexler Aff.; Exh 13 to Wexler Aff.). During that time, Management has paid itself over \$11.7 million in “management fees” from ICS, SEB and CBR, collectively. As the manager of the Companies,

Management owes statutory and common law fiduciary duties to Griffin. *See, e.g.,* KRS 275.170. Since 2008, SEB and CBR were only able to operate only because of periodic, significant investments from Griffin. (Griffin Aff. at ¶ 15; Morgan Aff. at ¶¶ 7-8). By the end of 2010, CBR was operating at a \$3.5 million loss, and the taxable income of ICS and SEB had decreased from 2009. The self-dealing of C. Jones, S. Jones and Management breached their fiduciary duties to Griffin, thus Griffin has a valid claim against each of them.

2. A high probability exists that fraudulent conduct has occurred or will occur to frustrate Griffin's claim.

“It is well settled that proof of fraud is not required to support a district court's discretionary decision to appoint a receiver.” *Aviation Supply*, 999 F.2d 314 at 316. Despite the fact that a showing of fraud is not required, a clear showing of fraud and self-dealing, as is the case here, certainly justifies the requested remedy. C. Jones and Management concealed from Griffin material facts they had a duty to disclose and made numerous misrepresentations to Griffin. Since 2009, C. Jones, through Management, has exercised complete control over the Companies. C. Jones concealed from Griffin, his fellow investor and shareholder/member, the basis, extent and justification for the Companies paying Management over \$11.7 million in “management fees.” (Griffin Aff. at ¶ 14). Management also concealed from Griffin the fact that it was causing SEB and CBR to make significant donations to various charitable and civic organizations in the Murray, Kentucky area for the Joneses' benefit. (Griffin Aff. at ¶ 16).

That fraudulent concealment alone — which is established largely by the Companies' own records and was done to hide the extensive self-dealing — justifies displacing C. Jones and Management from controlling the Companies. *See Chase Manhattan Bank, NA v. Turabo Shopping Ctr, Inc.*, 683 F.2d 25, 27 (1st Cir. 1982) (affirming appointment of receiver when the evidence established that leaving the existing party in control of the assets created a significant

danger of additional harm).

3. Imminent danger exists that the Companies property will be concealed, lost, or diminished in value.

C. Jones, S. Jones and Management have exercised complete control over the Companies since 2009, while funding a lavish lifestyle for the Joneses. Upon information and belief, the Joneses have used cash-flow from the Companies to obtain additional debt and assets. The Joneses recently built a \$7.5 million mansion and have spent lavishly over the past few years. Given that lifestyle, the Joneses cannot maintain their personal financial obligations without continuing money from the Companies. (Exhs. E, F).

Without displacing Management, C. Jones and S. Jones from controlling the Companies, past performance proves that they will not stop their wrongful conduct. In 2009, Commonwealth Economics advised C. Jones that the Companies could be more profitable if he decreased the significant expenses the Companies were incurring. (Farris Aff. at ¶ 5). C. Jones ignored that recommendation. In late 2010, Commonwealth Economics again recommended concrete steps to increase the profitability of the Companies, one step being decreasing expenses. (Farris Aff. at ¶ 10). Despite those warnings, C. Jones has actually *increased* the money that flows from the Companies to Management and others, apparently to support his lifestyle. As a matter of law, C. Jones, S. Jones and Management breached their fiduciary duties to Griffin by ignoring the advice of Commonwealth Economics and engaging in undisclosed and unapproved self-dealing. *See* KRS 275.170. Thus, the assets and funds of the Companies remain intertwined with Management and the Joneses, leaving the Companies in imminent danger of being depleted to the point they are no longer viable. That danger supports appointment of a Receiver. *Canada Life Assur. Co. v. LaPeter*, 563 F.3d 837 (9th Cir. 2009) (affirming appointment of receiver where income was being diverted to the detriment of creditors).

4. Legal remedies available to Griffin will not adequately protect his interests in the Companies.

If Management and C. Jones remain in control of the Companies, Griffin's investments will likely not be repaid. The conduct of C. Jones, S. Jones and Management establish that a monetary judgment against them will not make Griffin whole given that the Joneses likely have spent or levered their own assets to support their lifestyle. Accordingly, having a Receiver placed in charge of the Companies and Management provides the best remedy and the best opportunity for the Companies to be given the opportunity to turn a profit and repay Griffin his money. Moreover, while Griffin has all of his investments (plus guarantees) to lose, C. Jones will not be prejudiced by the appointment of a Receiver. A neutral party can protect C. Jones's interests in the Companies and, if C. Jones, S. Jones or Management, are needed by the Companies, the Receiver can contract with them openly before the Court and Griffin.

5. A less drastic equitable remedy will not provide the same protection.

Given that Management completely controls the operations and books of the Companies, allowing the status quo to remain presents a real danger that the Companies continue to operate at a loss. For the reasons stated above, a drastic remedy is precisely what is needed here. Allowing the lawsuit to proceed while the Joneses and Management continue to funnel funds for their own benefit will not afford the same protection.

6. The appointment of a receiver will do more good than harm.

The Companies are capable of being profitable. Despite the significant sums funneled from the Companies to Management — and then to C. Jones and S. Jones — SEB and CBR have seen increased revenues at times. (Exh. 20 to Wexler Aff. at p. 000171; Exh. 14 to Wexler Aff. at p. 000125; Exh. 16 to Wexler Aff. at p. 000146). C. Jones, as a member of BRI and shareholder of ICS, should want to see increased profits from the Companies. Accordingly,

appointment of a Receiver actually protects those interests of C. Jones. Of course, his most lucrative interest — ownership of Management — may see decreased revenues from the Companies, but that decrease may be offset by any increase in money he earns in the future from the Companies. Without question, a Receiver will benefit Griffin more than maintaining the status quo. This factor supports appointment of a Receiver over the Companies and Management.

7. The Identity and Duties of the Receiver.

Having satisfied the factors that support appointment of a Receiver, Griffin requests that the Court appoint Kevin Crumbo of KraftCPAs Turnaround & Restructuring Group, PLLC as Receiver of Management, ICS, BRI, SEB and CBR. Mr. Crumbo has extensive experience working with and turning around distressed businesses. He holds a bachelor's degree in accounting from the University of Kentucky and a masters in business administration from Vanderbilt University. Mr. Crumbo is a certified public accountant (CPA), certified in financial forensics (CFF), is a forensic accountant (Cr.FA), is a insolvency and restructuring advisor (CIRA), and is distressed business valuation analyst (CDBV). Mr. Crumbo's qualifications, experience and compensation fees are set forth in his Affidavit and Resume, filed herewith. (Exh. L).

Griffin requests that Mr. Crumbo, as Receiver, be exclusively empowered to perform the following duties without first seeking Court approval, except as expressly provided below, but the Receiver may seek Court approval at his discretion for any of the following duties:

- Maintain the Companies' operations, property, assets, funds and accounts to prevent waste, and maintain them in good order for the benefit of creditors, investors and members;
- Take possession and control of all bank accounts of Management and the Companies;

- Retain sufficient funds in said accounts to perform the legitimate business of Management and the Companies, including but not limited to, the payment of all necessary operating expenses, property taxes, notes, loans, debts, insurance premiums, utilities, supplies, equipment and the fees and expenses charged by the Receiver;
- Make any personnel changes that Receiver deems in the best interests of the operational and financial well being of Management and the Companies;
- Pay any and all outstanding obligations of Management and the Companies if deemed appropriate, but only to the extent the Receiver shall determine that it is prudent to do so in order to maintain the business relationships with such suppliers for the benefit of operations;
- Establish and maintain separate bank accounts in the Receiver's own name for each of the Companies and Management into which Receiver shall deposit all revenues, proceeds from any source and other income received by Management and each Company, and from which Receiver shall disburse such funds as may be required to defray the expenses of the receivership, including the Receiver's fees and expenses;
- Take possession of all corporate records, books and records of the Companies and Management; and the Companies, Management and Plaintiff David Griffin are ordered to provide to the Receiver all such records within twenty-four (24) hours after entry and service of an Order appointing the Receiver. This obligation should apply to any records which come into possession of the Companies, Management and/or Plaintiff David Griffin and their members, officers employees and agents after the appointment of the Receiver;
- Enter into contracts for such services, utilities, supplies, equipment and goods as are reasonably necessary to operate, manage, preserve, lease and protect Management and the Companies and to make such ordinary and routine repairs and improvements to the property of the Companies as the Receiver may reasonably deem necessary;
- Enforce and modify leases and rental agreements;
- Negotiate on behalf the Companies with lenders for the restructuring of any loans or indebtedness of Management and the Companies for the benefit of the Companies and all guarantors;
- Modify contracts with any third-party, including other companies to which Management provides services;
- Terminate or enter into vendor or other contracts pertaining to the

operations of the Companies and Management as the Receiver may determine necessary in his sole judgment with no further obligation or liability including having to pay any termination fees under any terminated contract;

- Employ and compensate any assistants, servants, agents, attorneys, property management firms, consultants, independent contractors, and professional persons, including Kraft and its affiliates, or other persons reasonably deemed necessary or desirable to assist the Receiver in diligently executing the duties imposed upon the Receiver by Court Order and to delegate in writing said duties, powers, and responsibilities as may be appropriate to effectuate the Receiver's duties and powers;

- Retain and communicate with counsel for the Companies and Management, including attorneys who have represented in the past or are currently representing the Companies and/or Management;

- Obtain and pay the premiums for policies of liability, casualty and other insurance required to adequately protect the property of the Companies and Management, if needed in addition to existing prepaid coverage, in such amounts and with such companies, and it insure against such risks as the Receiver deems necessary and desirable, including but not limited to securing the proper additional insured's, certificate holders and loss payee/mortgagee information.

- Allow Plaintiff David Griffin and his counsel access to the property of the Companies and Management at reasonable times to inspect the Property and all books and records thereof;

- Engage in efforts to sell Management and the Companies to a third party, such sale conditioned upon approval of the Court;

- File a petition under the Bankruptcy Code for Management and for for any of the Companies for the protection of Management and the applicable Companies and their creditors, owners and members;

- Retain or terminate existing employees or officers, hire additional employees, or independent contractors, as is necessary or appropriate for the maintenance and operation of the Property;

- Review and audit Management's records for years 2008 and thereafter to determine the appropriateness of all transactions, particularly transactions among Management and the Companies. If the Receiver determines that a transaction may have been inappropriate, the Receiver shall report his findings to the Court with a recommendation that the transaction should be avoided or adjusted;

- Provide quarterly reports to the Court, describing the Receiver's actions and accounting for the financial activities and condition of the Companies and Management; and

- Recommend to the Court additional duties which the Receiver reasonably believes to be necessary in order to accomplish the objectives of the Receivership.

Griffin further requests that the Receiver be compensated out of the funds of the Companies and/or Management at a rate of \$395 per hour, plus reimbursement of reasonable expenses incurred for the performance of his duties. Absent a timely filed objection, should compensation shall be paid on a monthly basis within fifteen (15) business days of Receiver's filing and serving of an itemized statement of his services and expenses, which may include summaries instead of specific descriptions of services where the Receiver determines there is a need for confidentiality, in which case the Court may conduct in camera review. If any objections are timely filed to the Receiver's itemized statements of his services and expenses, then the Court shall set a hearing thereon.

In addition, Griffin requests that the Court order that:

- The Receiver shall exercise reasonable business judgment. The Receiver shall have no liability to Management, to the Companies, or to any creditors, equity holders, or other parties in interest unless he is guilty of gross negligence or intentional misconduct;
- The Companies and Management shall indemnify, defend, and hold the Receiver harmless from any actions brought by third parties that arise from the Receiver's executing his duties, so long as Receiver's actions do not involve gross negligence or intentional misconduct;
- No action shall be brought against the Receiver without Court approval;
- All costs incurred by the Receiver, including his own fees and expenses, in performing the Receiver services shall be an expense of and paid out of the assets of Companies and Management, jointly and severally; Receiver shall not be obligated to use his own funds and/or advance any of his own funds to perform or pay for same; and
- The Receiver may resign upon his filing with the Court and service of a notice of resignation.

Griffin requests that, absent resignation, Mr. Crumbo shall remain as Receiver until further Order of the Court modifying or discharging his duties.

B. In the Alternative, The Court Should Enter a Preliminary Injunction.

Even if the Court elects not to appoint a Receiver to control the Companies and Management, it should enter a preliminary injunction to prevent C. Jones and Management from further harming the Companies. “In determining whether to issue a preliminary injunction, the Court must balance four factors: (1) the likelihood of the movant's success on the merits; (2) whether the injunction will save movant from irreparable injury; (3) whether the injunction would harm others; and (4) whether the public interest would be harmed or served by the injunction.” *Transamerica Ins. Fin. Corp. v. North Am. Trucking Ass'n, Inc.*, 937 F. Supp. 630, 633 (W.D. Ky. 1996).

As explained above, the Companies owe Griffin at least \$ 30 million collectively. Griffin will prevail on his claims against the Companies. Unless enjoined, Griffin will suffer irreparable injury because: 1) keeping C. Jones and Management in a controlling position will further harm the Companies; and 2) the loans guaranteed by Griffin could be in default, further harming Griffin. Because C. Jones is also a member of BRI and a shareholder of ICS, his interests in those companies will not be harmed by an injunction that prohibits further payments from the Companies to Management. Given that the Companies and Management are privately-owned entities, the public interest will not be harmed by entry of a preliminary injunction.

Having satisfied each of the factors required for entry of a preliminary injunction, Griffin requests that the Court enter a preliminary injunction against the Companies and Management, as well as those acting in concert with those parties. The scope of the injunction should be as follows:

- All transfers or payments of funds from the Companies to Management and among the Companies are prohibited, absent Court approval;

- All management fee payments from any of the Companies to Management are prohibited, absent Court approval, excluding reimbursement for actual payroll expenses documented by each of the Companies;
- Management shall provide a full accounting of all management fees, including supporting documentation, and expenses received by Management from the Companies since July 1, 2008, within fourteen days of entry of the injunction;
- The Companies or Management shall refrain from selling any assets of or obtaining any loans for the Companies and/or Management without prior Court approval; and
- Refrain from disbursing any funds from Management or the Companies to C. Jones and S. Jones.

IV. CONCLUSION

For the foregoing reasons, Griffin requests that the Court appoint Kevin Crumbo as Receiver of the Companies and Management, with the duties described above. In the alternative, Griffin requests that the Court enter a preliminary injunction, prohibiting Management, C. Jones and S. Jones from taking the actions described above.

Respectfully submitted,

/s/ Charles M. Pritchett
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Memorandum has been served via hand delivery, on this the 29th day of February 2012, on the following:

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Murray, KY 42071

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Blackrock Investments, LLC
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SE Book Company, LLC
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College Book Rental Company, LLC
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/s/ Charles M. Pritchett _____