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3:07-cv-04975-WHA Securities and Exchange Commission v. Trabulse et al **CASE CLOSED on 04/07/2008**

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U.S. District Court  
Northern District of California  
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**Case Name:** Securities and Exchange Commission v. Trabulse et al

**Case Number:** [3:07-cv-4975](#)

**Filer:** Michael A. Grassmueck

**WARNING: CASE CLOSED on 04/07/2008**

**Document Number:** [84](#)

**Docket Text:**

**Declaration of Michael A. Grassmueck in Support of [83] First MOTION to Approve Claims Procedures and for Order Establishing Claims Bar Date re [82] Notice (Other) re Motion to Approve Claims Procedures and for Order Establishing Claims Bar Date First MOTION to Approve Claims Procedures and for Order Establishing Claims Bar Date re [82] Notice (Other) re Motion to Approve Claims Procedures and for Order Establishing Claims Bar Date filed by Michael A. Grassmueck. (Related document(s)[83]) (Kim, Yale) (Filed on 9/10/2008)**

**3:07-cv-4975 Notice has been electronically mailed to:**

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The following document(s) are associated with this transaction:

**Document description:**Main Document

**Original filename:**C:\Transport Filings\Declaration of Michael A. Grassmueck in Support of Motion to Approve Claims Procedures and for Order Establishing Claims Bar Date.pdf

**Electronic document Stamp:**

[STAMP CANDStamp\_ID=977336130 [Date=9/10/2008] [FileNumber=4676055-0]  
[8168445f47e7fe7999803e3d7a185cca903f142f83d58fd108bf846a0032375d741e7  
598f4b4f8 522dec753091d3bb78feef4b659f65d72e85e657544d6d60c3]]

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8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN FRANCISCO

11 SECURITIES AND EXCHANGE  
COMMISSION,

12 Plaintiff,

13 vs.

14 ALEXANDER JAMES TRABULSE,

15 Defendant.

16 and

17 FAHEY FUND, L.P., FAHEY FINANCIAL  
18 GROUP, INC., INTERNATIONAL TRADE &  
DATA, and ITD TRADING,

19 Relief Defendants.  
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Case No. C 07-4975 (WHA)

DECLARATION OF MICHAEL A.  
GRASSMUECK IN SUPPORT OF MOTION  
TO APPROVE CLAIMS PROCEDURES AND  
FOR ORDER ESTABLISHING CLAIMS BAR  
DATE

Date: October 16, 2008

Time: 8:00 a.m.

Place: Courtroom 9, 19<sup>th</sup> Floor  
United States District Court  
Northern District of California-  
San Francisco Division  
450 Golden Gate Avenue  
San Francisco, CA 94102

1 I, Michael A. Grassmueck, declare:

2 1. I am the duly appointed monitor (the "Monitor") for Fahey Fund, L.P.; Fahey  
3 Financial Group, Inc.; International Trade & Data; and ITD Trading, and their subsidiaries and  
4 affiliates and any entities controlled by them (collectively referred to as the "Relief Defendants").

5 2. I submit this declaration (the "Declaration") in support of the Motion For Order  
6 Approving Claims Procedure And For Order Establishing Claims Bar Date (the "Motion"). I have  
7 personal knowledge of the facts stated in this Declaration as to which I could and would  
8 personally and competently testify if called upon to do so.

9 3. On December 17, 2007, I was appointed as Monitor of the Relief Defendants  
10 pursuant to the entered Order Appointing Monitor And Other Ancillary Relief ("Monitor Order").  
11 Pursuant to the Monitor Order, I was empowered and directed to, among other things, conduct  
12 such investigation as would be necessary to locate and account for the Relief Defendants' assets,  
13 and review the overall operation of the Relief Defendants in accordance with the Monitor Order.

14 4. On February 13, 2008, the Court entered an Order implementing certain of my  
15 recommendations, and which also incorporated the terms of the Monitor Order (the "Modified  
16 Order"). The Modified Order authorized me to, among other things, undertake the review and  
17 analysis of claims, and determine the allowance of claims, through a claims review process, and  
18 assist in the sale and liquidation of assets.

19 5. In connection with my duties under the Modified Order, and based on the timing of  
20 this case and the existence of funds available for distribution to investors and creditors, I have  
21 determined that it is appropriate to now commence the claims review and analysis process.

22 6. The first step in the process is to obtain Court approval of the following: (i) the  
23 procedure to be used by the Monitor for the solicitation, review and approval of claims against the  
24 Relief Defendants, (ii) a date certain (the "Bar Date") by which the Monitor must receive proofs of  
25 claim of any type against any of the Relief Defendants, and (iii) the form and manner of notice of  
26 the Bar Date to be sent to investors and creditors, (collectively, the "Claims Procedures").  
27  
28

1 PROPOSED CLAIMS PROCEDURES

2 7. I propose that once the Court has approved the form and content of the Notice of  
3 Bar Date for Submitting Any and All Claims (the "Notice of Bar Date") (attached as Exhibit A to  
4 the Motion), I, as Monitor, shall mail the Notice of Bar Date along with an approved proof of  
5 claim form to all known and suspected interested parties, and will publish notice in appropriate  
6 newspapers of general readership.

7 8. The establishment of a Bar Date is necessary in order to provide certainty and  
8 finality to the claims process and to allow for the timely wind-down of the monitorship. I propose  
9 that the Bar Date be set ninety-five (95) days from the date of mailing the Notice of Bar Date (i.e.,  
10 90 days plus 5 days for mailing), thereby providing sufficient notice to all to file their claims.

11 9. Once the Bar Date has passed and I have reviewed the claims, I will bring an  
12 omnibus motion or motions for approval of claims, rejection of claims, and disbursement of  
13 proceeds. All claimants will receive notice of this omnibus motion or motions with information  
14 about how I propose his/her or its claim be treated, so that a claimant whose claim is rejected can  
15 file an opposition to the motion if the claimant wishes to be heard.

16 NOTICE

17 10. I intend to provide creditors at least ninety (90) days notice to file a proof of claim  
18 from the date of receipt of the Notice of Bar Date. I believe that setting the Bar Date ninety-five  
19 (95) days from the date of mailing the Notice of Bar Date will ensure that creditors will have  
20 sufficient notice within which to file their claims with the Monitor.

21 11. I will also publish notice of the Bar Date in the *Wall Street Journal*, (or similar  
22 publication), the *San Francisco Chronicle*, and on the Monitor's website in a form similar to the  
23 Form of Notice for Publication attached to the Motion as Exhibit B.

24 EFFECT OF FAILURE TO FILE PROOF OF CLAIM

25 12. Any party who is required to file a proof of claim and otherwise fails to do so by  
26 the Bar Date: (i) should not, with respect to any such claim, be treated as a creditor or claimant of  
27 the Relief Defendants, (ii) should be forever barred, estopped and enjoined from (a) filing a proof  
28 of claim at a later date with respect to such claim, (b) asserting any claim against the Relief

1 Defendants, and (c) participating in any distribution in this case on account of such claim, and (iii)  
2 the monitorship and the Relief Defendants should be discharged forever from any and all  
3 indebtedness or liability in respect of such claim.

4 I declare under penalty of perjury under the laws of the United States of America that the  
5 foregoing is true and correct. Executed this 9<sup>th</sup> day of September, 2008, at Portland, Oregon.

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MICHAEL A. GRASSMUECK