

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

SECURITIES AND EXCHANGE COMMISSION,	§	
	§	
Plaintiff,	§	
	§	
vs.	§	
	§	
ARISEBANK,	§	Civil Action No. 3:18-cv-0186-M
JARED RICE SR., and	§	
STANLEY FORD,	§	
	§	
Defendants.	§	
	§	

RECEIVER’S CERTIFIED FIFTH FEE APPLICATION

Pursuant to paragraphs 58-63 of this Court’s Order Appointing Receiver in this case [ECF No. 12], which was incorporated in full into the Order Reappointing Receiver [ECF No. 72] (the “Receivership Order”), Mark Rasmussen, the Court-appointed Receiver for AriseBank and its affiliates (the “Receivership Entities”), files this certified fifth fee application.

SUMMARY OF FEE REQUEST

1. This fifth fee application covers January 1, 2019 to March 31, 2019 (the “Application Period”) and is submitted in accordance with the Receivership Order, the local rules of this Court, and the Billing Instructions for Receivers in Civil Actions Commenced by the United States Securities and Exchange Commission (the “Billing Instructions”).

2. The Receiver respectfully requests that this Court enter an order approving and authorizing, on an interim basis, the payment of fees and expenses for the Application Period totaling \$48,277.68 to Jones Day and \$4,650.00 to Kroll.

STANDARDIZED FUND ACCOUNTING REPORT

3. Attached as Exhibit A is the Standardized Fund Accounting Report (SFAR) for the Receivership for the Application Period.

CASE STATUS

4. Cash on Hand: The amount of cash on hand in the Receiver’s bank account as of the end of the Application Period (March 31, 2019) was \$198,282.73. These funds were received by (i) taking control of the Bank of America bank account held by AriseBank (\$196,211.13), (ii) securing funds obtained by Defendant Jared Rice’s legal counsel, who had received the liquidated value of certain cryptocurrency assets of AriseBank (\$200,000.00), (iii) recovering the unused portion of a legal retainer (\$1,365.00), (iv) recovering the security deposits for office space (\$16,347.90); and (v) interest payments from the bank at which the Receiver established a bank account (\$187.30). The Receiver has made payments to Jones Day in the amount of \$147,957.00 and to Kroll in the amount of \$67,353.60 in accordance with the order granting the Receiver’s first fee application. In addition, the Receiver has paid a total of \$518.00 in expenses.

5. Other Assets: In addition to the cash on hand listed above, the Receiver has on hand the following assets.

<u>Asset</u>	<u>Estimated Amount/Value</u>
Bitcoin	27.96 coins
Doge	196,131.04 coins
Litecoin	271.33 coins
Ether	218.73 coins
Bitshares	2,391,455.51 coins
PIVX	19,413.76 coins

BitUSD	3599.99 coins
Various computers, televisions, and smart phones	\$5,000-\$10,000

6. The Receiver has established multiple cryptocurrency wallets to hold the cryptocurrencies listed above and is in possession of the private keys associated with these wallets.

7. Expenses: The Receiver has incurred administrative expenses as a result of his efforts to marshal and preserve the assets of the Receivership. For the Application Period, most of these expenses were advanced by Jones Day (See Exhibit B at B-001 and B-007). In addition, the Receiver has paid \$39.00 per month (\$117.00 in total for the Application Period) out of the Receiver’s bank account to allow the Receiver to access records from an online support service used by AriseBank. Those records have been helpful in the forensic accounting analysis performed by the Receiver.

8. Creditor Claims: On February 1, 2019, the Court entered an order that authorized a claims process, set a claims bar date, and authorized certain notice procedures. The Receiver sent notice via the approved procedures on February 13, 2019. The claims bar date was May 7, 2019. Over two hundred claims were submitted. The Receiver is in the process of analyzing and validating each of them. The Receiver is working as quickly as circumstances allow to complete this process. To date, the Receiver has not disbursed any funds to any claimants.

9. Claims Held by Receiver: On April 24, 2018, the Receiver filed suit in the United States District Court for the Northern District of Texas against Richard Smith, Jr. and Kurt F. Matthew, Jr. (the “Smith Complaint”). In the Smith Complaint, the Receiver alleges that, in December 2017 and January 2018, Jared Rice Sr. transferred at least 95,000 PIVX coins, worth

at that date approximately \$1.3 million, to Defendant Smith in connection with the acquisition by AriseBank of a purported FDIC-insured bank. The PIVX transfers were made by Rice on behalf of AriseBank. The Receiver also alleges that Smith transferred at least USD \$123,000 in funds derived from the PIVX coins to Defendant Matthew. The Receiver asserts claims against Defendants Smith and Matthew for unjust enrichment, conversion, and fraudulent transfer, and seeks return of all funds to the Receivership, together with interest and attorneys' fees as provided for by law. At the time of filing suit, the Receiver weighed the likelihood of prevailing on his claims and recovering assets for the Receivership against the expected costs and expenses of the litigation, and concluded that the balance in this case favored prosecution of the claims. The Receiver continues to believe that the balance favors prosecution of the claims and will continue to assess that balance as circumstances develop.

10. The Receiver also has also negotiated with an additional third party regarding funds that were transferred to it in mid-January 2018 by AriseBank. The Receiver continues to believe that this transfer of funds occurred in violation of the Texas Uniform Fraudulent Transfers Act and that fair value was not received by AriseBank for the funds. The Receiver has demanded the return of the funds but the third party to date has refused. The Receiver will continue to demand funds but has determined that the cost of pursuing the assets through litigation may be greater than their value.

11. The Receiver filed a notice of receivership in all relevant jurisdictions where assets of the Receivership are believed to be located.

FEE APPLICATION

12. On January 25, 2018, the Securities and Exchange Commission filed a complaint against Defendants AriseBank, Jared Rice, Sr., and Stanley Ford, along with an application for the appointment of a receiver for the Receivership Entities [ECF No. 2]. That same day, the Court

appointed Mark Rasmussen to be the Receiver over the business and assets of AriseBank and its affiliates [ECF No. 12]. On April 5, 2018, the Court reappointed Rasmussen to be the Receiver over the business and assets of AriseBank and its affiliates.

13. On January 26, 2018, the Court entered orders authorizing the Receiver to employ Jones Day as legal counsel [ECF No. 14] and Kroll Cyber Security as a computer forensics and investigative consultant [ECF No. 13]. Jones Day and Kroll began working on this matter on January 25, 2018. On March 19, the Court approved the Receiver's motion to extend the engagement of Kroll to include forensic accounting services [ECF No. 67].

14. The names, hours worked, hourly billing rates, and total fees of all Jones Day professionals who have billed time to this matter, including the Receiver, are listed in Exhibit B at B-006. The blended hourly billing rate of the Receiver and each Jones Day attorney working on the matter is \$525. The billing rate of Jones Day timekeepers who are not attorneys is their standard rate.

15. The names, hours worked, hourly billing rates, and total fees of all Kroll professionals who have billed time to this matter are listed in Exhibit C at C-002.

16. The total actual fees and expenses incurred for the Application Period are summarized as follows:

Receiver – Fees for Application Period

Hours	Hourly Rate	Total Fees
34.90	\$525	\$18,322.50

Receiver’s Counsel, Jones Day – Fees and Expenses for Application Period

Hours	Hourly Rates	Total Fees	Total Expenses	Fees and Expenses
43.40	See Ex. B at B-6	\$22,610.00	\$7,295.18	\$29,905.18

**Receiver’s Forensic Accounting Consultant, Kroll
Fees and Expenses for Application Period**

Hours	Hourly Rate	Total Fees	Expenses	Fees and Expenses
12.00	See Ex. C at D-002	\$4,650.00	\$0	\$4,650.00

17. The Receiver asks the Court to approve payment to Jones Day, on an interim basis, in the amount of \$48,277.68 for the Application Period. The Receiver further asks the Court to approve payment to Kroll, on an interim basis, in the amount of \$4,650.00 for the Application Period.

18. In accordance with the Billing Instructions, the Receiver and his advisors have separately categorized their services by task. The following table summarizes the respective number of hours incurred relative to each task category during the Application Period:

Receiver and Receiver’s Counsel, Jones Day

Task Description	Hours Worked	Total Fees
Asset Analysis and Recovery	30.50	\$16,012.50
Asset Disposition	0	0
Business Operations	0	0
Case Administration	5.60	\$2,765.00
Claims Administration	42.20	\$22,150.00
Employee Benefits/Pensions	0	0

Receiver’s Consultant, Kroll

Task Description	Hours Worked	Total Fees
Asset Collection and Analysis	12.00	\$4,650.00
Forensic Accounting	0	0
Status Reports	0	0
Case Administration	0	0
Litigation Consulting	0	0

19. Also, in accordance with the Billing Instructions, the Receiver and his advisors have separately categorized the fees and expenses associated with the separately filed litigation matter, the Smith Complaint. These fees and expenses are a subset of, and included within, the total fees and expenses incurred by the Receivership as described above. The following table summarizes the fees and expenses incurred with respect to this matter during the Application Period:

Project: Smith Litigation

Hours Incurred	Fees Incurred	Expenses Incurred
29.50	\$15,487.50	\$0

20. This interim fee application is the fifth fee application that the Receiver has made. The first fee application, as amended on August 8, 2018, requested an order approving the payment of fees and expenses totaling \$184,946.30 to Jones Day and \$67,353.60 to Kroll. That fee application was granted on September 11, 2018. The Receiver made payments to Jones Day and Kroll in accordance with the order on October 2, 2018.

21. The second interim fee application requested an order approving the payment of fees and expenses totaling \$114,909.00 to Jones Day and \$121,950.00 to Kroll. The third interim fee application requested an order approving the payment of fees and expenses totaling \$46,388.98 to Jones Day and \$57,703.85 to Kroll. The fourth interim fee application requested an order approving the payment of fees and expenses totaling \$17,436.32 to Jones Day and \$3,169.79 to Kroll. No order has been entered as to the second or third interim applications, and no payments have been made related to it.

ARGUMENTS AND AUTHORITIES IN SUPPORT OF REQUEST

22. This Court may award compensation for services rendered and costs expended in furtherance of the Receivership. *Hensley v. Eckerhart*, 461 U.S. 424 (1983); *Louisiana Power & Light Co. v. Kellstrom*, 50 F.3d 319 (5th Cir. 1995). When determining the amount of professional fees to award, the Court should use the lodestar method, which multiplies the number of hours reasonably expended by the reasonable hourly rate. *Id.*

23. As for the hours expended, the Court must “determine whether the total hours claimed are reasonable [and] also whether particular hours claimed were reasonably expended.”

Kellstrom, 50 F.3d at 325. As for rate, a reasonable hourly rate is determined by considering the applicant's regular rates and the prevailing rates in the community. *Id.* at 328. After calculating the lodestar amount, the Court may exercise its discretion to adjust the approved amount up or down. *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 717-719 (5th Cir. 1974)

24. In support of this application, the Receiver submits the following exhibits for the Court's review.

- Exhibit B shows professional fees (including (i) the date the services were rendered, (ii) the nature of the services rendered, (iii) the time required for the performance of such services, and (iv) the fees charged for each service rendered) and expenses of Jones Day in connection with the administration of the Receivership;
- Exhibit C shows professional fees (including (i) the date the services were rendered, (ii) the nature of the services rendered, (iii) the time required for the performance of such services, and (iv) the fees charged for each service rendered) and expenses of Kroll in connection with the administration of the Receivership; and
- Certification of Mark W. Rasmussen stating the reasonableness of the rates charged and hours billed by professionals at Jones Day and Kroll.

25. Jones Day and Kroll have charged fees that are at or below the standard billing rates for the professionals working on this matter, and those fees are at or below customary fees charged by like professionals in their respective markets. Further, Jones Day's blended rate of \$525 per hour is a significant discount to the normal billing rate for the Receiver and most of the lawyers working on the matter.

26. In addition, Jones Day is not seeking reimbursement for certain expenses, including computerized research charges, photocopying charges, and research fees. Jones Day and Kroll have billed all other expenses at their actual costs with no mark-up added, and they are not seeking overhead charges. The fees and expenses sought in this application are reasonable and were necessary for the proper administration of the duties of the Receiver.

27. As explained in the status reports, the Receiver and his advisors have performed tasks that have added value to the Receivership. On January 26, 2018, the Receiver was able to collect and search computer equipment belonging to the Receivership Entities and interview Mr. Rice and three of his associates at a temporary residence in Wills Point, Texas, following the FBI's execution of a search warrant at that location.

28. Through that search and those interviews, the Receiver identified and took control of certain cryptocurrency assets. In addition, the Receiver collected other assets at the Wills Point site and from an office site in downtown Dallas, Texas that had been leased on behalf of AriseBank.

29. In addition, during the Application Period, the Receiver and his advisors pursued litigation against Richard Smith and Kurt Matthew in order to recover additional assets for the estate. Much of the work done during this period relates to the motion for summary judgment that the Receiver filed against Messrs. Smith and Matthew. Also, the Receiver has responded to various governmental information requests in connection with the criminal proceeding against Mr. Rice. In addition, the Receiver developed a claims process, built a claims submission website, and analyzed claims that have been submitted.

30. Additional actions the Receiver and his advisors have taken during the Application Period include, but are not limited to, the following:

- a. Maintaining a Receiver website (arisebankreceiver.com), email address (mail@arisebankreceiver.com), and phone numbers (214-969-2950; 1-833-472-0789) so that contributors to the ICO can receive information pertaining to the receivership;
- b. Communicating with contributors by phone and email;
- c. Maintaining AriseBank cryptocurrency wallets and/or accounts containing the cryptocurrencies Bitcoin, Ether, Litecoin, Dogecoin, Bitshares, BitUSD, and PIVX;

- d. Attempting to liquidate certain assets pursuant to the order dated August 1, 2018 [Dkt. No. 83]
- e. Coordinating with certain individuals to return property after analyzing the property and determining that it does not belong to the Receivership Estate;

31. Each of these tasks was reasonably necessary to secure assets of the Receivership and to evaluate potential sources of other assets. Further, each task was performed efficiently by the Receiver or his advisors at Jones Day and Kroll.

CONCLUSION

32. For the reasons stated, the Receiver respectfully requests that this Court enter an order approving and authorizing, on an interim basis, the payment of fees and expenses totaling \$48,277.68 to Jones Day and \$4,650.00 to Kroll.

Dated: May 14, 2019

Respectfully submitted,

/s/ James Cox

James A. Cox
Texas Bar No. 04946560
jacox@jonesday.com
Richard J. Johnson
Texas Bar No. 24088799
rjohnson@jonesday.com
JONES DAY
2727 North Harwood Street
Dallas, TX 75201
Telephone: (214) 220-3939
Facsimile: (214) 969-5100

COUNSEL TO RECEIVER

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 14, 2019, the foregoing document was submitted to the clerk of the Court for the U.S. District Court, Northern District of Texas, and served on all counsel through the electronic service system.

/s/ James Cox

James A. Cox