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UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
(Tampa Division)

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SECURITIES AND EXCHANGE COMMISSION, )  
)  
Plaintiff, )  
v. )  
)  
PHYSICIANS GUARDIAN UNIT INVESTMENT )  
TRUST, by and through its Trustee, PHYSICIANS )  
GUARDIAN, INC.; PHYSICIANS GUARDIAN, )  
INC.; PHYSICIANS GUARDIAN INSURANCE )  
CORP.; ABFAC, INC.; TEL COM PLUS EAST, )  
L.L.C.; TEL COM PLUS WEST, L.L.C.; )  
CHARLES POLLEY; and ROBERT W. )  
SINGERMAN, )  
)  
Defendants. )

CASE NO. 99-1117-CIV-T-17A-MAGISTRATE PIZZO

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CLERK OF COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA, FLORIDA

**FINAL JUDGMENT CONCERNING DISGORGEMENT, PRE-JUDGMENT INTEREST, AND CIVIL MONEY PENALTY AGAINST DEFENDANT CHARLES A. POLLEY**

Plaintiff Securities and Exchange Commission ("SEC" or "Commission") commenced this action by filing its Complaint against, among others, Defendant Charles A. Polley ("Defendant"). In its Complaint, the Commission sought, among other relief, a permanent injunction to prohibit violations by the Defendant of Sections 5(a), 5(c), 17(a)(1), 17(a)(2) and 17(a)(3) of the Securities Act of 1933 ("Securities Act"), Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), and Rule 10b-5, thereunder, an order providing for disgorgement and prejudgment interest thereon, and imposition of a civil money penalty against Defendant pursuant to Section 20(d) of the Securities Act and Section 21(d) of the Exchange Act.

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On March 26, 2001, this Court entered an Order of Permanent Injunction by consent as to Defendant Polley enjoining him from future violations of the above provisions. In its Order of Permanent Injunction the Court retained jurisdiction over this matter, and the Commission's claim for disgorgement and a civil money penalty, and over Polley in order to implement and carry out the terms of all Orders and Decrees that may be entered and/or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court, and to order any other relief that the Court deemed appropriate under the circumstances.

Defendant, by the Consent affixed hereto, without admitting or denying any of the allegations in the Commission's Complaint or any other paper filed herein, except as to the jurisdiction of this Court, has agreed to the entry of this Final Judgment Concerning Disgorgement, Pre-Judgment Interest, and Civil Money Penalty ("Final Judgment"). This Court having accepted such Consent and this Court having jurisdiction over the Defendant and the subject matter hereof, and the Court being fully advised in the premises, orders as follows:

I.

**DISGORGEMENT AND CIVIL MONEY PENALTY**

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that Defendant shall pay disgorgement in the amount of \$261,340, representing the proceeds he received as a result of the conduct alleged in the Complaint, together with pre-judgment interest thereon. The amount of disgorgement owed by Defendant Polley shall be reduced by the \$176,340.92, which was turned over in 1999 to the Receiver by a company once controlled by Polley, resulting in a balance owed of \$84,999.08 in disgorgement plus pre-judgment interest.

Furthermore, in satisfaction of the balance of \$84,999.08 in disgorgement plus pre-judgment interest owed, within five (5) business days of the entry of this Final Judgment, Defendant shall instruct Bank of America to pay \$9,197.32 held by it on behalf of Defendant in Account No. 001266913297 to the Court appointed Receiver in this action.

Furthermore, within five (5) business days Defendant shall instruct Bank of America to pay \$ 5,775.56 to the Clerk of the Court of the Middle District of Florida, held by it on behalf of Defendant as signatory to the account of Defendant Tel Com Plus, Inc. Account No. 00163800924. This payment should be made together with a cover letter identifying Polley as a Defendant in this action; setting forth the title and civil action number of this action and the name of this Court; and specifying that payment is made pursuant to this Final Judgment. Defendant shall simultaneously transmit photocopies of such payment and letter to the SEC's counsel, Teresa J. Verges, Esquire and/or Lisa T. Roberts, Esquire, 801 Brickell Avenue, Suite 1800, Miami, Florida 33131. By making this payment, Defendant relinquishes all legal and equitable right, title, and interest in such funds, and no part of the funds shall be returned to Defendant. The Clerk shall deposit the funds into an interest bearing account with the Court Registry Investment System ("CRIS"). These funds, together with any interest and income earned thereon (collectively, the "Fund"), shall be held by the CRIS until further order of this Court. In accordance with the guidelines set by the Director of the Administrative Office of the U.S. Courts, the Clerk is directed, without further order of this Court, to deduct from the income earned on the money in the Fund a fee equal to ten percent of the income earned on the Fund. Such fee shall not exceed that authorized by the Judicial Conference of the United States. The Commission may be motion propose a plan to distribute the Fund subject to the Courts approval.

Such a plan may provide that the Fund shall be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. The Commission may by motion propose a plan to distribute the Fund subject to the Courts approval; if no distribution will be made to investors, the Commission will notify the Clerk who shall thereafter distribute the Fund to the United States Department of the Treasury, c/o Comptroller, Securities and Exchange Commission, 450 Fifth Street N.W., Washington, D.C., 20549, within thirty (30) days of the date of this Final Judgment, by cashier's check, certified check or postal money order, under cover of a letter that identifies the name and number of this action and the name of this Court, with a copy to Teresa J. Verges, Esq. and/or Lisa T. Roberts, Esq., Securities and Exchange Commission, 801 Brickell Avenue, Suite 1800, Miami, Florida, 33131, counsel of record for the Plaintiff Securities and Exchange Commission.

Based upon Defendant's sworn representations in his Statement of Financial Condition dated December 9, 2002, and other documents submitted to the Commission, payment of \$70,026.20 of disgorgement and pre-judgment interest thereon is waived, contingent upon the accuracy and completeness of his Statement of Financial Condition.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that based on Defendant's sworn representations in his Statement of Financial Condition dated December 9, 2002, and other documents submitted to the Commission, the Court is not ordering him to pay a civil money penalty. The determination not to impose a civil money penalty and to waive payment of disgorgement and pre-judgment interest thereon is contingent upon the accuracy and completeness of his Statement of Financial Condition.

If at any time following the entry of this Judgment the Commission obtains information indicating that Defendant's representations to the Commission concerning his assets, income, liabilities, or net worth were fraudulent, misleading, inaccurate, or incomplete in any material respect as of the time such representations were made, the Commission may, at its sole discretion and without prior notice to Defendant, petition the Court for an order requiring Defendant to pay the unpaid portion of the disgorgement, pre-judgment interest thereon, and the maximum civil penalty allowable under the law. In connection with any such petition, the only issue shall be whether the financial information provided by Defendant was fraudulent, misleading, inaccurate, or incomplete in any material respect as of the time such representations were made. In its petition, the Commission may move this Court to consider all available remedies, including, but not limited to, ordering Defendant to pay funds or assets, directing the forfeiture of any assets, or sanctions for contempt of this Final Judgment. The Commission may also request additional discovery. Defendant may not, by way of defense to such petition: (1) challenge the validity of the Consent or the Final Judgment; (2) contest the allegations in the Complaint filed by the Commission; (3) assert that payment of disgorgement, pre-judgment interest and post-judgment interest or a civil penalty should not be ordered; (4) contest the amount of disgorgement and pre-judgment and post-judgment interest; (5) contest the imposition of the maximum civil penalty allowable under the law; or (6) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

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II.

**RETENTION OF JURISDICTION**

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that this Court shall retain jurisdiction over this matter and Defendant in order to implement and carry out the terms of all Orders and Decrees that may be entered and/or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court, and will order other relief that this Court deems appropriate under the circumstances.

Dated this 25<sup>th</sup> day of AUGUST, 2003.



ELIZABETH A. KOVACHEVICH

United States District Judge

**ELIZABETH A. KOVACHEVICH  
UNITED STATES DISTRICT JUDGE**

Copies to:

Edmund S. Whitson, III, Esquire  
Donna DeVaney, Esquire  
CARLTON FIELDS P.A.  
One Harbour Place (33602)  
Post Office Box 3239  
Tampa, Florida 33601  
*Attorneys for Receiver, Gwynne A. Young*

Gwynne A. Young, Esquire  
CARLTON FIELDS P.A.  
Post Office Box 3239  
Tampa, Florida 33601-3239  
*Receiver for Defendants PG Trust, PGI, Physician Guardian and ABFAC*

Bill Guerrant, Esq.  
Hill, Ward & Henderson  
Suite 3700 Barnett Plaza  
101 East Kennedy Blvd.  
Tampa, FL 33602  
*Attorneys for Defendants Tel Com Plus East, LLC, Tel Com West, LLC N/K/A United States Telecommunications, Inc.*

Melissa M. Thalji, Esquire  
Burton W. Wiand, Esquire  
Fowler, White, et al.  
501 East Kennedy Blvd.  
Tampa, FL 33602  
*Attorneys for Defendant Charles A. Polley*

Robert Singerman  
14617 Turtle Creek Circle, Apt. 711  
Lutz, Florida 33549  
*Defendant Robert Singerman, Pro Se*

Teresa J. Verges, Esquire and  
Lisa T. Roberts, Esquire  
801 Brickell Avenue, Suite 1800  
Miami, Florida 33131  
*Counsel for Securities and Exchange Commission*

F I L E C O P Y

Date Printed: 08/26/2003

Notice sent to:

— John R. Teakell, Esq.  
Securities and Exchange Commission  
801 Brickell Ave., Suite 1800  
Miami, FL 33131

8:99-cv-01117 jlh

— J. Cindy Eson, Esq.  
Securities & Exchange Commission  
Miami Branch Office  
801 Brickell Ave., Suite 1800  
Miami, FL 33131

8:99-cv-01117 jlh

— Chedley C. Dumornay, Esq.  
Securities & Exchange Commission  
Miami Branch Office  
801 Brickell Ave., Suite 1800  
Miami, FL 33131

8:99-cv-01117 jlh

— William C. Guerrant Jr., Esq.  
Hill, Ward & Henderson, P.A.  
101 E. Kennedy Blvd., Suite 3700  
P.O. Box 2231  
Tampa, FL 33601

8:99-cv-01117 jlh

— Burton Webb Wiand, Esq.  
Fowler White Boggs Banker, P.A.  
501 E. Kennedy Blvd.  
P.O. Box 1438  
Tampa, FL 33601-1438

8:99-cv-01117 jlh

— Gwynne Alice Young, Esq.  
Carlton Fields, P.A.  
P.O. Box 3239  
Tampa, FL 33601-3239

8:99-cv-01117 jlh

— Michael P. Horan, Esq.  
Akerman, Senterfitt & Eidson, P.A.  
100 S. Ashley Dr., Suite 1500  
P.O. Box 3273



Tampa, FL 33601-3273

8:99-cv-01117 jlh

— Alfred A. Colby, Esq.  
Ketchey, Horan, Hearn, Neukamm & Baumann, P.A.  
100 N. Tampa St., Suite 1900  
P.O. Box 500  
Tampa, FL 33601-0500

8:99-cv-01117 jlh

— Ginnie Van Kesteren, Esq.  
Law Office of Ginnie Van Kesteren  
150 2nd Ave. N., Suite 1470  
St. Petersburg, FL 33701

8:99-cv-01117 jlh

— Vanessa Lizzette Cohn, Esq.  
Cohn & Cohn, P.A.  
1110 N. Florida Ave.  
P.O. Box 3424  
Tampa, FL 33601-3424

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