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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
(West Palm Beach Division)

CARLOS JUDGE  
CLERK, USDC SD FL WPB

SECURITIES AND EXCHANGE COMMISSION, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 HURST CAPITAL CORPORATION, )  
 JAMES F. HURST, and E. WILLIAM CLIFTON )  
 )  
 Defendants, )  
 )  
 and )  
 )  
 HURST CAPITAL COMMERCIAL CORPORATION, )  
 HURST CLIFTON CORPORATION, )  
 LIQUID ASSETS, INC., )  
 CORPORATE LEASING SYSTEMS, INC., and )  
 JOSEPH A. HURST )  
 )  
 Relief )  
 Defendants. )

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Case No.  
 98-8090-CIV-HURLEY  
 AMENDED  
 COMPLAINT FOR  
 INJUNCTIVE AND  
OTHER RELIEF

Plaintiff Securities and Exchange Commission ("SEC" or "Commission") alleges as follows:

INTRODUCTION

1. The Commission brings this action to restrain and enjoin Defendants from continuing to violate the federal securities laws by offering and selling unregistered securities in the form of interests in accounts receivable. Defendant Hurst Capital Corp. ("HCC") has raised \$49 million from over 1300 investors across the nation but has purchased only \$625,000 in accounts receivable. Millions of dollars have been misappropriated by Defendants or transferred to corporations they control. For example, the SEC has determined that Defendant James F. Hurst, HCC's president, diverted at least \$10 million in investor funds to his personal account and

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spent this money on a luxury home, on personal investments, and on cars and boats. Unless immediately restrained and enjoined, Defendants will continue to defraud the investing public and to place investor funds at serious risk of diversion and theft.

**DEFENDANTS**

2. Hurst Capital Corporation ("HCC") is a Florida corporation incorporated in November 1988, with principal offices located at 501 S. Flagler Drive, Suite 307, West Palm Beach, Florida 33401.

3. James F. Hurst ("Hurst") is 40 years old and the president and chief executive officer of HCC.

4. E. William Clifton ("Clifton") is 66 years old and the vice-president of HCC.

**RELIEF DEFENDANTS**

5. Hurst Capital Commercial Corporation ("Hurst Commercial") is a Florida corporation incorporated in June 1997, with principal offices located at Hurst's residence, 1125 N. Flagler Drive, West Palm Beach, Florida 33401. Hurst is the president and chief executive officer of Hurst Commercial; he has transferred at least \$6.5 million in investor funds to Hurst Commercial.

6. Hurst Clifton Corporation ("Hurst Clifton") is a Florida corporation, with offices located at 501 S. Flagler Drive, Suite 307, West Palm Beach, Florida 33401. Clifton is the sole officer and director of Hurst Clifton. At least \$6.7 million in investor funds have been transferred to Hurst Clifton.

7. Liquid Assets, Inc. ("Liquid Assets") is a Florida corporation incorporated in September 1996, with principal offices located at 501 S. Flagler Drive, Suite 307, West Palm Beach,

Florida 33401. Hurst is Liquid Assets' president and secretary, and Clifton is its vice-president and treasurer. Liquid Assets received \$195,000 in investor funds from HCC.

8. Corporate Leasing Systems, Inc. ("Corporate Leasing") is a Florida corporation incorporated in April 1997, with principal offices located at Hurst's residence, 1125 N. Flagler Drive, West Palm Beach, Florida 33401. Hurst is Corporate Leasings' sole officer and, in April 1997, he titled a luxury boat he purchased with \$300,000 in investor funds in Corporate Leasing's name.

9. Joseph A. Hurst is Defendant James F. Hurst's brother. During 1997, Joseph A. Hurst received approximately \$4 million in fraudulently obtained investor funds.

#### JURISDICTION AND VENUE

10. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(d) and 22(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §§ 77t(b), 77t(d) and 77v(a), and Sections 21(d), 21(e), and 27 of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §§ 78u(d), 78u(e) and 78aa.

11. Certain of the acts and transactions constituting violations of the Securities Act and the Exchange Act have occurred within the Southern District of Florida. The principal offices of Defendant HCC is located within the Southern District of Florida. Defendant Hurst resides in the Southern District of Florida. Defendants have engaged in many of the acts and practices complained of herein within the Southern District of Florida.

12. Defendants, directly and indirectly, have made use of the means and instrumentalities of interstate commerce, the means and

instruments of transportation and communication in interstate commerce, and the mails, in connection with the acts, practices, and courses of business complained of herein.

### **THE FRAUDULENT SCHEME**

#### **Background**

13. HCC purports to be engaged in the business of factoring accounts receivable. HCC claims that it raises capital from investors to purchase accounts receivable from health care providers and commercial companies at a discount. HCC ostensibly pays sellers up to 85% of the value of their accounts receivable due from insurance companies, government agencies.

14. In a document titled "Hurst Capital Corporation -- Medical Receivables Purchase Program," HCC tells investors that the "'investment return' element of this program consists in the margin between the discounted price and the sum collected on each receivable for the account of the client." HCC also represents that their funds will be reinvested four times a year, and that they will receive a guaranteed 20% annual return.

#### **HCC's Offering**

15. Since 1993, HCC has been offering and selling securities to the general public in the form of promissory notes and Medical Insurance Receivables Purchase and Agency Agreements ("MIR Agreements"). Through these two investment vehicles, HCC has raised at least \$49 million from approximately 1300 investors nationwide, \$36.5 million of which was raised during 1997.

16. HCC raised the lion's share of investor funds, i.e., approximately \$45.4 million, through the MIR program. HCC

guarantees investors annual returns of 20%, which are paid out at 5% per quarter. When investing in the MIR program, investors can elect to receive quarterly interest payments, re-invest the interest earned, or defer compensation and receive interest payments annually. If investors choose to re-invest their earned interest, HCC promises a compounded annual return of 21.55%. Investors are told that their funds are "turned" or re-invested four times a year. HCC also gives investors the option of investing funds in Individual Retirement Accounts ("IRA") through IRA custodians selected by HCC.

17. The MIR program has no minimum investment, and investors provide no financial information to HCC. HCC encourages investors to keep their funds in the MIR program for at least three years, but they are told that they may withdraw their funds upon 60-day written notice to HCC. After investing, investors are not provided with any information or documentation as to which accounts receivable HCC has purchased on their behalf.

18. Investments in HCC's MIR program are offered and sold to the general public through a network of independent sales agents. HCC provides the sales agents with marketing materials and all necessary training. At least one sales agent has used investment sales seminars to solicit funds from investors and another used an advertisement. HCC pays its sales agents a 2% commission on the investor's principal investment and does not require that they have securities licenses.

19. In September 1996, HCC began offering and selling three-year promissory notes to the general public through three private

placement offerings. HCC promoted all three offerings and raised approximately \$3.6 million from investors.

20. The three private placement offerings were:

(a) a \$30 million offering issued by the Hurst Secured Participating Note Fund, L.L.C., dated September 1, 1996, through which HCC raised \$100,000;

(b) a \$30 million offering issued by the Hurst Receivables Fund, L.L.C., dated November 1, 1996, through which it raised an estimated \$1.2 million; and

(c) a \$5 million offering issued by the Hurst Account Receivables Fund, L.L.C., dated May 15, 1997, through which it raised approximately \$2.3 million.

21. These notes promise investors quarterly returns of 5%, or 20% per year. The minimum investment is \$25,000, but HCC has accepted smaller amounts. The notes purport to be collateralized by the medical insurance and/or commercial accounts receivable purchased by HCC.

22. HCC's MIR Agreements and notes are securities as defined by Section 2(a)(1) of the Securities Act, 15 U.S.C. § 77b(1), and Section 3(a)(10) of the Exchange Act, 15 U.S.C. § 78c(10). No registration statement has been filed or is in effect with the Commission in connection with the securities offered by HCC.

#### **HCC's Offering Materials**

23. Investors and prospective investors in the MIR program are provided with offering materials, which describe HCC and the investment program. In the materials, HCC represents that it has

10 years of experience purchasing medical receivables and claims to have an "excellent record of performance" dating back to 1985.

24. In the offering materials, HCC also represents to investors their funds will be used to purchase accounts receivable from "individual doctors, clinics and hospitals" that are due from insurers such as Prudential, Aetna and Blue Cross/Blue Shield. Investors are told that HCC will act as their agent to purchase these accounts receivable and that they are "actual purchasers of accounts receivable not investors in securities." A page of "Frequently Asked Questions" assures investors that the risk of an insurance company becoming insolvent and being unable to pay is "virtually non-existent considering that the claims/receivables will be paid by credit worthy insurance companies, whose credit ratings will have been verified."

25. The offering materials explain that investor returns will be generated from the "margin between the discounted purchase price and the sum collected on each receivable." The 5% per quarter returns are described to investors as "slightly conservative and therefore readily attainable." Along with the offering materials, investors receive a MIR Agreement, which they all must sign in order to invest in the program. The MIR Agreement states HCC is acting as the investor's agent to purchase accounts receivable on his or her behalf.

26. HCC also profiles its medical and commercial divisions in a nineteen (19) page glossy brochure recently distributed to potential investors. In the brochure, HCC is introduced to investors as a "creative innovator in state-of-the-art financial

technology." HCC also represents to investors that it has earned a "leadership position" in the accounts receivable funding industry and has "pioneered asset-based financing for health care providers." Investors are further told about HCC's "advanced computer software technology" and its team of expert personnel, which include attorneys, accountants, insurance claims analysts, and computer programmers. In these materials, HCC also asserts that it "manages outstanding debt of more than \$200 million nationwide."

27. Investors and potential investors in the three-year notes are provided with Limited Offering Memoranda ("Memoranda"), which represent that their funds will be used to acquire accounts receivables from medical and commercial companies that are payable by insurance companies, Medicare, Medicaid and other commercial entities. The Memoranda advise investors that their investments are collateralized by the accounts receivable purchased. In the Memoranda, HCC asserts that it generally purchases accounts receivable of payors "that hold an A.M. Best rating of at least A, or Standard & Poor's, Moody's, or Duff & Phelps rating of at least BBB." HCC further claims that if the minimum rating is not met, it may "enhance performance either by reserves and/or insurance policies."

#### Role of Hurst

28. Hurst, as president and chief executive officer of HCC, manages the day-to-day affairs of the company. Hurst solicits and negotiates the purchase of accounts receivable from health care providers and commercial entities. He signs the agreements for



purchase and sale of receivables on behalf of HCC. He also has signature authority over all of HCC's bank accounts.

29. In addition, the brochure given to potential investors includes a letter from Hurst, as president and chief executive officer of HCC, touting the company's twelve years of experience as a "creative innovator in state-of-the-art financial technology," and describing HCC's "unique services of accounts receivable funding, collections, and accounts management to an industry with limitless potential."

#### **Role of Clifton**

30. Clifton is vice-president of HCC. Clifton frequently communicates with investors and potential investors verbally and in writing. He has made direct offers and sales of the MIR Agreements to investors and potential investors. He also signs most of the investor correspondence, including letters to investors acknowledging receipt of their funds and thanking them for their investments. Many of the MIR Agreements issued to investors are signed by Clifton on behalf of HCC.

#### **Material Misrepresentations and Omissions**

##### **Purchase of Accounts Receivable**

31. HCC's representations to investors that it is purchasing medical insurance or commercial accounts receivable on their behalf are false. Of the \$49 million in investor funds raised by HCC, HCC own records reflect that it has purchased only approximately \$625,000 in accounts receivable from five businesses. Only one of these five was a health care provider, and it is now defunct.

**Hurst's Misappropriation of Investor Funds**

32. Hurst has taken more than \$10 million in investor funds for his own use. For example, Hurst used over \$1.3 million in investor funds to purchase and renovate a mansion for himself in West Palm Beach, Florida. He has also been using investor funds to pay his household and living expenses. In addition, Hurst deposited \$4 million in investor funds into a personal investment account. He has also purchased over \$2 million in annuities and other investments, as well as over \$600,000 in boats and automobiles, all with monies from investors.

**Ownership of Accounts Receivable**

33. HCC is also misrepresenting to investors that they are the actual owners of the accounts receivable HCC purchases. Contrary to what the company tells investors, the purchase agreements that HCC enters into with health care providers or commercial entities show that HCC, and not any investor or group of investors, is the purchaser of the accounts receivable. In fact, none of HCC's purchase agreements reflect that the company is purchasing accounts receivable on behalf of investors.

34. Nor do investors hold any security interests in the receivables purchased by HCC. The one and only Uniform Commercial Code filing made by HCC in connection with its accounts receivable purchases reflects that HCC, and not any investor or group of investors, has a secured interest in the receivables. In addition, the investors receive no documentation or information from HCC as to which accounts receivable HCC has purportedly purchased on their behalf.

**Evidence of a Ponzi Scheme**

35. HCC is engaged in a Ponzi scheme. Bank records indicate that, as recently as December 1997, HCC is using new investor money to pay interest to prior investors. The bank records further reflect that the four named relief defendants, three controlled by Hurst and one controlled by Clifton, have received over \$13.5 million in investor funds.

**COUNT I**

**SALE OF UNREGISTERED SECURITIES IN VIOLATION OF SECTIONS 5(a) AND 5(c) OF THE SECURITIES ACT**

36. The Commission repeats and realleges paragraphs 1 through 35 of this Complaint.

37. No registration statement was filed or in effect with the Commission pursuant to the Securities Act with respect to the securities and transactions described herein.

38. Since a date unknown but since at least 1993 through to the present, Defendants HCC, Hurst, and Clifton, directly and indirectly, have:

- (a) made use of the means or instruments of transportation or communication in interstate commerce or of the mails to sell securities as described herein, through the use or medium of a prospectus or otherwise;
- (b) carried securities or caused such securities, as described herein, to be carried through the mails or in interstate commerce, by any means or instruments of transportation, for the purpose of sale or delivery after sale; and/or

(c) made use of the means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise, as described herein, without a registration statement having been filed or being in effect with the Commission as to such securities.

39. By reason of the foregoing, Defendants HCC, Hurst, and Clifton have violated, and unless enjoined, will continue to violate Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. §§ 77e(a) and 77e(c).

**COUNT II**

**FRAUD IN VIOLATION OF  
SECTION 17(a)(1) OF THE SECURITIES ACT**

40. The Commission repeats and realleges paragraphs 1 through 39 of the Complaint.

41. Since a date unknown but since at least 1993 through to the present, Defendants HCC, Hurst, and Clifton, directly and indirectly, by use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, in the offer or sale of securities, as described herein, have knowingly, willfully or recklessly employed devices, schemes or artifices to defraud.

42. By reason of the foregoing, Defendants HCC, Hurst, and Clifton have violated and, unless enjoined, will continue to violate Section 17(a)(1) of the Securities Act, 15 U.S.C. § 77q(a)(1).

COUNT III

FRAUD IN VIOLATION OF  
SECTION 10(b) OF THE EXCHANGE ACT AND RULE 10b-5

43. The Commission repeats and realleges paragraphs 1 through 42 of its Complaint.

44. Since a date unknown but since at least 1993 through to the present, Defendants HCC, Hurst, and Clifton, directly or indirectly, by use of the means or instrumentalities of interstate commerce or of the mails, in connection with the purchase or sale of securities have knowingly, willfully and/or recklessly:

- (a) employed devices, schemes or artifices to defraud;
- (b) made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and/or
- (c) engaged in acts, practices and courses of business which have operated, are now operating and will operate as a fraud upon the purchasers of such securities.

45. By reason of the foregoing, Defendants HCC, Hurst, and Clifton have violated and, unless enjoined, will continue to violate Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240. 10b-5, thereunder.

COUNT IV

FRAUD IN VIOLATION OF  
SECTIONS 17(a)(2) AND 17(a)(3) OF THE SECURITIES ACT

46. The Commission repeats and realleges paragraphs 1 through 45 of its Complaint.

47. Since a date unknown but since at least 1993 through to the present, Defendants HCC, Hurst, and Clifton, directly and indirectly, by use of the means or instruments of transportation or communication in interstate commerce or by the use of the mails, in the offer or sale of securities, as described herein, have:

- (a) obtained money or property by means of untrue statements of material facts and omissions to state material facts necessary to make the statements made, in the light of the circumstances under which they were made, not misleading; and/or
- (b) engaged in transactions, practices and courses of business which are now operating and will operate as a fraud or deceit upon purchasers and prospective purchasers of such securities.

48. By reason of the foregoing, Defendants HCC, Hurst, and Clifton have violated and, unless enjoined, will continue to violate Sections 17(a)(2) and 17(a)(3) of the Securities Act, 15 U.S.C. §§ 77(q)(a)(2) and 77(q)(a)(3).

**RELIEF REQUESTED**

**WHEREFORE**, the Commission respectfully requests that the Court:

**I.**

**Declaratory Relief**

Declare, determine and find that Defendants HCC, Hurst, and Clifton committed the violations of the federal securities laws alleged herein.

**II.**

**Temporary Restraining Order,  
Preliminary and Permanent Injunctive Relief**

Issue a Temporary Restraining Order, a Preliminary Injunction and a Permanent Injunction, restraining and enjoining Defendants HCC, Hurst, and Clifton, their officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, and each of them, from violating: (a) Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. §§ 77e(a) and 77e(c); (b) Section 17(a)(1) of the Securities Act, 15 U.S.C. § 77q(a); (c) Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5, thereunder; and (d) Sections 17(a)(2) and 17(a)(3) of the Securities Act, 15 U.S.C. §§ 77(q)(a)(2) and 77(q)(a)(3).

**III.**

**Disgorgement**

Issue an Order requiring Defendants HCC, Hurst, and Clifton, and Relief Defendants Hurst Commercial, Hurst Clifton, Liquid Assets, Corporate Leasing Systems and Joseph A. Roberts, jointly

and severally to disgorge all ill-gotten profits or proceeds that they have received as a result of the acts and/or courses of conduct complained of herein, with prejudgment interest.

IV.

**Penalties**

Issue an Order directing Defendants Hurst and Clifton to pay civil money penalties pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d) of the Exchange Act, 15 U.S.C. § 78(d)(3).

V.

**Asset Freeze and Accounting**

Issue an Order temporarily freezing the assets of Defendants HCC, Hurst, and Clifton, and Relief Defendants Hurst Commercial, Hurst Clifton, Liquid Assets, Corporate Leasing Systems, and Joseph A. Roberts until further Order of the Court, and requiring accountings by HCC, Hurst, Clifton, Hurst Commercial, Hurst Clifton, Liquid Assets, Corporate Leasing Systems and Joseph A. Roberts.

VI.

**Appointment of Receiver**

Issue an Order appointing a Receiver of the assets of HCC to marshal and safeguard all of said assets, and any other duties the Court deems appropriate, and to prepare a report to the Court and the Commission detailing the activities of HCC, Hurst, and Clifton and the whereabouts of investor funds.



VII.

**Records Preservation and Expedited Discovery**

Issue an Order requiring Defendants HCC, Hurst, and Clifton, and Relief Defendants Hurst Commercial, Hurst Clifton, Liquid Assets, Corporate Leasing Systems and Joseph A. Roberts to preserve any records related to the subject matter of this lawsuit that are in their custody, possession or subject to their control, and to respond to discovery on an expedited basis.

VIII.

**Further Relief**

Grant such other and further relief as may be necessary and appropriate.

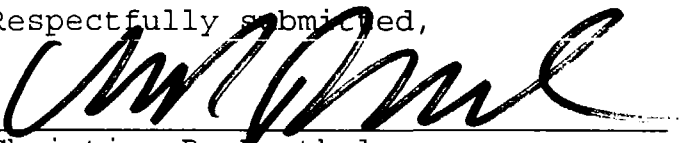
IX.

**Retention of Jurisdiction**

Further, the Commission respectfully requests that the Court retain jurisdiction over this action in order to implement and carry out the terms of all orders and decrees that may hereby be entered, or to entertain any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court.

Respectfully submitted,

By:



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Dated: June 10, 1998

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