IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. ANGELO A. ALLECA, SUMMIT WEALTH MANAGEMENT, INC., SUMMIT INVESTMENT FUND, LP, ASSET DIVERSIFICATION FUND, LP, and PRIVATE CREDIT OPPORTUNITIES FUND, LLC Defendants.	Civil Action No. 1:12-CV-3261-WSD

RECEIVER'S MOTION FOR ENTRY OF JUDGMENT UNDER FED. R. CIV. P. 54(b)

Receiver Robert D. Terry hereby moves seeking an amendment to the October 15, 2015, Opinion and Order (the "October 15 Order") (D.E. 113) that, among other things, granted the Receiver's Motion for Approval of Settlement of Disputed Claim and Settlement Agreement and for Entry of a Bar Order. Specifically, the Receiver seeks an amendment that adds language making the October 15 Order a final judgment under Fed. R. Civ. P. Rule 54(b).

A memorandum of law in support hereof is submitted concurrently herewith.

Respectfully submitted this 18th day of December, 2015.

/s/ J. Steven Parker
J. Steven Parker
Counsel for Receiver
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CERTIFICATE OF SERVICE

I certify that the foregoing was prepared with one of the font and point selections approved by the Court in LR 5.1B. I further certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notice of electronic filing to counsel of record.

Respectfully submitted this 18th day of December, 2015.

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MEMORANDUM OF LAW IN SUPPORT OF
RECEIVER'S MOTION FOR ENTRY OF JUDGMENT
UNDER FED. R. CIV. P. 54(b)

I. Introduction

Movant Robert D. Terry, the Receiver, seeks an amendment to the October 15, 2015, Opinion and Order (the "October 15 Order") (D.E. 113) that, among other things, granted the Receiver's Motion for Approval of Settlement of Disputed Claim and Settlement Agreement and for Entry of a Bar Order. Specifically, the Receiver seeks an amendment that adds language making the October 15 Order final under

Fed. R. Civ. P. Rule 54(b). As will be demonstrated herein, a practice has emerged among district courts in Receivership cases of using the recitation of finality under Rule 54(b) in orders approving settlement such as the present one, in order to provide protection to the party paying financial consideration as part of the settlement.

The October 15 Order approved the Receiver's settlement with insurer Federal Insurance Company ("Federal"), whereby Federal is released and protected from further liability in consideration of a compromise payment of the $1,487,500 into the Receivership Estate, and with Federal receiving the protection of a Bar Order that is final and not subject to appeal. Under the terms of the Agreement, the settlement is "effective and binding on the Parties only after entry of a Final Order."

The Settlement Agreement between Federal and the Receiver defines a Final Order, in relevant part, as "an Order (or Orders) that has not been reversed, stayed, modified or amended, and as to which the time to appeal or seek reconsideration or rehearing thereof has expired." (D.E. 103-1 at 8.) The October 15 Order approved the Settlement Agreement, entered a Bar Order, and retained jurisdiction related "to the administration, interpretation, effectuation, or enforcement of [the] Order, the Settlement Agreement, and any related disputes." (D.E. 113.) The Order did not, however, include the recitation from Rule 54(b) establishing it as a final judgment and triggering a mandatory time for appeal. The proposed Bar Order submitted by

the Receiver to the Court, and approved as to form by Federal, contained such a recitation.

Upon reviewing the October 15 Order, counsel for Federal advised counsel for the receiver of Federal's position that Federal's obligation to pay the settlement consideration was not triggered by the October 15 Order. The Receiver agrees that Federal's obligation to pay is not triggered until the Bar Order becomes final and non-appealable. Without expressing an opinion as to whether the October 15 Order is, in fact, final and non-appealable, the Receiver hereby requests an amendment to the October 15 Order adding language that makes the October 15 Order final under Rule 54(b). This request is consistent with the intention of the settling parties as more fully discussed in the immediately following section.

II. Finality is a material condition in the Settlement Agreement.

The Settlement Agreement leaves no doubt that Federal's obligation to pay the settlement amount is contingent upon the expiration of the time to appeal the October 15 Order. Federal is obligated to pay the settlement amount "[w]ithin ten (10) business days of the Effective Date." (D.E. 103-1 at § 3.4.) The Effective Date is defined as "the date that the Final Order . . . becomes final and not subject to further appeal." (*Id.* at § 3.3.) "Final Order" is a defined term under the Settlement

Agreement. (D.E. 103-1 at § 8.) Indeed, obtaining a Final Order is one of the two defined "Settlement Contingencies" in the Settlement Agreement:

> **3.2 Court Approval.** The Parties agree and acknowledge that this Agreement is contingent upon and shall be effective and binding on the Parties only after entry of a Final Order (or Orders) of the Court in the Enforcement Action, and the occurrence of each of the following (the "Settlement Contingencies"):
>
> a. the approval of the settlement and terms of this Agreement; and
>
> b. the entry by the Court of a Final Order approving and entering a Bar Order . . .

(D.E. 103-1 at § 3.2.) As stated above, "Final Order" is defined as "an Order (or Orders) that has not been reversed, stayed, modified or amended, and as to which the time to appeal or seek reconsideration or rehearing thereof has expired." (D.E. 103-1 at 8.)

Other sections of the Settlement Agreement reinforce the contingent nature of Federal's payment obligation, and demonstrate the parties' intention to obtain an order that is expressly final for purposes of appeal. For example, Section 1.1 reiterates that, for Federal to pay, a Bar Order must not be subject to further appeal:

> **1.1** . . . to constitute a Bar Order for purposes of triggering Federal's payment obligation herein, (i) the order or judgment must be final and not subject to further appeal or any pending collateral challenge… A Bar Order in a form approved by the Parties is attached as Exhibit B.

(D.E. 103-1 at § 1.1.) The Bar Order attached as Exhibit B to the Settlement Agreement stated: "There being no just reason for delay, this Order is, and is intended to be, a final, appealable decision of the Court within the meaning of Rule 54(b) of the Federal Rules of Civil Procedure."

In a similar fashion, Section 3.7 of the Settlement Agreement reiterates Federal's payment contingency:

> **3.7 Approval Process.**
>
> . . .
>
> If the Court enters a Bar Order in accordance with Paragraph 3.2 that becomes a Final Order as defined in this Agreement, then the terms of this Agreement shall become binding on the Parties, and Federal shall transfer the payment to the Receiver . . .

(*Id.* at § 3.7.) Obtaining a Final Order was and remains a material term of the Settlement Agreement as well as a requirement for triggering Federal's payment obligation.

III. Finality is necessary to avoid substantial delay in the Receiver collecting and distributing the settlement amount.

Federal's payment obligation triggers when the Bar Order becomes final and not subject to further appeal or any pending collateral challenges. The settling parties clearly contemplated that the right of any appeal would commence upon entry of the approving order, i.e., prior to the ultimate final judgment in the action, and

further that the right of appeal would then be terminated, so that the approving order would be "Final" as defined in the Settlement Agreement, and distribution of the proceeds could then take place prior to the ultimate conclusion of the receivership. The October 15 Order, however, currently does not contain language establishing it as final.

Although the October 15 Order may be challenged with an interlocutory appeal because of its injunctive nature, a "failure to take an authorized appeal from an interlocutory order . . . does not preclude raising the question on appeal from the final judgment." *Clark v. Merril Lynch, Pierce, Fenner & Smith, Inc.*, 924 F.2d 550, 553 (4th Cir. 1991). It is also likely true that the October 15 Order is "collateral," and therefore immediately appealable. *See Coopers & Lybrand v. Livesay*, 437 U.S. 463, 468, 98 S.Ct. 2454, 2458, 57 L.Ed.2d 351 (1978). [1] Some courts have held that such collateral orders must be appealed immediately under Fed. R. App. Proc. 4. *See, e.g., SEC v. Capital Consultants LLC*, C.A. 453 F.3d 1166, 1173 (9th Cir. 2006). In the Eleventh Circuit, however, it appears that a collateral order may either be

[1] The order "conclusively determine[d] the disputed question, resolve[d] an important questions completely separate from the merits of the action, and [is] effectively unreviewable on appeal from a final judgment." *See Coopers & Lybrand*, . 437 U.S. at 468.

appealed from within the time specified by Rule 4 or after final judgment is entered in the case. *Singleton v. Apfel*, 231 F.3d 853, 856-57 (11th Cir. 2000).[2] While the facts here are distinguishable from *Singleton*, it is not apparent that the Eleventh Circuit would prohibit an appeal after final judgment.

Without Rule 54(b) finality, therefore, the October 15 Order likely remains subject to appeal at a later date – the resolution of this receivership action in its entirety. Thus, without the grant of finality under Rule 54(b), the Receiver—and, by extension, claimants—may be forced to wait months, or even years, for the termination of the Enforcement Action and the expiration of any appellate deadlines. Such a result would substantially delay distributions from the Receivership Estate.

IV. Federal courts facing similar circumstances have included Rule 54(b) findings.

The Receiver requests that the Court look to other receivership actions involving similar settlements. Two similar S.E.C. enforcement actions are instructive here. According to Federal's counsel, the possibility of obtaining a

2 For a number of reasons, the Receiver believes that the likelihood of a successful appeal is extremely low. There were no objections to the proposed settlement motion, after notice. The parties that present most risk to the finality of the October 15 Order are not parties to the case, and therefore would have to intervene. Their standing to intervene seems doubtful based upon waiver principles. Further, it is also likely that an appeal taken at a later date will have been rendered moot by subsequent proceedings. Despite all of these factors, Federal reasonably seeks the comfort of a Rule 54(b) determination.

similar framework to the one that the courts sanctioned in those two cases – particularly with respect to predictability and finality – played an important role in Federal's willingness to settle the present matter. Because these cases suggest that an order including language establishing the order as final under Rule 54(b) will facilitate settlement with, and payment from, settling insurers, the Receiver seeks the inclusion of that language in connection with the present matter.

In *S.E.C. v. Parish*, No. 2:07-cv-00919-DCN (D.S.C. May 12, 2008), the court approved a settlement agreement between the receiver, a non-party, and the non-party's insurer. In the same order approving the settlement, the court entered a bar order similar to the bar order here. (*See* May 12, 2008, Order, attached as Exhibit A). That settlement agreement conditioned payment on the order becoming "final and not subject to appeal." (*Parish* Settlement Agreement at Section 2, attached as Exhibit B.) The court's order approving the settlement agreement and bar order concluded with language establishing the order as final under Rule 54(b):

> This court finds that there is no just reason for delay for an entry of a final judgment as to the approval of the settlement and bar order and directs the entry of judgment pursuant to Fed. R. Civ. P. 54(b).

Ex. A at 13-14. That order was issued on May 12, 2008. The court did not terminate the *Parish* receivership until January 8, 2013, nearly five years later. Had the order not contained the Rule 54(b) language, the *Parish* receiver would have been forced

to wait until the conclusion of the entire proceeding before the settlement requirement was met and the payment became payable.

Similarly, the court in *S.E.C. v. Kaleta*, No. 4:09-cv-03674 (S.D. Tex. June 11, 2013), approved a settlement agreement between the receiver and an insurer as well as a bar order. (*See* June 11, 2013, Order attached as Exhibit C.) The *Kaleta* settlement agreement and bar order are substantially similar to those approved here, and in fact were a consideration during the Receiver's and Federal's negotiations. In *Kaleta*, as was negotiated here, the insurer's payment was conditioned upon the entry of a Final Claim Bar Order, defined in part as an order or judgment that is "final and not subject to further appeal or any pending collateral challenge." (*See Kaleta* Settlement Agreement attached as Exhibit D.) In its order approving the settlement and entering the bar order, the *Kaleta* court included Rule 54(b) language:

> There being no just cause for delay, this Order is, and is intended to be, a final, appealable decision of the Court within the meaning of Rule 54(b) of the Federal Rules of Civil Procedure.

Ex. C at 6.

In this proceeding, the inclusion of Rule 54(b) language will serve to trigger clearly the time limit for an appeal, and thus will satisfy the finality required as part of the consideration for Federal to pay the settlement amount. Consequently, the

Receiver moves the Court to amend its October 15 Order to include Rule 54(b) language making the October 15 Order final.

V. Conclusion

For the foregoing reasons, the Receiver respectfully requests that an amended order be entered establishing finality under Fed. R. Civ. P. 54(b). The Receiver attaches as Exhibit E to this memorandum a proposed order identical in all respects to the Court's October 15 Order with the exception that it includes the same Rule 54(b) language used in *Kaleta*, above.

Respectfully submitted this 18th day of December, 2015.

/s/ J. Steven Parker
J. Steven Parker
Counsel for Receiver
Robert D. Terry

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Respectfully submitted this 18th day of December, 2015.

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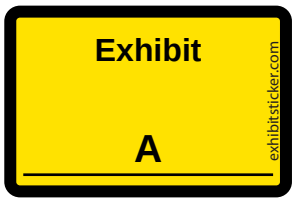

Neutral
As of: August 8, 2013 2:12 PM EDT

SEC v. Parish

United States District Court for the District of South Carolina, Charleston Division
May 12, 2008, Decided; May 12, 2008, Filed
C/A No. 2:07-CV-00919-DCN

Reporter: 2008 U.S. Dist. LEXIS 113241

Securities and Exchange Commission, Plaintiff, vs. Albert E. Parish, Jr.; Parish Economics, LLC; and Summerville Hard Assets, LLC, Defendants.

Subsequent History: Motion granted by *SEC v. Parish, 2010 U.S. Dist. LEXIS 11757 (D.S.C., Feb. 10, 2010)*

Core Terms

investors, receivership, settlement, entities, affiliated, pari delicto, pools, aggrieved, fraudulent conveyance, receivership estate, district court, settlement agreement, investment scheme, appointed, injunction, fraudulent, mathematical, lawsuits, faculty, enjoin

Counsel: **[*1]** For Securities and Exchange Commission, Plaintiff: John H Douglas, LEAD ATTORNEY, US Attorneys Office, Charleston, SC; James Alex Rue, Shawn Murnahan, William P Hicks, Securities and Exhange Commission, Atlanta, GA.

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For S Gregory Hays, Receiver: Charles Robert Burnett, LEAD ATTORNEY, PRO HAC VICE, Troutman Sanders, Atlanta, GA; David Popowski, LEAD ATTORNEY, David Popowski Law Office, Charleston, SC; Benjamin D Chastain; J David Dantzler, Jr, Troutman Sanders, Atlanta, GA; Merle Reginald Arnold, III, PRO HAC VICE.

For National Bank of South Carolina, Interested Party: Tara Elizabeth Nauful, William Harold Short, Jr, LEAD ATTORNEYS, Haynsworth Sinkler Boyd, Columbia, SC.

For MS Rau Antiques LLC, Interested Party, Interested Party: Robert C Byrd, LEAD ATTORNEY, Parker Poe Adams and Bernstein, Charleston, SC; Sydney F Cook, LEAD ATTORNEY, Richard K Leefe, Leefe Gibbs Sullivan Dupre and Aldous, Metairie, LA.

For Regions Bank, Interested Party: Mark Stephens Sharpe, LEAD ATTORNEY, Warren and Sinkler, Charleston,

SC.

For Swiss Supply Direct Inc, Interested **[*2]** Party: Robert A Muckenfuss, LEAD ATTORNEY, McGuireWoods (Char NC), Charlotte, NC.

For DIC Academy LLC, Beresford Partners LP, Interested Parties: John Hertz Warren, III, LEAD ATTORNEY, Warren and Sinkler, Charleston, SC.

For Ms Marian Ruth Parish, Interested Party: Bruce Alan Berlinsky, LEAD ATTORNEY, Bruce A Berlinsky Law Office, Charleston, SC.

For Charleston Southern University, Interested Party: Joseph Rutledge Young, Jr, LEAD ATTORNEY, Young Clement Rivers and Tisdale, Charleston, SC.

For Battery Wealth Management LLC, Interested Party: Neil Keith Emge, Jr, LEAD ATTORNEY, Carlock Copeland Semler and Stair, Charleston, SC.

For Bank of South Carolina, The, Interested Party: Larry D Cohen, LEAD ATTORNEY, Larry D Cohen Law Office, Charleston, SC.

For Bank of America NA, Interested Party, Creditor: Steven R Anderson, LEAD ATTORNEY, Steven R Anderson Law Office, Columbia, SC.

T Alexander Beard, Interested Party, Pro se, Mt Pleasant, SC.

Steven L Smith, Interested Party, Pro se, Charleston, SC.

For Steven L Smith, Interested Party: Steven L Smith, LEAD ATTORNEY, Smith and Collins, Charleston, SC.

For Kalpana P Patel, Dilip Patel, Rupal Patel, Jennifer Patel, Ravi Patel, Interested Parties: Jacques **[*3]** G Simon, LEAD ATTORNEY, PRO HAC VICE, Jacques G Simon Law Office, Merrick, NY; William Michael Gruenloh, LEAD ATTORNEY, Cone Gruenloh, Charleston, SC.

For Dilip Patel MD PC-Pension Plan, Dilip Patel MD PC Profit Sharing Plan, Dilip Patel Profit Sharing Plan Trust, Dilip Patel Living Trust, Kalpana Patel MD PC Profit Sharing Plan, Kalpana Patel Trust, Ravi Patel Trust Account No I, Ravi Patel Trust Account No II, Jennifer Patel Trust Account No I, Jennifer Patel Trust II, Rupal Patel Trust I, Rupal Patel Trust II, Rupal Chiniwala, Dikal Limited Partnership, Irrevocable Life Insurance Trust, Joint Irrevocable Trust, Sharrda Desai, also known as Sharda Banker, Lina Multani, also known as Lina Desai, Ami Multani, also known as Ami Desai, Rita Parikh, also known as Rita Banker, G Patel, J H Patel, S Shah, Ritu Patel, Nirav Chiniwala, Samay Chiniwala, Simryn Chiniwala, Interested Parties: William Michael Gruenloh, LEAD ATTORNEY, Cone Gruenloh, Charleston, SC.

For Charles Schwab & Co Inc, Interested Party: Mary (Molly) Agnes Hood Craig, LEAD ATTORNEY, Hood Law Firm, Charleston, SC.

For Joseph S Mendelsohn, Custodian: Joseph S Mendelsohn, LEAD ATTORNEY, Charleston, SC.

For L. G. Elrod, Mary Elrod, **[*4]** Tommie Williams, Amy Williams, Jerry R Williams, Objectors: Mary Leigh Arnold, LEAD ATTORNEY, Mary L Arnold Law Office, Mt Pleasant, SC.

For Louis Mancuso, Richard Brown, Ryan Brown, Objectors: James Mixon Griffin, LEAD ATTORNEY, James M Griffin Law Office, Columbia, SC; Richard A Harpootlian, LEAD ATTORNEY, Richard A. Harpootlian PA, Columbia, SC.

For David T Pearlman, Objector: Andrew D Gowdown, Elizabeth P Marlow, Richard S Rosen, LEAD ATTORNEYS, Rosen Rosen and Hagood, Charleston, SC.

George White, Doris White, Objectors, Pro se, Johns Island, SC.

David J Lane, Lynn A Lane, Objectors, Pro se, Rockport, MA.

Zayda C Yoder, Objector, Pro se, Henderson, NC.

Judges: DAVID C. NORTON, CHIEF UNITED STATES DISTRICT JUDGE.

Opinion by: DAVID C. NORTON

Opinion

ORDER and OPINION

This matter is before the court on the receiver's motion to approve the settlement agreement and release of claims he reached with Charleston Southern University (CSU) and affiliated individuals on behalf of the receivership estate. In the course of his investigation of the facts and circumstances related to the fraudulent investment scheme that is the subject of this SEC enforcement action, the receiver determined that he, as well as the investors who **[*5]** lost money as a result of the investment scheme, have potential claims against CSU and certain individuals affiliated with CSU. The receiver began negotiations with CSU and its insurer, National Union Fire Insurance Co. of Pittsburgh, regarding resolution of the receiver's claims.

As a result of those efforts, the receiver and CSU, in conjunction with National Union, have reached a written settlement agreement. That agreement, in addition to providing a substantial monetary settlement to the receiver, also includes a partial waiver of CSU's entitlement to payment from the receivership estate (which it may have been entitled to as an aggrieved investor in the scheme). The receiver has agreed to release any claims arising from the scheme that the receivership entities may have against CSU or affiliated individuals. The settlement is conditioned upon this court's entry of a ″bar order,″ which would enjoin the filing of any suit or further prosecution of any previously-filed suit against CSU or affiliated individuals relating to Parish's investment scheme or his employment at CSU. For the reasons set forth below, the court grants the motion, approves the settlement agreement, and issues

[*6] the bar order.

I. BACKGROUND

1. This enforcement action was filed on April 5, 2007 by the Securities Exchange Commission against Albert E. Parish ("Parish") and Parish Economics, LLC ("Parish Economics"), and Summerville Hard Assets, LLC ("SHA"). The SEC alleged that Parish operated a fraudulent investment scheme in violation of securities laws through Parish Economics and SHA.

2. Pursuant to temporary and preliminary orders dated April 5 and 12, 2007, this court appointed S. Gregory Hays as receiver for the defendants authorizing him to, among other things, pursue all claims which may be brought by receivership entities and settle any of those claims as may be advisable or proper in the administration of the receivership estate.

3. The receiver and the professionals working with him have conducted an extensive investigation of the fraudulent investment scheme conducted by Parish. As more fully set forth in the receiver's interim reports filed with this court, the scheme involved "investment pools" -- the Hedged Income Pool, the Stock Pool, the Commodity Futures Pool, and the Hard Asset Pool -- which were operated and maintained by Parish Economics and SHA and purportedly managed by Parish **[*7]** using a confidential, proprietary "mathematical model" developed by him as a part of his research as an economist. Investors were provided with periodic reports indicating that each of these pools was yielding high returns that consistently outperformed traditional investments and the market.

4. Parish and Parish Economics expressly represented to investors that, in operating the investment pools, Parish used a confidential, proprietary "mathematical model" developed by him as a part of his research as an economist.

5. Parish Economics was originally formed on December 31, 1996. At the time of its formation, Parish expected that investors would become members of Parish Economics. Parish Economics operated as a partnership for federal income tax purposes from 1998 through 2004, and filed partnership returns for each of those years that included K-1's for investors indicating that they were "Limited Partners" or "other LLC Members." Parish Economics did not file a tax return for 2005 or 2006, but did issue K-1's to investors.

6. Over time, approximately 630 individuals invested in excess of $ 100 million in the investment pools. As of the date of the hearing, 471 investors had filed claims **[*8]** with the receiver.

7. On October 5, 2007, Parish entered a guilty plea to two counts of mail fraud and one count of making false statement to an agency of the federal government.

8. Parish was employed by CSU from the early 1990s until April 2007, and as a member of CSU's faculty, purportedly performed research in the field of mathematical economics. Hence, Parish perpetrated the fraudulent investment while employed by CSU.

9. As a member of CSU's faculty, Parish specialized in the field of mathematical economics. He also was the director of the Center of Economic Forecasting, which was located at CSU. The Center of Economic Forecasting was jointly sponsored by CSU, *The Post and Courier* and the Charleston Metro Chamber of Commerce.

10. CSU has been named as a defendant in two civil actions filed in the South Carolina Courts of Common Pleas by various investors (collectively the ″Investor Lawsuits″). More specifically, on April 9, 2007 (i.e., four days after the SEC filed this action and the receiver was appointed), L.G. Elrod, Mary Elrod, Tommie Williams, Amy Williams and Jerry R. Williams filed a Complaint in the Charleston County Court of Common Pleas, naming Charleston Southern University, **[*9]** Albert E. Parish, Jr., Yolanda Yoder, Parish Economics LLC, Summerville Hard Assets, LLC, Wayne Cassady, and Battery Wealth Management, Inc. as defendants. On the same day, Steven L. Smith filed a Complaint in the Berkeley County Court of Common Pleas, naming Albert E. Parish, Jr., Yolanda Yoder, Mary Elizabeth Parish, Sarah Rosemary Parish, Genie Parish, William Parish, Parish Economics LLC, and Summerville Hard Assets, LLC as defendants. On June 18, 2007, Smith's complaint was amended to add Charleston Southern University as a defendant and omit the remaining defendants except for Yolanda Yoder.

11. The six plaintiffs in the investor lawsuits are among the objecting investors opposed to the receiver's settlement with CSU.

12. CSU denies that it is liable to the objecting investors or any other investors or claimants, and has engaged counsel to defend the investor lawsuits.

13. As part of his investigation, the receiver and his counsel determined the following with respect to CSU:

a. Certain activities related to the ″investment pools″ actually took place in Parish's CSU office. For example, the computer that Parish used to keep up with individual investors and their investments was located **[*10]** in his office. On occasion, Parish met with investors in that office and took delivery of certain ″hard asset″ purchases there.

b. While CSU may have been unaware of the illegal nature of Parish's conduct, CSU knew of and consented to Parish's conducting investment activities from his CSU office.

c. CSU, a well respected institution of higher learning, publicly embraced Parish and affirmed his expertise as a mathematical economist. This affirmation of Parish provided many, if not all, investors with assurance and comfort regarding Parish's competence and integrity.

d. Since late 2002, CSU invested its own endowment funds and operating funds in various ″investment pools.″ Over time, CSU invested more than $ 10,000,000 with Parish Economics. As of the date of the filing of this enforcement action, the principal amount of CSU's investment in the ″pools″ was $ 8,400,000.

e. Individuals affiliated with CSU also invested in the ″investment pools.″

f. Between March 14, 2003 and March 20, 2007, Parish Economics made a total of 11 payments in varying amounts to CSU. It is evident that some of these payments were made to CSU as an investor with Parish Economics, while other payments were made to **[*11]** fund various activities at CSU. The last two payments made to CSU were $ 300,000 on or about March 13, 2007 and $ 1,200,000 on March 20, 2007. All of the payments made to CSU were from the Parish Economics bank accounts into which investors' monies were deposited.

g. As Parish's employer, and by virtue of their investments with Parish, CSU and senior members of its administration knew that Parish was making express representations to investors regarding the connection between the ″investment pools″ and his research activities at CSU. Moreover, CSU became aware over time that Parish was making unconventional representations to investors about the manner in which the ″pools″ were operated.

h. As early as 2006, CSU and senior members of its administration became aware of facts that indicated that Parish was not operating the ″investment pools″ in accordance with the representations made to investors.

i. Additionally, a member of CSU's faculty issued an opinion letter on CSU letterhead erroneously opining that Parish's ″investment pools″ were not subject to registration as securities. CSU did know and consented to the faculty member, who was a lawyer, practicing law using his CSU office. **[*12]** CSU, however, was unaware of this letter until after this receivership action was commenced, and terminated the author of the letter upon learning of its existence.

j. CSU is a 43 year old church-supported educational institution serving a diverse student body with a significant contribution to the Charleston tri-county area. The majority of CSU's 2,300 students are first generation South Carolinians, and 28% of its students are minorities. CSU employs approximately 400 people as faculty and staff.

14. Based on his findings, the receiver and his counsel concluded that, as receiver for Parish Economics and SHA, he could assert viable claims against CSU and certain affiliated individuals. In anticipation of filing a lawsuit, the receiver made a settlement demand on CSU and certain affiliated individuals.

15. Even though CSU and the affiliated individuals, along with National Union, deny that any of them is liable to the receiver (or any other claimant), they engaged in settlement negotiations with the receiver and CSU, which resulted in the execution of the settlement agreements. A copy of the operative agreement, i.e., Amended Settlement Agreement and Mutual Release dated March 8, 2008, **[*13]** is attached to this Order as Exhibit ″A″ and incorporated herein by reference.

16. Under the circumstances of this case, the terms of the Settlement Agreement are fair and reasonable. In particular:

a. CSU's losses in the investment scheme perpetrated by Parish totaled ap-

proximately $ 8.4 million in endowment and operating funds. Programming and capital improvements have been negatively affected as a result of these losses.

b. The $ 160,000 to be paid by CSU comprises approximately 10% of its available cash.

c. The $ 3.75 million to be paid by National Union comprises 93.75% of the limits of CSU's insurance policy.

d. In addition to these cash payments, CSU's waiver of a significant portion of its claim could be worth as much as $ 1.5 million, depending upon the cumulative amount that the Receiver is ultimately able to distribute to aggrieved investors and other creditors. Importantly, the receivership is the only mechanism available to take full advantage of CSU's waiver.

The cash value of the proposed settlement could be as much as $ 5.41 million, which will inure to the benefit of all aggrieved investors. The court is satisfied that it is highly unlikely that any other plaintiff or group **[*14]** of plaintiffs could obtain a more favorable financial settlement nor one that could benefit all aggrieved investors.

17. The objecting investors' claims against CSU are not meaningfully different from the claims that could be asserted by Parish's other aggrieved investors. If the proposed settlement is not approved, it is reasonable to assume that many other investors will file suits against CSU, thereby creating a ″race to the courthouse,″ which is not in the best interest of any investor or other creditor. Moreover, because the settlement proceeds can be administered through the receivership and distributed to all aggrieved investors and other creditors, the result will be far more fair and efficient than having investors compete for recoveries through the prosecution of multiple lawsuits against CSU while eliminating the concomitant costs and attorneys' fees that will be incurred by National Union and CSU in defending these cases.

18. The settlement proposed by the receiver and his counsel guarantees a substantial recovery to be divided pro rata among all aggrieved investors and avoids the risks and costs of protracted litigation.

II. DISCUSSION

A. The Receiver's Standing to Assert [*15] Claims

The receiver can only act only with respect to the assets (including choses in action) of the receivership estate. See Receivership Order at §§ VI, VII. The receiver has no power to assert claims on behalf of aggrieved investors or other creditors of the receivership entities. Some have objected to this settlement by arguing that the receivership estate possesses no causes of action against CSU and, therefore, the claims the receiver is attempting to settle belong to aggrieved investors or other creditors. However, the receivership estate currently holds many potential claims against CSU and affiliated individuals that are distinct and separate from claims owned by third-parties.

The receiver has various causes of action under South Carolina law against

CSU and its affiliated individuals, including: negligent supervision, negligent misrepresentation, and control person liability under the South Carolina Uniform Securities Act of 2005, *S.C. Code Ann. § 35-1-509(g)(1)* & *(2)*, and, most importantly, fraudulent conveyance. The receiver has identified various defenses CSU could assert, including arguments that Parish was not acting within the scope of his employment, that CSU did not **[*16]** know (and could not have known in the exercise of reasonable care) about Parish's fraud, and that CSU did not control or otherwise assist Parish in his scheme. Although CSU possesses defenses, those defenses do not negate the receiver's standing to assert those claims. Moreover, the receiver and CSU have properly valued the estate's claims, accounting for defenses, in reaching this settlement.

The objectors argue that the receiver has no standing to assert claims because of the legal doctrine of *in pari delicto.* ″The doctrine of in pari delicto is '[t]he principle that a plaintiff who has participated in wrongdoing may not recover damages resulting from the wrongdoing.'″ *Myatt v. RHBT Fin. Corp.*, 370 S.C. 391, 635 S.E.2d 545 (Ct. App. 2006) (quoting Black's Law Dictionary 794 (7th ed. 1999)). In Myatt, the South Carolina Court of Appeals squarely considered the operation of *in pari delicto* on claims brought by a receiver on behalf of receivership entities that were used to carry on a Ponzi scheme against defendants who assisted in the execution of that scheme. The receiver asserted multiple claims, including breach of fiduciary duty, negligence, and negligent supervision, on behalf **[*17]** of the receivership entities' against a bank that had a business relationship with the orchestrator of the Ponzi scheme. *Id.* at 393-94, 635 S.E.2d at 546-47. The trial court granted summary judgment to the defendants, concluding that *in pari delicto* barred all of the receiver's claims. See id. The court of appeals agreed, holding ″that, in the absence of a fraudulent conveyance case, the receiver of a corporation used to perpetuate fraud may not seek recovery against an alleged third-party co-conspirator in the fraud.″ *Id.* at 397, 635 S.E.2d at 548.

The Myatt court expressly relied on a pair of Seventh Circuit decisions considered the effect of *in pari delicto* in actions brought by a receiver on behalf of receivership entities against co-conspirators in the fraud. In Scholes v. Lehman, Michael Douglas orchestrated a Ponzi scheme using various limited partnerships and corporations he controlled. *56 F.3d 750, 752 (7th Cir. 1995)*. The federal government brought criminal charges against Douglas, and he was sentenced to a term of imprisonment on those charges. Id. The SEC also brought a civil enforcement action against Douglas and three of his corporations. The federal district court appointed **[*18]** a receiver for Douglas and the corporations. Id. In an attempt to recover assets of the scheme, the receiver brought fraudulent conveyance claims against Douglas's ex-wife, one of the investors in the scheme, and five religious corporations. *Id.* at 753. The district court granted summary judgment for the receiver on the fraudulent conveyance claims. Id.

The Seventh Circuit first considered whether the receiver had standing to bring the fraudulent conveyance suit. Id. The court quickly rejected the receiver's argument that he had power to bring claims on behalf of the victims of the Ponzi scheme. Rather, the court reasoned that he only had power to pursue claims on behalf of the individual and entities that were subject to the receivership. Id. The court further concluded that the receivership entities did in fact have claims against the defendants for fraudulent conveyance because they, as separate legal entities from the orchestrator of the scheme, were harmed by the wrongful transfers. See *id.* at 754. More importantly for purposes of this case, the Seventh Circuit held the defense of *in pari delicto* did not bar the claims because Douglas--the fraudulent scheme's orchestrator--was **[*19]** not part of the suit. Id. The Seventh Circuit explained:

> [T]he wrongdoer must not be allowed to profit from his wrong by recovering property that he had parted with in order to thwart his creditors. That reason falls out now that Douglas has been ousted from control of and beneficial interest in the corporations. The appointment of the receiver removed the wrongdoer from the scene. The corporations were no more Douglas's evil zombies. Freed from his spell they became entitled to return of the moneys--for the benefit not of Douglas but of innocent investors--that Douglas had made the corporations divert to unauthorized purposes. . . . Put different, the defense of *in pari delicto* loses its sting when the person who is *in pari delicto* is eliminated.

Id. Thus, the Seventh Circuit concluded the receiver's suit was proper and proceeded to address the remaining issues in the appeal, eventually reversing the district court in part on other grounds. *Id.* at 763.

The Seventh Circuit revisited Scholes in *Knauer v. Jonthan Roberts Financial Group*, 348 F.3d 230 (7th Cir. 2003). Knauer was appointed in SEC enforcement action as receiver over two entities, Heartland and JMS Investment Group, that were **[*20]** involved in executing a Ponzi scheme. Heartland and JMS were formed by Kenneth R. Payne, who was assisted by Daniel Danker, both of whom were registered representatives of the five broker-dealers (the defendants) who the receiver sued on behalf of Heartland and JMS. *Id.* at 231-32. The receiver asserted various claims against the defendants, including control person liability under the federal securities laws and vicarious liability because Payne and Danker were their agents. *Id.* at 232. The district court granted the defendants' motion to dismiss, concluding the receiver had no standing to assert claims on behalf of investors and that *in pari delicto* barred the claims the receiver asserted on behalf of the receivership entities. *Id.* at 233.

The Seventh Circuit affirmed. In doing so, the court distinguished Scholes be-

cause the receiver in that case had brought fraudulent conveyance claims:

> This case . . . presents a different equitable alignment [than Scholes]. The key difference, for purposes of equity, between fraudulent conveyance cases such as Scholes and the instant case is the identities of the defendants. The receiver here is not seeking to recover the diverted funds from beneficiaries **[*21]** of the diversions (e.g., the recipients of Douglas's transfers in Scholes). Rather, this is a claim for tort damages from entities that derived no benefit from the embezzlements, but that were allegedly partly to claim for their occurrence. In the equitable balancing before us, we find Scholes less pertinent than the general . . . rule that the receiver stands precisely in the shoes of the corporations for which he has been appointed.

Id. at 236. Because the Seventh Circuit concluded that the receivership entities' fault for the wrong was at least equal to the parties they were suing, *in pari delicto* prevented their suit to recover damages incurred as a result of the Ponzi scheme. *Id.* at 237.

The receiver has *standing* to assert any claims held by the receivership entities against CSU, including claims for negligent supervision, control person liability, and fraudulent conveyance. If the receiver brought those claims against CSU, the university would certainly raise *in pari delicto* as a defense. Under Myatt, *in pari delicto* may bar the receiver's non-fraudulent conveyance claims. However, the receivership entities (and, consequently, the receiver) possess valid fraudulent conveyance claims **[*22]** that are included as part of the settlement agreement. Parish has been removed from control over Parish Economics and Summerville Hard Assets. Thus, under the South Carolina Court of Appeals' decision in *Myatt* and the Seventh Circuit's decision in *Scholes*, the receiver can bring claims on the entities' behalf for fraudulent conveyance without implicating *in pari delicto.*

B. The Court's Power to Enter a Bar Order

Before determining whether the settlement, in conjunction with a bar order, is in the best interest of the receivership entities and their creditors, it is first necessary to determine whether the court has the power to issue a bar order enjoining new or existing litigation. The All Writs Act authorizes federal courts to ″issue all writs necessary and appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.″ *28 U.S.C. § 1651*. This includes the authority ″to issue such commands . . . as may be necessary or appropriate to effectuate and prevent the frustration of orders it has previously issued in its exercise of jurisdiction otherwise obtained.″ *In re Am. Honda Motor Co., Inc., Dealerships Relations Litig.*, 315 F.3d 417, 437-38 (4th Cir. 2003) **[*23]** (internal quotations omitted) (quoting *Penn. Bureau of Corr. v. U.S. Marshals Serv.*, 474 U.S. 34, 40, 106 S. Ct. 355, 88 L. Ed. 2d 189 (1985)).

A ″district court has within its equity power the authority to appoint receivers and to administer receiverships.″ *Gilchrist v. Gen. Electric Capital Corp.*, 262 F.3d 295, 302 (4th Cir. 2001) (citing *Fed. R. Civ. P. 66*). Moreover, a ″district court has within its equity power the authority to protect its jurisdiction over a receivership estate through the All Writs Act, *28 U.S.C. § 1651*, and through its injunctive powers, consistent with *Federal Rule of Civil Procedure 65*. Of course, the exercise of this authority is always subject to other limitations, statutory and constitutional, which limit the jurisdiction of federal courts.″ Id. By appointing a receiver in this matter, the court created a receivership estate over which it has *in rem* jurisdiction. Id. That jurisdiction extends to all assets of the estate, including choses in action. See id. Accordingly, this court has the power under the All Writs Act to issue injunctions in order to protect the estate's choses of action against CSU (including any settlement reached in connection with those claims).

The power conferred by **[*24]** the All Writs Act extends beyond issuing only injunctions that are necessary to carrying out the district court's jurisdiction. Application of the All Writts Act is ″not limited to those situations where it is 'necessary' to issue the writ or order 'in the sense that the court could not otherwise physically discharge its . . . duties.″ *United States v. N.Y. Tel. Co.*, 434 U.S. 159, 173, 98 S. Ct. 364, 54 L. Ed. 2d 376 (1977). Rather, a district court may issue an injunction when ″calculated in [the court's] sound judgment to achieve the ends of justice entrusted to it.″ *Adams v. United States*, 317 U.S. 269, 273, 63 S. Ct. 236, 87 L. Ed. 268 (1942). Finally, the court has the power to extend the injunction to third-parties who are not parties to the action nor were involved in the wrongdoing: ″The power conferred by the Act extends, under appropriate circumstances, to persons who, though not parties to the original action or engaged in wrongdoing, are in a position to frustrate the implementation of a court order or the proper administration of justice and encompasses even those who have not taken any affirmative action to hinder justice.″ *N.Y. Tel.*, 434 U.S. at 174 (internal citations omitted).

Having concluded that the court possesses the power **[*25]** to issue the bar order, the propriety of issuing such an order is discussed below as part of considering the sufficiency and fairness of the agreement as a whole.

C. Sufficiency and Fairness of the Agreement

The primary purpose of the equitable receivership is the marshaling of the estate's assets for the benefit of all the aggrieved investors and other creditors of the receivership entities. See *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986) (″[A] primary purpose of equity receiverships is to promote orderly and efficient administration of the estate by the district court for the benefit of creditors.″) In administering the receivership, the district court has ″broad discretion″ to take actions it deems appropriate to effectuate the purpose of the receivership. See *United States v. Vanguard Inv. Co.*, 6 F.3d 222, 226-27 (4th Cir. 1993).

The proposed settlement is consistent with and furthers the purposes of the receivership. The settlement proceeds, which could total as much as $ 5.41 million, will ultimately be distributed to the investors and victims of Parish's fraudulent investment scheme. While the settlement will not fully restore the investors and other creditors, its proceeds **[*26]** represent a considerable addition to the amount that will be distributed to investors from the estate. The receiver has appropriately determined the settlement value of his claims against CSU and, by reaching this agreement at this time, has saved the estate from the expenses of protracted litigation.

This settlement is also a fair and efficient means of distributing the compensation that may be owed by CSU to all of the receivership entities' creditors, especially investors. The fairness of this solution is clear in light of the alternative. Investors could bring individual suits against CSU, which would require expensive and protracted litigation. If litigation were pursued, investors would face an uncertain outcome and perhaps, years later, could recover nothing in their suits. The resources it would take for hundreds of investors to individually pursue their claims against CSU demonstrates the economic irrationality of individual litigation relative to the receivership process. Given the costs and duration of litigation, many investors would choose not to pursue claims against CSU--leaving them with only part of the recovery to which they would otherwise be entitled. The receiver **[*27]** has been able to negotiate a fair, global settlement with CSU and affiliated individuals that assures that all aggrieved investors will realize relatively timely compensation. Failing to approve this settlement would result in a drawn-out, inefficient, and chaotic administration of justice, assuming justice in those circumstances could be achieved at all.

Among the investors who choose to pursue individual litigation, there will certainly be a ″free for all″ competition to obtain recovery against CSU. That ″race to the courthouse″ will likely result in disparate outcomes, which would be inapposite to the goals of this receivership and would likely impair the receiver's and, ultimately, this court's ability to fairly administer the receivership estate. To preserve the court's equitable powers, particularly the power to establish a fair and efficient scheme for administering the estate and distributing its assets to the aggrieved investors, it is necessary to enter the bar order. Thus, the court finds it appropriate and necessary to enjoin the further filing of claims and/or continued prosecution of claims pending against CSU that relate to or arise from the investment schemes that are **[*28]** the subject of this action.

The court recognizes that the Anti-Injunction Act generally prohibits this court from enjoining the prosecution of pending state-court actions. See *28 U.S.C. § 2283*. Although the Act does not apply to suits have that not yet been filed, some investors have already filed suits against CSU. There is a clear exception to the Act, however, when the injunctive relief is necessary in aid of the district court's jurisdiction. See id. Because the entry of the bar order is necessary to preserve and aid this court's jurisdiction

over the receivership estate, the court finds that the Anti-Injunction Act does not prohibit an injunction against pending investor suits. [1]

III. CONCLUSION

For the foregoing reasons, it is hereby **ORDERED:**

1. The settlement between the receiver, CSU and National Union, as specifically provided for in the Amended Settlement Agreement and Mutual Release dated March 8, 2008, is hereby approved and the parties are directed to perform in accordance with its terms.

2. Any and all persons or entities, including those who purchased investments from Parish or any of the other receivership entities, are hereby enjoined from the filing and/or continued prosecution of any third party claims or causes of action, including, but not limited to, the investor lawsuits, claims by investors in and creditors of Parish, as well as claims by donors to or benefactors of CSU, against CSU, and/or its current and/or former trustees, officers, administrative officers, members of its Investment Management Team and Investment Team (except Albert E. Parish), arising out of or in any way connected with: (a) the **[*30]** investment-related activities of Parish, Parish Economics and/or Summerville Hard Assets or any affiliated ″investment pool″; (b) Parish's employment by and affiliation with CSU; (c) any investment made by any person or entity in or with Parish or any of the Receiver Entities; and/or (d) any other affiliation with or support of Parish by CSU, or any of its current and/or former trustees, officers, administrative officers, members of its Investment Management Team and Investment Team.

3. Nothing in this order is intended to nor should be construed to release, limit or otherwise modify any right, claim or defenses that the receiver or any individual investor (including individuals employed by or affiliated with CSU) might have with respect to individual claims filed with the Receiver to recover their or their family's individual investment losses as a part of the receivership claims administration process. Any party, attorney or other person who acts in a manner contradictory to this order shall subject to such remedies for contempt as the court shall deem appropriate. This court shall retain exclusive jurisdiction over the parties with respect to any disputes related to the interpretation **[*31]** and performance of the Settlement Agreement.

4. Nothing in the Settlement Agreement or this order shall operate to in any way release, waive or limit the receiver's rights, if any, to pursue claims against other third parties.

5. This court finds that there is no just reason for delay for an entry of a final judgment as to the approval of the settlement and bar order and directs the entry

[1] In its memorandum supporting the settlement and in its argument at the hearing on this matter, CSU argued that its liability exposure could cause it to become insolvent. CSU's precarious financial situation is a relevant consideration in only the following respects: its lack of financial resources could exacerbate the investors' race to the courthouse and further disrupt administration of the estate, or cause some (or all) investors to recover nothing if CSU ceases to be a going concern. Otherwise, the **[*29]** damage to CSU is relevant only insofar as CSU is one of hundreds of the receiver estate's potential creditors. The agreement is approved and bar order are entered solely because doing so is in the best interest of all the creditors and investors.

of judgment pursuant to *Fed. R. Civ. P. 54(b)*.

AND IT IS SO ORDERED.

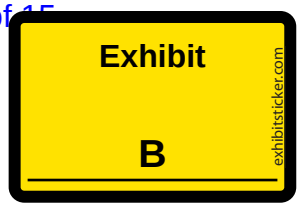
/s/ David C. Norton

DAVID C. NORTON

CHIEF UNITED STATES DISTRICT JUDGE

May 12, 2008

Charleston, South Carolina



AMENDED SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Amended Settlement Agreement and Mutual Release ("Agreement") is entered into as of the 18th day of March, 2008 by and among S. Gregory Hays, as Receiver of Albert E. Parish ("Parish"), Parish Economics, LLC and Summerville Hard Assets, LLC ("Receiver"), Charleston Southern University ("CSU"), on behalf of itself and its current and/or former trustees, officers, administrative officers, members of its Investment Management Team and Investment Team (except Albert E. Parish, who is not a party to this Settlement Agreement and Release and not entitled to benefit for it) and CSU's Insurer, National Union Fire Insurance Company of Pittsburgh, P.A. ("National Union"), collectively, the "Parties".

WHEREAS, the Receiver was appointed by the United States District Court for the District of South Carolina in a civil enforcement action styled *Securities and Exchange Commission v. Albert E. Parish, et. al.,* Civil Action File No. 2:07-919-DCN ("the Enforcement Action"); and,

WHEREAS, Defendant Parish, through Defendants Parish Economics, LLC and Summerville Hard Assets, LLC, solicited, received and managed money belonging to investors in various "investment pools," which the Securities and Exchange Commission and the Receiver allege were securities and formed the basis of a fraudulent investment scheme; and,

WHEREAS, the Receiver is, among other things, authorized and directed to "pursue . . . all suits, actions, claims and demands which may . . . be brought by" the Receiver Entities (i.e., Parish, Parish Economics, LLC and Summerville Hard Assets, LLC); and,

WHEREAS, pursuant to and in accordance with the authorizations and orders of the Court in the Enforcement Action, the Receiver and his counsel investigate, assert and, where

necessary and appropriate, prosecute claims against third-parties in an effort to effect recoveries on behalf of the Receiver Estate for the benefit of creditors of the Receiver Entities, including the investors; and,

WHEREAS, Defendant Parish was employed by CSU during the time period that he operated the fraudulent investment scheme that is the subject of the Enforcement Action; and,

WHEREAS, over time, CSU invested in excess of $10 million in Parish's investment scheme; and,

WHEREAS, individuals affiliated with and employed by CSU, including members of its administration, personally invested and lost significant amounts of their own (or family members') money in Parish's investment scheme; and,

WHEREAS, the Receiver contends that CSU and members of its administration had access to information not generally available to others who invested in Parish's investment scheme; and,

WHEREAS, the Receiver believes that he, as well as Parish's other investors and creditors, could assert causes of action such as fraudulent conveyance, professional negligence, negligent misrepresentation, negligent supervision and control person liability against CSU, its current and/or former trustees, officers, administrative officers, members of its Investment Management Team and Investment Team, and other affiliated individuals, which could result in significant damages awards against CSU and others; and,

WHEREAS, the Receiver has informed CSU's Board of Trustees and its legal counsel of the results of his investigation and made a demand for payment from CSU; and,

WHEREAS, CSU has also been named as a defendant in not less than two (2) civil

actions filed in the South Carolina Court of Common Pleas by various investors (collectively the "Investor Lawsuits") arising from and related to the investment offering that is the subject of the Enforcement Action including the following:

- Smith v. Charleston Southern University, Case No. 07-CP-08-809; and
- Elrod, et al. v. Charleston Southern University, et al., Case No. 07-CP-10-1465;

and,

WHEREAS, National Union issued a School Leaders Errors & Omissions Policy to CSU (the "Policy"), policy number 965-17-73; and,

WHEREAS, CSU has made claims for coverage with National Union as a result of the Elrod and Smith Lawsuits; and,

WHEREAS, the Plaintiffs in the Elrod and Smith Lawsuit have objected to the proposed settlement made by the Receiver; and'

WHEREAS, National Union, in accordance with the terms and conditions of the Policy, has responded to these claims for coverage and provided CSU with a defense, subject to a reservation of rights for the Elrod and Smith Lawsuits; and,

WHEREAS, the Receiver requested CSU and National Union contribute to a settlement for claims arising out of and related to the activities of the Parish Defendants; and,

WHEREAS, CSU has been threatened with additional lawsuits by other investors and investor groups, and has been threatened by various donors and benefactors with actions which could reduce or reverse gifts and bequests made to CSU; and,

WHEREAS, CSU and its current and/or former trustees, officers, administrative officers, members of its Investment Management Team and Investment Team believe that they have

meritorious defenses to the Investor Lawsuits, as well as the claims of the Receiver or any investors, donors , benefactors or other creditors and they deny any liability whatsoever; and,

WHEREAS, litigation is often expensive, time consuming and the results are difficult to predict with accuracy; and,

WHEREAS, the cumulative amount of legal fees and expenses, coupled with the damages that might be claimed by the Receiver, investors, investor groups or others, would likely exceed CSU's ability to pay and, in fact, threatens CSU's mission and operation; and,

WHEREAS, CSU is a 43 year old church-supported educational institution that seeks to provide a diverse student body with a Christian oriented education: and,

WHEREAS, the majority of CSU's students are first generation South Carolinians and 28% of its students are minorities; and,

WHEREAS, putting CSU out of business would result in discontinuing the education of 2300 students, the loss of 400 faculty, staff and coaching jobs, and a loss of a significant contribution to the Charleston tri-county area; and,

WHEREAS, the payment by National Union on behalf of CSU, its insured, provided for herein includes 93.75% of the potential limits of liability under CSU's applicable insurance policy, which is currently subject to a reservation of rights by National Union; and,

WHEREAS, the Receiver, National Union and CSU, its current and/or former trustees, officers, administrative officers, members of its Investment Management Team and Investment Team (except Albert E. Parish), desire to resolve any and all claims that could arise from Parish's investment scheme and any other related activities without incurring further expense and other risks of litigation; and,

WHEREAS, the Receiver and his counsel are unaware of any facts that indicate that CSU or any affiliated individuals were knowing participants in any efforts to assist Parish in the perpetration of the fraudulent investment scheme; and,

WHEREAS, based upon the known relevant facts and circumstances, the Receiver and his counsel believe that the terms of the settlement and compromise set forth herein are in the best interest of the Receiver Estate and, ultimately, all of the investors who invested in the subject investment pools;

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, along with other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Court Approval. Except for the escrow provision set forth in Paragraph 4, below, this Agreement shall only be effective and binding on all Parties hereto upon the entry of an Order of the Court in the Enforcement Action:

a. approving the terms of this Agreement; and,

b. permanently enjoining the filing and/or continued prosecution of any third party claims or causes of action, including, but not limited to, the Investor Lawsuits, claims by investors in and creditors of Parish, as well as claims by donors to or benefactors of CSU, against CSU or its current and/or former trustees, officers, administrative officers, members of its Investment Management Team and Investment Team (except Albert E. Parish), arising out of or in any way connected with: (a) the investment-related activities of Parish, Parish Economics and/or Summerville Hard

Assets or any affiliated "investment pool"; (b) Parish's employment by and affiliation with CSU; (c) any investment made by any person or entity in or with Parish or any of the Receiver Entities; and/or, (d) any other affiliation with or support of Parish by CSU or any of its current and/or former trustees, officers, administrative officers, members of its Investment Management Team and Investment Team.

2. Effective Date. The Effective Date shall be the date that the Order described in Paragraph 1, above, becomes final and not subject to appeal, even though the permanent injunction set forth in Paragraph 1 shall be in effect between the date the Order is signed and the Effective Date.

3. Payment. Within three (3) business days of the Effective Date, CSU's counsel and National Union's counsel shall deliver to the Receiver the following:

a. A cash payment in the amount of $3,910,000 to be paid by and on behalf of CSU, in a manner directed by the Receiver. The payment is comprised of $3,750,000 from National Union and $160,000 from CSU directly, minus any transaction fees; and,

b. An executed and stamped "filed" dismissal with prejudice of the lawsuit filed in the South Carolina Court of Common Pleas, styled Charleston Southern University v. Parish, et al., Case No. 07-CP-10-1405; and,

c. An executed amendment to CSU's claim filed with the Receiver, which, depending upon the ultimate amount available for distribution to investors from the Receiver Estate, could provide as much as an additional $1,512,000 in cash benefit to the Receiver Estate. A copy of the Amended Claim is attached hereto as Exhibit "A."

4. Escrow. Within twenty (20) business days of the date of the execution of this Agreement, but in no event not less than three (3) business days prior to the hearing on the Receiver's motion to have this settlement approved:

a. CSU shall transfer $160,000 to CSU's counsel, Young Clement Rivers LLP ("YCR"), along with the other documents identified in Paragraph 3, above; and,

b. National Union shall transfer $3,750,000 to its counsel, Vorys, Sater, Seymour & Pease LLP ("VSSP").

Said monies and documents shall be held in escrow by YCR and VSSP pending the completion of the court-approval process described herein. Upon receipt of these monies and documents, YCR and VSSP shall each give written notice to Receiver's counsel that the monies and documents have been received and are being held in escrow to be disbursed and transferred in accordance with the terms of this Agreement.

5. Release of CSU and National Union. The Receiver, on behalf of himself, his successors and assigns, as well as on behalf of Parish and the Receiver Entities, hereby forever releases, discharges and acquits CSU, its current and former individual trustees and officers, as well as any other CSU employees who served on CSU's Investment Management Committee or Investment Team (except Albert Parish) and its insurer, National Union, from any and all claims, demands or causes of action that the Receiver may now have or which may hereafter accrue on account of, in connection with, or which in any way may grow out of: (a) the investment-related activities of Parish, Parish Economics and/or Summerville Hard Assets or any affiliated "investment pool"; (b) Parish's employment by and affiliation with CSU; (c) any investment made by any person or entity in or with Parish or any of the Receiver Entities; and/or, (d) any

other affiliation with or support of Parish by CSU or any of its current and/or former trustees, officers, administrative officers, or members of its Investment Management Team and Investment Team. Notwithstanding the foregoing, nothing herein is intended to be nor should be construed to be a release of any other person or entity, specifically including, but not limited to, individuals and entities that worked on or provided professional services to or in connection with Parish's investment activities, the Receiver Entities and/or the subject "investment pools." The Receiver hereby expressly reserves such claims against any such person or entity not expressly released herein.

6. Release of Receiver and Receiver Entities. Except as expressly set forth herein, CSU and its insurer, National Union, hereby release, discharge and acquit the Receiver, his employees, agents, attorneys and assigns, as well as the Receiver Estate, Parish and the Receiver Entities, their members, employees, agents, and assigns, from any and all claims, demands or causes of action that it may have, specifically including, but not limited to the lawsuit filed in the South Carolina Court of Common Pleas, styled Charleston Southern University v. Parish, et al., Case No. 07-CP-10-1405.

7. Reservation of All Rights Regarding Investor Claims. Notwithstanding the releases provided for in Paragraphs 6 and 7, above, nothing herein is intended to release, limit or otherwise modify any right, claim or defense that the Receiver or any individual investor (including individuals employed by or affiliated with CSU) may have with respect to individual claims filed with the Receiver to recover their or their family's individual investment losses as a part of the receivership claims administration process.

8. Approval Process. Upon the execution of this Agreement, the Receiver shall file a motion in the Enforcement Action seeking approval of the terms of this settlement and compromise. Notice of the filing of the motion (the "Notice") and any hearing date set by the Court shall be posted on the Receiver's website and served upon each person known to the Receiver who invested with Parish or one of the Receiver Entities. Moreover, CSU shall serve a copy of the Notice on any donor or benefactor that has threatened to assert a claim against CSU that might be affected by the entry of the injunction provided for above. If the Court approves this settlement and compromise in accordance with Paragraph 1, above, the terms of this Agreement shall become binding on the Parties hereto, and YCR and VSSP shall transfer the monies and other documents to the Receiver in accordance with the terms of this Agreement. If the Court does not approve this settlement and compromise, this Agreement shall terminate immediately upon the entry of an order denying the Receiver's motion seeking approval, and YCR and VSSP shall be authorized to return the monies and other documents held by them in escrow, less wire transfer and other transaction costs.

9. Return of Documents. The Receiver agrees to return to CSU's counsel, YCR, all the documents subpoenaed in this Receivership, to include the return to CSU of the original and all copies of the deposition transcripts of CSU's trustees, officers and/or administrative officers, along with any exhibits attached thereto. CSU's counsel, YCR, shall preserve, maintain and retain all such returned documents until this Receivership is terminated by the entry of a final order discharging the Receiver and terminating the Receivership. These documents shall be available to the Receiver and his counsel in the event that they are later determined to be relevant to other aspects of the receivership.

10. Indemnity and Defense.

(a) In the event that this Agreement is approved as provided for above, the Receiver agrees that, subject to the limitations set forth in subparagraph (d), below, he shall indemnify, defend and hold harmless CSU and its current and/or former trustees, officers, administrative officers, members of its Investment Management Team and Investment Team (except Albert E. Parish) and its insurer, National Union, from and against any and all liability and loss, including attorneys fees and expenses of litigation, incurred in connection with any claim or action asserted, maintained, or otherwise prosecuted after the Effective Date in any way relating to, because of, or in connection with, the subject matter of the Enforcement Action and/or CSU's involvement with Parish, any of the Receiver Entities and/or Parish's investment activities.

(b) In the event that CSU, National Union or any other person indemnified pursuant to subparagraph 10(a), above, makes a demand upon the Receiver under this indemnity provision with respect to any claim or action, the Receiver shall have the right, at his option and in his sole discretion, to undertake and direct the defense of such claim and to demand from CSU, National Union and any other indemnified party and take assignment of any claim or action which any of them may have against any such claimant.

(c) In the event, for any reason, CSU, National Union or any other indemnified party does not, after notice, promptly cooperate in connection with the defense and/or assignment of any claim it may have against any such claimant, then the Receiver is hereby authorized, constituted and appointed as attorney-in-fact for CSU, National Union and any other indemnified parties to assign such claim to the Receiver.

(d) The Receiver's obligations under this indemnity are limited to the assets of the Receiver Entities available at the time that any such indemnity claim is made and, in any event, shall not exceed $3,910,000. CSU and National Union understand and agree that the indemnity is given by the Receiver in that capacity and not in his personal or individual capacity, and that this indemnity will terminate altogether upon final payments being made to investors and other creditors and the termination of this receivership by the entry of a final order discharging the Receiver and terminating the Receivership.

(e) The Receiver's indemnity obligation as set forth above does not apply to claims, demands or other actions taken by or on behalf of any donor to or benefactor of CSU against CSU or any of its current and/or former trustees, officers, administrative officers, members of its Investment Management Team and Investment Team.

11. Cooperation. CSU and National Union agree that, upon execution of this Agreement and continuing thereafter, they shall, without charge to the Receiver or the Receiver Estate, cooperate with the Receiver and his counsel and other professionals working with them to provide information and assistance in the Receiver's investigation, as well as the prosecution or defense of any claims by or against the Receiver Entities. However, CSU and National Union shall be entitled to reimbursement from the Receiver Estate for reasonable out-of-pocket expenses such as travel and significant copying or duplication of records.

12. No Admissions. The Receiver, CSU and National Union acknowledge and agree that this Agreement is entered into for the purpose of compromising disputed claims and that the giving and receiving of the consideration and covenants provided for herein shall not be construed as an admission of any liability or wrongdoing of any kind by CSU or any of its current

and/or former trustees, officers, administrative officers, Investment Management Team or Investment Team. To the contrary, CSU and its trustees, officers, administrative officers, Investment Management Team and Investment Team expressly deny and contest any alleged liability for any wrongful acts. Conversely, the Receiver believes that the monetary liability and investor losses resulting from the investment-related activities of Parish, Parish Economics and/or Summerville Hard Assets and affiliated "investment pools" far exceeds the amounts being received pursuant to the terms of this Agreement. By entering into this Agreement with CSU and National Union, the Receiver does not intend to release, waive, limit or otherwise modify his rights and claims against others who were in any way involved with Parish or the Receiver Entities.

13. This Agreement shall be binding upon and inure to the benefit of the Receiver, National Union and CSU and their respective successors and assigns, along with CSU's current and/or former trustees, officers, administrative officers, members of its Investment Management Team and Investment Team (except Albert E. Parish), who are intended to be third-party beneficiaries hereunder.

14. This Agreement in all respects shall be interpreted, enforced and governed by and under the laws of the State of South Carolina. The Receiver, National Union and CSU agree that the United States District Court for the District of South Carolina, Charleston Division shall have exclusive jurisdiction over all issues related to this Agreement.

15. This Agreement, the Amendment to Claim attached hereto as Exhibit "A," and the Agreement between CSU and National Union consist of the entire agreement between the Parties hereto and may not be amended or modified except by a written agreement signed by each of

them. The Receiver, National Union and CSU acknowledge that no representations, inducements, promises, or agreements have been made by or on behalf of any party except those covenants and agreements embodied in this Agreement, the Amendment to Claim attached hereto as Exhibit A and the Agreement between CSU and National Union. The Receiver, National Union and CSU acknowledge that CSU and National Union have also entered into an Agreement, the terms of which shall be read together with this Agreement.

16. The Parties to this Agreement stipulate that each term and condition of this Agreement is material to each of the Parties and that, in the event the Court does not approve this Agreement in *toto* without modification, no Party shall be bound hereby.

17. The Receiver, National Union and CSU warrant and represent that in executing this Agreement, they have relied upon legal advice from their attorneys of choice, that the terms of this Agreement, and its consequences, have been completely read and explained by their attorneys, and that they fully understand the terms of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have set their hands and seals as of the day and year first written above.

S. Gregory Hays, Receiver

Witness

Charleston Southern University

By:

Title:

Attest

AIG Domestic Claims, Inc., Financial Lines, on behalf of
National Union Fire Insurance Company of Pittsburgh, PA

By:

Title:

AMENDMENT TO CLAIM

In accordance with the Amended Settlement Agreement dated March 18, 2008, Charleston Southern University ("CSU") hereby amends its claim previously filed with S. Gregory Hays, Receiver for Albert E. Parish, et. al. ("Receiver") as follows:

1. As a result of the Receiver's review and analysis of CSU's claim, the claimed loss by CSU is hereby adjusted, and CSU agrees that the allowed amount of the claim should be $8,400,000.
2. In conjunction with and furtherance of the terms of the Settlement Agreement, CSU agrees that it shall not be entitled to receive any payment from the Receiver unless and until there are monies in the Receiver Estate sufficient make payment on all other allowed investor claims in an amount equal to eighteen percent (18 %) of the cumulative amount of allowed claims.
3. In the event that the Receiver makes a distribution to investors that exceeds 18 % of the cumulative amount of allowed claims (without regard to CSU's allowed claim), then CSU will be entitled to participate in and receive its pro rata portion of such excess amount as if its claim had been allowed and it had received the amount waived in Paragraph 2, above.

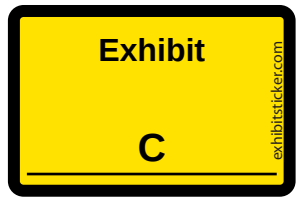
CHARLESTON SOUTHERN UNIVERSITY

By: Johnny E. Ward

Title: Chairman

ACCEPTED AND AGREED TO:

S. Gregory Hays, Receiver



IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

SECURITIES AND EXCHANGE COMMISSION,	§	
Plaintiff,	§	
v.	§	
ALBERT FASE KALETA and KALETA CAPITAL MANAGEMENT, INC.,	§	
Defendants,	§	**Civil Action No. 4:09-cv-3674**
and	§	
BUSINESSRADIO NETWORK, L.P., d/b/a BizRadio and DANIEL FRISHBERG FINANCIAL SERVICES, INC., d/b/a DFFS CAPITAL MANAGEMENT, INC.,	§	
Relief Defendants, Solely for the purposes of Equitable Relief.	§	

ORDER APPROVING SETTLEMENT AND ENTERING FINAL BAR ORDER AND INJUNCTION

For purposes of this Order:

a. The term "Insurance Company" refers to American International Specialty Lines Insurance Company, Chartis, Inc., Chartis Claims, Inc., American International Companies ("AIG"), and each of their respective past, present, and future agents, directors, officers, underwriters, reinsurers, shareholders, predecessor companies, successor companies, employees, representatives, affiliates, assigns, attorneys and all other related and/or affiliated entities.

b. The term "Receiver" refers to Thomas L. Taylor III, solely in his capacity as Court-appointed Receiver in the above-styled action ("SEC Action") of Kaleta Capital Management, Inc., BusinessRadio Network, L.P. d/b/a BizRadio, Daniel Frishberg Financial Services, Inc. d/b/a DFFS Capital Management, Inc., and all of the entities they own or control (collectively, the "Receivership Entities").

c. The term "Policy" refers to that third party liability claims-made and reported Investment Management Insurance Policy No. 01-766-06-99 issued by American International Specialty Lines Insurance Company to Daniel Frishberg Financial Services Inc. d/b/a Frishberg, Jordan & Stewart Advisors with a policy period of April 1, 2009 to April 1, 2010 and limits of liability of $1,000,000 (which erodes by payment of defense costs), and which includes all terms, conditions, exclusions, limitations, endorsements and contractual provisions made a part of the Policy.

d. The term "Named Insured" refers to Daniel Frishberg Financial Services Inc. d/b/a Frishberg, Jordan & Stewart Advisors.

e. The term "Insured" refers to Daniel Frishberg and/or Elisea Frishberg, and any past, present or future partners, officers, directors, trustees or employees of the Named Insured Daniel Frishberg Financial Services Inc. d/b/a Frishberg, Jordan & Stewart Advisors, as defined in the Policy.

f. The term "Policy Insureds" refers to the Named Insured and any Insured.

g. The term "Investments" refers to those series of transactions in which persons or entities, at the encouragement and direction of the Policy Insureds and others related to them, placed money in the care of the Policy Insureds which were then

funneled into various companies allegedly owned and/or controlled, directly or indirectly, by the Policy Insureds including BusinessRadio Network, L.P., Kaleta Capital Management, L.P. and/or Wallace Bajjali limited partnerships which then loaned the monies back into Policy Insured controlled businesses or related businesses in which Policy Insureds had a financial interest.

h. The term "Policy Claimants" refers to those investors who timely asserted a professional liability claim under the Policy against Policy Insureds for damages arising from the Investments. This term only shall mean the following fourteen (14) claimants: Doreen House, David Selter (wife Joanne Cassidy), Phillip Jones (wife Alissa Jones), Steve Cook, John Dosier, Ronald Ellisor, Ed Gray, Glenn Latta, Doug Shaffer, Kohur Subramanien, Blake Taylor, the Roger Taylor Trust, Paul Williams and Morris Wolf, and each of their respective heirs, beneficiaries, assigns, representatives, agents, trustees, relations by blood and marriage, and other related and/or affiliated entities.

i. The term "Other Investors" refers to all other individuals and entities who allege damages against the Policy Insureds arising from the Investments but who failed to tender a claim against the Policy Insureds prior to the expiration of the Policy, and each of their respective heirs, beneficiaries, assigns, representatives, agents, trustees, relations by blood and marriage, and other related and/or affiliated entities.

j. The term "Third Persons" refers to all other individuals and entities who have had any connection with the Policy Insureds associated with the Investments including but not limited to Richard Jordan, Daniel Stewart, David Wallace, Costa Bajjali,

Albert Fase Kaleta, Kaleta Capital Management, Inc., Kaleta Capital Management, L.P., West Houston WB Realty Fund, L.P., Wallace Bajjali Investment Fund II, L.P., Laffer Frishberg Wallace Economic Opportunity Fund, L.P., Wallace Bajjali Development Partners, L.P., Spring Cypress Investments, L.P. and all other investment vehicles or entities; and each of their respective past, present, and future agents, directors, officers, shareholders, heirs, beneficiaries, assigns, representatives, agents, trustees, predecessors, successors, employees, affiliates, assigns, attorneys and all other related and/or affiliated entities.

WHEREAS, on February 21, 2013 the Receiver filed a motion (Doc. #234) (the "Motion") seeking (i) a determination that a proposed settlement between the Receiver and the Insurance Company be deemed fair, equitable, reasonable, and in the best interest of the Receivership Estate and, thus be approved by the Court; and (ii) an Order, as a condition of the proposed settlement, releasing any and all claims against the Insurance Company and the Policy by the Policy Insureds and Policy Claimants, and (iii) an Order, as a condition of the proposed settlement, permanently barring or enjoining any and all Policy Insureds, Policy Claimants, Other Investors and Third Persons from commencing or continuing any judicial, administrative, arbitration, or other proceeding and/or from asserting or prosecuting any claims and/or causes of action against the Insurance Company or the Policy arising out of, in connection with, or relating in any way to the Investments or arising out of any advice, recommendation, opinion or act by the Policy Insureds in providing Investment Advisory Services for others as defined in the Policy;

WHEREAS, due and proper notice of the Motion, the proposed settlement, and any hearing on the Motion, has been given to all interested persons, and the court has considered the

papers filed and arguments made by the Receiver in support of his motion, and any objections to the Motion, and such other and further evidence as has been presented to the Court.

NOW, THEREFORE, it is hereby ORDERED that:

I. The Motion is GRANTED;

II. The settlement between the Receiver and the Insurance Company, as specifically provided for in the Compromise Settlement and Release Agreement, attached to the Motion as Exhibit 1, is hereby approved;

III. The Policy Insureds, Policy Claimants, Other Investors and Third Persons are hereby permanently barred, restrained, and enjoined, consistent with general equitable principles and in accordance with this Court's ancillary equitable jurisdiction in this matter, from commencing or continuing any judicial, administrative, arbitration or other proceeding and/or from asserting or prosecuting any claims and/or causes of action against the Insurance Company or the Policy arising out of, in connection with, or relating in any way to the Investments or arising out of any advice, recommendation, opinion or act by the Policy Insureds in providing Investment Advisory Services for others as defined in the Policy or in any manner taking any adverse action against the Insurance Company and/or the Policy;

IV. Neither the Insurance Company's settlement with the Receiver, nor any of the settlement's terms or provisions, nor any of the negotiations or proceedings in connection with the settlement, nor any of the documents or statements referred to therein shall be construed as or deemed in any judicial, administrative, arbitration or other type of proceeding to be evidence of a presumption, concession, or an admission by the Insurance Company of the truth of any fact alleged or the validity of any claim that has

been, could have been, or in the future might be asserted in the SEC Action or any other judicial, administrative, arbitration or other proceeding;

V. The rights of the Policy Claimants, Other Investors and/or Third Persons to participate in the claims process for the Receiver's ultimate plan of distribution for the Receivership Estate shall not be impaired by this Order;

VI. The Court shall have and retain jurisdiction over all matters related to the administration, interpretation, effectuation, or enforcement of this Order, the Compromise Settlement and Release Agreement between the Insurance Company and the Receiver, and any related disputes;

VII. There being no just cause for delay, this Order is, and is intended to be, a final, appealable decision of the Court within the meaning of Rule 54(b) of the Federal Rules of Civil Procedure.

VIII. The clerk shall promptly serve copies of this Order upon all parties to the SEC Action.

IT IS SO ORDERED, this 31st day of May, 2013.

Nancy F. Atlas
United States District Judge

Exhibit D

exhibitsticker.com

COMPROMISE SETTLEMENT AND RELEASE AGREEMENT

This Compromise Settlement and Release Agreement is entered into by, between, and among the parties identified below, and shall be effective upon the Effective Date, as defined below. This Agreement is a binding contract, the terms of which are delineated below.

1. PARTIES

1.1 "**Insurance Company**" means American International Specialty Lines Insurance Company, Chartis, Inc., Chartis Claims, Inc., American International Companies ("AIG"), and each of their respective past, present and future agents, directors, officers, underwriters, reinsurers, shareholders, predecessor companies, successor companies, employees, representatives, affiliates, assigns, attorneys and all other related and /or affiliated entities.

1.2 "**Receiver**" means Thomas L. Taylor III, Esq., solely in his capacity as Court-appointed Receiver of Kaleta Capital Management, Inc., BusinessRadio Network, L.P. d/b/a BizRadio, Daniel Frishberg Financial Services, Inc. d/b/a DFFS Capital Management, Inc. and all of the entities they own or control, appointed by the December 2, 2009 Agreed Order Appointing Receiver (Doc. # 7) in *S.E.C. v. Kaleta, et. al.*, No. 4:09-CV-3674, in the United States District Court for the Southern District of Texas, and as amended by the June 17, 2010 Order Modifying Order Appointing Receiver (Doc. # 34).

1.3 "**Settling Parties**" means the Receiver and the Insurance Company, collectively (or, individually, "**Settling Party**").

2. DEFINITIONS

2.1 "**Agreement**" means this Compromise Settlement and Release Agreement and its exhibits.

2.2 "**Claim**" or "**Claims**" means all actions, causes of action, claims, counterclaims, cross-claims, debts, demands, controversies, liabilities, suits, legal, equitable, arbitration and administrative proceedings of any kind, payments, charges, reimbursements, obligations, judgments, and theories of recovery of whatever nature, arising before the Effective Date, whether presently known or unknown, foreseen or unforeseen, fixed or contingent, asserted or unasserted, liquidated or unliquidated, accrued or unaccrued, recognized by the law of any jurisdiction, whether arising under statute or common law, in contract or in tort, at law or in equity, or under any theory of liability or damages including without limitation any theory of strict liability, trespass, nuisance, breach of any duty, fraud, bad faith, breach of the duty of good faith and fair dealing, intentional or negligent misrepresentation, common law or statutory negligence, breach of contract, fraudulent transfer or conveyance, securities violations, insurance code violations, breach of fiduciary duty, conversion, defamation, unjust enrichment, tortious interference, property damage, conspiracy, inducement, aiding and abetting, quantum meruit, promissory

estoppel, waiver, mental anguish, gross negligence, vicarious liability, "alter ego" liability, piercing the corporate veil, exemplary damages, disgorgement, fee forfeiture, constructive trust, penalties, suit for accounting, injunctive relief, attorneys' fees and costs, intentional acts or omissions, or violation of any regulation or statutory duty under State, Federal, or local law (including insurance and securities laws).

2.3 "**Claim Bar Notice**" means the written notice given by the Receiver of his filing of a motion seeking approval of this Agreement and the entry of a Final Claim Bar Order (defined below) to all persons sought to be bound by the Final Claim Bar Order. Such Claim Bar Notice shall include copies of said motion seeking approval of this Agreement (without exhibits) and the proposed Final Claim Bar Order. A Claim Bar Notice in a form approved by the Settling Parties is attached as **Exhibit A**.

2.4 "**Effective Date**" means the date that all Settling Parties having executed the Agreement and a Final Claim Bar Order in the form attached as **Exhibit B** (or another form agreed to by the Settling Parties in writing) becomes final and any and all appeals of the Final Claim Bar Order are exhausted or the time for appeal has expired and the Final Claim Bar Order is not the subject of any pending collateral attack.

2.5 "**Final Claim Bar Order**" means an order or judgment by the Court in the Litigation that, to the satisfaction of the Insurance Company, permanently bars or enjoins any and all Policy Insureds, Policy Claimants, Other Investors and Third Persons from commencing or continuing any judicial, administrative, arbitration, or other proceeding and/or asserting or prosecuting any Claims against any of the Insurance Company (and against the Policy), its respective past, present, and future agents, officers, directors, employees, heirs, representatives, relations by blood and marriage, affiliates, predecessors, successors, assigns, and related entities arising out of, in connection with, or relating to the Investments or arising out of any advice, recommendation, opinion or act by the Policy Insureds in providing Investment Advisory Services for others as defined in the Policy. Without limiting the generality of the foregoing, to constitute a Final Claim Bar Order, (i) the order or judgment must be final and not subject to further appeal or any pending collateral challenge; and (ii) the order or judgment must be binding on the Settling Parties, the Receivership Entities, the Policy Insureds, the Policy Claimants, the Other Investors and the Third Persons. A Final Claim Bar Order in a form approved by the Settling Parties is attached as **Exhibit B**.

2.6 "**Kaleta**" means Albert Fase Kaleta, a defendant in the Litigation.

2.7 "**KCM**" means Kaleta Capital Management, Inc., a defendant in the Litigation, and all of the entities it owns or controls.

2.8 "**KCM LP**" means Kaleta Capital Management, L.P., a Texas limited partnership controlled by KCM.

2.9 "**Policy**" refers to that third party liability claims-made and reported Investment Management Insurance Policy No. 01-766-06-99 issued by American International Specialty Lines Insurance Company to Daniel Frishberg Financial Services Inc. d/b/a

Frishberg, Jordan & Stewart Advisors with a policy period of April 1, 2009 to April 1, 2010 and limits of liability of $1,000,000 (which erodes by payment of defense costs), and which includes all terms, conditions, exclusions, limitations, endorsements and contractual provisions made a part of the Policy.

2.10 "**Policy Claimants**" refers to those investors who timely asserted a professional liability claim under the Policy against Policy Insureds for damages arising from the Investments. This term only shall mean the following fourteen (14) claimants: Barbara Doreen House, David Selter (wife Joanne Cassidy), Phillip Jones (wife Alissa Jones), Steve Cook, John Dosier, Ronald Ellisor, Ed Gray, Glenn Latta, Doug Shaffer, Kohur Subramanien, Blake Taylor, the Roger Taylor Trust, Paul Williams and Morris Wolf, and each of their respective heirs, beneficiaries, assigns, representatives, agents, trustees, relations by blood and marriage, and other related and/or affiliated entities.

2.11 "**Insured**" refers to Daniel Frishberg and/or Elisea Frishberg, and any past, present or future partners, officers, directors, trustees or employees of the Named Insured Daniel Frishberg Financial Services Inc. d/b/a Frishberg, Jordan & Stewart Advisors, as defined in the Policy.

2.12 "**Investments**" refers to those series of transactions in which persons or entities, at the encouragement and direction of the Policy Insureds and others related to them, placed their money in the care of the Policy Insureds which were then funneled into various companies allegedly owned and/or controlled, directly or indirectly, by the Policy Insureds including BusinessRadio Network, L.P., KCM and/or Wallace Bajjali limited partnerships which then loaned the monies back into Policy Insured controlled businesses or related businesses in which the Policy Insureds had a financial interest.

2.13 "**Litigation**" means Civil Action No. 4:09-cv-3674, *Securities and Exchange Commission v. Albert Fase Kaleta and Kaleta Capital Management, Inc., Defendants and BusinessRadio Network, L.P., d/b/a BizRadio and Daniel Frishberg Financial Services, Inc., d/b/a DFFS Capital Management, Inc., Relief Defendants Solely for the Purpose of Equitable Relief*; in the United States District Court for the Southern District of Texas, Houston Division.

2.14 "**Named Insured**" refers to Daniel Frishberg Financial Services, Inc. d/b/a Frishberg, Jordan & Stewart Advisors.

2.15 "**Other Investors**" refers to all other individuals and entities who allege damages against the Policy Insureds arising from the Investments but who failed to tender a claim against the Policy Insureds prior to the expiration of the Policy, and each of their respective heirs, beneficiaries, assigns, representatives, agents, trustees, relations by blood and marriage, and other related and/or affiliated entities.

2.16 "**Policy Insureds**" refers to the Named Insured and any Insured.

2.17 "**Receiver**" refers to Thomas L. Taylor, III, solely in his capacity as Court-appointed Receiver in the above-styled action ("SEC Action") of Kaleta Capital Management, Inc., BusinessRadio Network, L.P. d/b/a BizRadio, Daniel Frishberg Financial Services, Inc.

d/b/a DFFS Capital Management, Inc.[1], and all of the entities they own or control (collectively, the "Receivership Entities").

2.18 "**Receivership Entities**" means all entities, now or hereafter subject to the Receivership Estate, including without limitation KCM, KCM LP, BusinessRadio, Daniel Frishberg Financial Services, Inc. d/b/a DFFS Capital Management, Inc. and all of the entities they own or control.

2.19 "**Receivership Estate**" means that receivership created by and defined in the December 2, 2009 Agreed Order Appointing Receiver (Doc. 7) and amended by the June 17, 2010 Order Modifying Order Appointing Receiver (Doc. 34) in the Litigation.

2.20 "**Third Persons**" refers to all other individuals and entities who have had any connection with the Policy Insureds associated with the Investments including but not limited to Richard Jordan, Dan Stewart, David Wallace, Costa Bajjali, Albert Fase Kaleta, Kaleta Capital Management, Inc., Kaleta Capital Management, L.P., West Houston WB Realty Fund, L.P., Wallace Bajjali Investment Fund II, L.P., Laffer Frishberg Wallace Economic Opportunity Fund, L.P., Wallace Bajjali Development Partners, L.P., Spring Cypress Investments, L.P., and all other investment vehicles or entities; and each of their respective past, present, and future agents, directors, officers, shareholders, heirs, beneficiaries, assigns, representatives, agents, trustees, predecessors, successors, employees, affiliates, assigns, attorneys and all other related and /or affiliated entities.

3. RECITALS

3.1 WHEREAS, on November 13, 2009, the United States Securities and Exchange Commission instituted the Litigation against KCM and Kaleta alleging violations of the federal securities laws in connection with the alleged Investments;

3.2 WHEREAS, on December 2, 2009, the Court presiding over the Litigation (the "Court") appointed Thomas L. Taylor, III ("Taylor") as the Receiver for KCM in the Litigation;

3.3 WHEREAS, on June 17, 2010, the Court modified its order appointing Taylor as the Receiver to add the Named Insured and BusinessRadio to the Receivership Estate;

3.4 WHEREAS, on April 1, 2009, the Insurance Company issued the Policy to the Named Insured;

3.5 WHEREAS, the Policy may provide a duty to defend and/or a duty to indemnify Policy Insureds under a properly tendered claim under the Policy as long as the claim falls within the terms, conditions and contractual language of the Policy;

[1] The Settling Parties agree that there is a corporate name difference between the Policy's Named Insured Daniel Frishberg Financial Services Inc. d/b/a Frishberg, Jordan & Stewart Advisors and the named Relief Defendant sued in the Litigation, Daniel Frishberg Financial Services, Inc. d/b/a DFFS Capital Management, Inc. For purposes of this Agreement, the Named Insured also will include DFFS Capital Management, Inc.

3.6 WHEREAS, on July 24, 2009, the Policy Insureds were sued in a lawsuit styled: Cause No. 2009-46559; *Barbara Doreen House v. Daniel S. Frishberg, et al*, pending in the 234th Judicial District Court of Harris County, Texas ("House Lawsuit");

3.7 WHEREAS, on March 9, 2010, the Policy Insureds were sued in a lawsuit styled: Cause No. 2010-15157; *David A. Selter and Joanne M. Cassidy v. Daniel Frishberg*, pending in the 270th Judicial District Court of Harris County, Texas ("Selter Lawsuit");

3.8 WHEREAS, on March 30, 2010, the Policy Insureds sent a demand to the Insurance Company to defend and indemnify the Policy Insureds under the Policy from claims being brought against them by twelve (12) additional Policy Claimants for wrongful acts in the rendering of or failure to render Investment Advisory Services by the Policy Insureds;

3.9 WHEREAS, prior to the expiration of the Policy on April 1, 2010, the *only* persons or entities that had made a valid claim for defense and indemnity under the Policy due to misconduct alleged against the Policy Insureds were the Policy Claimants;

3.10 WHEREAS, there are more than sixty (60) Other Investors who did not timely tender a claim against the Policy Insureds and under which the Policy has no duty to defend and no duty to indemnify the Policy Insureds for the Other Investors' claims due to the Policy's expiration;

3.11 WHEREAS, the Insureds Daniel Frishberg and Elissa Frishberg are not Receivership Entities;

3.12 WHEREAS, the Insureds have demanded insurance coverage under the Policy in the House Lawsuit and in the Selter Lawsuit in which there is no Receivership Entity Defendant;

3.13 WHEREAS, the House Lawsuit and the Selter Lawsuit have been stayed by the Court in this proceeding to preserve the status quo of the Receivership Estate;

3.14 WHEREAS, but for the stay of the various proceedings brought by the Policy Claimants against the Policy Insureds, the Policy would likely undertake a duty to defend the Policy Insureds in the various claims subject to reservation of rights letters that have been issued to the Policy Insureds arising out of the claims made by the Policy Claimants;

3.15 WHEREAS, the Policy is an "eroding limits" policy with defense costs first reducing the limits of liability under the Policy;

3.16 WHEREAS, there are significant insurance coverage issues which may result in no indemnification payments being made under the Policy for the claims asserted by the Policy Claimants which coverage issues would have to be determined in this Litigation or in separate litigation as a matter of law;

3.17 WHEREAS, both the Insureds and the Receiver for the Named Insured would be necessary parties to any insurance coverage litigation;

3.18 WHEREAS, the Named Insured and Insureds would be competing for defense and indemnity recovery under the eroding limits Policy;

3.19 WHEREAS, the Settling Parties wish to buy peace and avoid the expense and time required to litigate potentially lengthy and complex insurance coverage disputes;

3.20 WHEREAS, the Insurance Company disputes and does not admit any of the Receiver's allegations;

3.21 WHEREAS, given the Insurance Company's intent to defend vigorously against any Claims asserted against it by the Receiver, and the likelihood that claim litigation would significantly erode the limits of liability of the Policy, the risks inherent in litigation and the expenses that would likely result from protracted litigation, and the limited resources of the Receivership Parties, the Receiver has concluded that it is in the best interest of the Receivership Estate to avoid litigation that will deplete the assets of the Receivership Estate and that the terms of this Agreement will provide more benefit to the Receivership Estate than any recovery that might be achieved through litigation; and

NOW THEREFORE, IN CONSIDERATION of the promises, terms, provisions, and agreements contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Settling Parties agree as follows:

4. SETTLEMENT TERMS

4.1 Within fifteen (15) days of the Effective Date, the Insurance Company shall pay to the Receiver on behalf of the Policy Insureds for the benefit of the Policy Claimants and the Receivership Estate the sum of Eight Hundred Thousand Dollars and No Cents ($800,000.00).

4.2 The Receiver shall credit any sums paid by the Insurance Company pursuant to the terms of this Agreement to the Receivership Estate. The Insurance Company will have no responsibility for the allocation, distribution, or payment of such funds to any Claimant against the Receivership Entities or the Receivership Estate, their respective attorneys, or to any other person.

4.3 The Receiver shall secure the written approval of the Insurance Company of any motions and proposed orders that the Receiver files in the Litigation in connection with this Agreement, including without limitation the motion to approve this Agreement and for entry of a Final Claim Bar Order and related proposed orders, before such motions and orders are filed with the Court.

4.4 Within twenty (20) days of the signing of this Agreement, the Receiver shall file with the Court in the Litigation a motion seeking the Court's approval of this Agreement and entry of a Final Claim Bar Order, subject to the approval of the Insurance Company required by the terms of ¶ 4.3. The Receiver shall serve by regular, first-class United States mail, a copy of the Claim Bar Notice, the proposed Final Claim Bar Order, and the motion seeking approval of the settlement (without exhibits), on the persons and entities listed in **Exhibit C** at the addresses listed in **Exhibit C**. The Receiver shall post this Agreement,

the motion seeking its approval (and all exhibits thereto), the proposed Final Claim Bar Order, and the Claim Bar Notice on the Receivership Estate's website at http://www.kcmreceivership.com.

4.4.1 The entry of a Final Claim Bar Order in the form attached as **Exhibit B** (or a form agreed to by the Insurance Company in writing) and Court approval of the Agreement are conditions precedent to the formation of this Agreement. Subject to ¶ 2.4, this Agreement shall not become effective unless and until the Court approves this Agreement and a Final Claim Bar Order as defined in ¶ 2.5 and in the form attached as **Exhibit B** (or a form agreed to by the Insurance Company in writing) exists.

4.4.2 Nothing in this Agreement or the Final Claim Bar Order is intended to or shall impair in any way the rights of the Policy Claimants, the Other Investors and/or the Third Persons to participate in the claims process for the Receiver's ultimate plan of distribution for the Receivership Estate or to receive distributions of receivership assets pursuant to that ultimate plan of distribution.

4.5 The Insurance Company will not be liable for the attorneys' fees and costs incurred by the Receiver or any Policy Insureds, Policy Claimants, the Other Investors and/or the Third Persons, in finalizing and implementing the terms of this Agreement, including without limitation those attorneys' fees and costs related to motions filed with the Court in the Litigation and the Final Claim Bar Order. Likewise, the Receiver and any Policy Insureds, Policy Claimants, the Other Investors and/or the Third Persons who may have a claim against the Receivership Estate, will not be liable for the attorneys' fees and costs incurred by the Insurance Company in finalizing and implementing the terms of this Agreement, including without limitation those attorneys' fees and costs related to the Final Claim Bar Order.

5. RELEASES

5.1 The releases granted in this section by the Settling Parties shall not impair in any way the rights of any Settling Party to enforce this Agreement or any breach of this Agreement against any other Settling Party.

5.2 The Receiver and the Receivership Entities and their respective past, present, and future officers, directors, owners, shareholders, members, agents, partners, parent companies, subsidiaries, related entities, affiliates, employees, representatives, attorneys, trusts, trustees and estates, executors, administrators, predecessors, successors, relations by blood and marriage, beneficiaries, heirs, assigns, and all persons, natural and corporate, in privity with any of the foregoing, and anyone claiming by, through or under them (collectively, the "Receiver Releasing Parties") RELEASE, ACQUIT, AND FOREVER DISCHARGE the Insurance Company, and its respective past, present, and future officers, directors, owners, shareholders, members, agents, partners, parent companies, subsidiaries, underwriters, reinsurers, related entities, affiliates, employees, representatives, attorneys, trusts, trustees and estates, executors, administrators, predecessors, successors, relations by blood and marriage, beneficiaries, heirs, assigns,

and all persons, natural and corporate, in privity with them (collectively, the "Insurance Company Released Parties") from any and all Claims, including without limitation, all Claims asserted or that could have been asserted by the Receiver Releasing Parties in the Litigation or otherwise against the Insurance Company Released Parties, which the Receiver Releasing Parties have ever had, or now have, or may have in the future against the Insurance Company Released Parties based upon events, actions, and/or omissions which occurred prior to and through the Effective Date arising out of, concerning, or relating, directly or indirectly, to the Litigation, the Receiver, the Receivership Entities, and/or the Receivership Estate, the Policy, the Policy Insureds, the Policy Claimants including without limitation, the Investments or arising out of, related to or in connection with any advice, recommendation, opinion or act by the Policy Insureds in providing Investment Advisory Services for others as defined in the Policy; and any other transactions or dealings that the Insurance Company Released Parties had with the Receiver Releasing Parties.

5.3 The Insurance Company and its respective past, present, and future officers, directors, owners, shareholders, members, agents, partners, parent companies, subsidiaries, related entities, affiliates, employees, representatives, attorneys, trusts, trustees and estates, executors, administrators, predecessors, successors, relations by blood and marriage, beneficiaries, heirs, assigns, and all persons, natural and corporate, in privity with them (collectively, the "Insurance Company Releasing Parties") RELEASE, ACQUIT, AND FOREVER DISCHARGE the Receiver, the Receivership Entities, and the Receivership Estate, as well as their respective past, present, and future parent companies, subsidiaries, attorneys, predecessors, successors and assigns (collectively, the "Receiver Released Parties"), from any and all Claims, including without limitation, all Claims asserted or that could have been asserted by the Insurance Company Releasing Parties against the Receiver Released Parties in the Litigation, or otherwise under the Policy, which the Insurance Company Releasing Parties have ever had, or now have, or may have in the future against the Receiver Released Parties based upon events or actions which occurred prior to and through the Effective Date arising out of, concerning, or relating, directly or indirectly, to the Litigation, the Receiver, the Receivership Entities, and/or the Receivership Estate, the Policy, the Policy Insureds, the Policy Claimants including without limitation, the Investments, and any other transactions or dealings that the Receiver Released Parties had with the Insurance Company Releasing Parties.

6. CONSIDERATION ACKNOWLEDGED

6.1 The Settling Parties acknowledge that the provisions of this Agreement provide mutually sufficient consideration for any and all rights, duties, or obligations created in the provisions of this Agreement. The Settling Parties have made no agreement or promise to do any act or thing not set forth in this Agreement.

7. REPRESENTATIONS AND WARRANTIES

7.1 The Settling Parties expressly represent that the purpose of this Agreement is to compromise doubtful and disputed Claims in which liability is expressly denied. This

Agreement will not be deemed to constitute an admission of liability or of the validity of any Claim, or of the truth of any allegation, all of which are expressly denied.

7.2 The Settling Parties expressly represent that they have had an opportunity and have the means to have had this Agreement reviewed by legal counsel of their own choosing.

7.3 The Settling Parties further represent that their attorneys have fully explained the terms of this Agreement to them and they have carefully read and fully understand this Agreement.

7.4 The Settling Parties further represent that they are completely satisfied with the advice and assistance of their legal counsel.

7.5 The Settling Parties further represent that they have not assigned, conveyed, or encumbered in any way, or agreed to assign, convey, or encumber in any way, any of their interests in any of the Claims released herein.

7.6 Each Settling Party represents that no consent, approval, authorization, or order of any governmental authority, person, or entity, except as provided in Section 4, is required for the execution, delivery, and performance of this Agreement.

7.7 Each Settling Party represents that it has the power and authority to enter into this Agreement and the documents delivered pursuant to same to which it is a party, and that the person or entity acting on behalf of the Settling Party in executing this Agreement has the authority to do so.

7.8 The Settling Parties represent that they have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Settling Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Settling Party by virtue of the authorship of any of the provisions of this Agreement.

8. AGREEMENT BINDING ON PARTIES, SUCCESSORS, AND ASSIGNS

8.1 This Agreement shall be binding upon and shall inure to the benefit of the Settling Parties and their respective past, present, and future officers, directors, owners, shareholders, members, agents, partners, parent companies, subsidiaries, underwriters, reinsurers, related entities, affiliates, employees, representatives, attorneys, trusts, trustees and estates, executors, administrators, predecessors, successors, relations by blood and marriage, beneficiaries, heirs, assigns, and all persons, natural and corporate, in privity with them.

9. NOTICE

9.1 Any notice, demand, or information required or permitted to be given to the respective Settling Parties pursuant to the terms and conditions of this Agreement, if any, must be in writing. Such notice may be given by messenger, facsimile, Federal Express (or other commercial air carrier), or United States mail. Notice shall be deemed given under the

respective service methods within the following time periods, but actual notice however given or received shall always be effective:

9.1.1 Mail—three (3) business days after the deposit in the U.S. mails, certified or registered mail, return receipt requested, adequate postage prepaid, addressed to the parties at the addresses given below. Rejection or other refusal to accept or the inability to deliver because of a change of address of which no proper notice was given shall be deemed receipt of notice;

9.1.2 Federal Express (or other commercial air carrier)—two (2) business days after being deposited with such carrier;

9.1.3 Facsimile—at the time stated on the confirmation of the facsimile transmission; and

9.1.4 Messenger—upon delivery to the person at the address specified below.

By giving at least ten (10) days written notice, any Settling Party shall have the right from time to time and at any time while this Agreement is in effect to change its respective address or fax number and each shall have the right to specify a different address or fax number within the United States of America.

If to the Receiver:

Thomas L. Taylor III, Receiver
THE TAYLOR LAW OFFICES, P.C.
4550 Post Oak Place Dr., Suite 241
Houston, Texas 77027

Telephone No.: (713) 626-5300
Facsimile No.: (713) 402-6154

If to the Insurance Company:

Chartis Claims, Inc.
Financial Lines Claims
P.O. Box 29547
Shawnee Mission, KS 66225

Ref. Claim No. 550-002029

With a copy to
Susan Abbott Schwartz
Henslee Schwartz LLP
8150 N. Central Expressway
Suite 950
Dallas, Texas 75206

Telephone No.: (214) 239-7900
Facsimile No.: (214) 239-7999

10. **ENTIRE AGREEMENT**

10.1 **This Agreement represents the entire agreement between the Settling Parties with respect to the matters referred to herein, and supersedes all prior agreements, negotiations, or statements, all of which are deemed merged into this Agreement, and shall not be modified or affected by any offer, proposal, statement, or representation, either oral or written, heretofore made by or for any Settling Party in connection with the negotiation of the terms hereof. No Settling Party has any obligation to any other Settling Party other than those contained in this Agreement, and this Agreement may not be modified or amended except in writing executed by all of the Settling Parties.**

10.2 If any provision of this Agreement is or may be held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless survive and continue in full force and effect without being impaired or invalidated in any way.

11. **EACH PROVISION HEREIN IS MATERIAL**

11.1 Each of the promises, conditions, and terms set forth herein, including without limitation the releases contained in Section 5 of this Agreement, are essential to this Agreement. Breach of any such promise, condition, or term shall be a material breach of this Agreement.

12. **GOVERNING LAW**

12.1 The interpretation, validity, and enforceability of this Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without regard to the choice of law or conflict of laws rules of Texas or any other jurisdiction.

13. **COUNTERPARTS**

13.1 This Agreement may be executed in any number of original or facsimile counterparts, each of which shall be deemed an original for all purposes, and all of which constitute, collectively, one instrument.

14. **HEADINGS**

The headings herein are for convenience only and shall not be deemed a part hereof.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Settling Parties have signed and acknowledged this Agreement below.

Thomas E. Taylor III

In his capacity as Receiver for Kaleta Capital Management, Inc., BusinessRadio Network, L.P. d/b/a BizRadio, Daniel Frishberg Financial Services, Inc. d/b/a DFFS Capital Management, Inc., and all of the entities they own or control

Date: 1/29/13

Chartis Claims, Inc.
a New York corporation

By: MARK C. SCHIAVI

Name: Mark C. Schiavi

Title: Authorized Representative

Date: 2/14/13

VERIFICATION

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

Before me, the undersigned authority, on this day personally appeared Thomas L. Taylor, III, in his capacity as Receiver for Kaleta Capital Management, Inc., BusinessRadio Network, L.P. d/b/a BizRadio, Daniel Frishberg Financial Services, Inc. d/b/a DFFS Capital Management, Inc., and all of the entities they own or control, known to me to be the person who executed the foregoing instrument who, after being duly sworn by me, did upon oath depose and state that he is fully competent and duly authorized to make this Verification and acknowledged to me that he executed it for the purposes and considerations expressed in it, in the capacities therein stated.

Given under my hand and seal of office this 29th day of January, 2013.

KELLY ANN CORNELISON
Notary Public, State of Texas
My Commission Expires
February 25, 2014

Notary Public in and for the
State of Texas

My Commission Expires: 2/25/14

VERIFICATION

THE STATE OF New Jersey §
§
COUNTY OF Union §

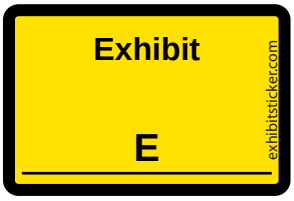
Before me, the undersigned authority, on this day personally appeared Mark Schiavi, _____ of Chartis Claims, Inc., a New York corporation, known to me to be the person who executed the foregoing instrument who, after being duly sworn by me, did upon oath depose and state that he is fully competent and duly authorized to make this Verification and acknowledged to me that he executed it for the purposes and considerations expressed in it, in the capacities therein stated.

Given under my hand and seal of office this 14 day of February, 2013.

Notary Public in and for the
State of New Jersey

My Commission Expires: 3/26/16

LORA J. CAMPOREALE
NOTARY PUBLIC OF NEW JERSEY
ID # 2187586
My Commission Expires Mar. 26, 2016



IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SECURITIES AND EXCHANGE COMMISSION Plaintiff, v. ANGELO A. ALLECA, SUMMIT WEALTH MANAGEMENT, INC., SUMMIT INVESTMENT FUND, LP, ASSET DIVERSIFICATION FUND, LP, and PRIVATE CREDIT OPPORTUNITIES FUND, LLC, Defendants.	1:12-cv-3261-WSD

OPINION AND ORDER

This matter is before the Court on Robert D. Terry's (the "Receiver") "Motion for Approval of Settlement of Disputed Calm and Settlement Agreement and for Entry of Bar Order" [103] ("Motion and Bar Order").[1]

I. BACKGROUND

This action involves alleged violations of the securities laws by Defendants, resulting in significant investment losses to investors. On September 19, 2012, the Court entered a permanent injunction [7] against

[1] The Receiver's Memorandum of Law in support of his Settlement Motion is docketed at [104] ("Settlement Memorandum").

Defendants enjoining them from violating the securities laws, freezing Defendants' assets, and requiring an accounting of assets. On September 21, 2012, the Court appointed [9] Robert D. Terry as the Receiver for the estates of Defendants Summit Wealth Management, Inc. ("Summit"), Summit Investment Fund LP, Asset Class Diversification Fund, LP, and Private Credit Opportunities Fund, LLC (the "Receivership Entities") (the "Receivership Order"). On November 21, 2012, the Court entered an order [27] authorizing the Receiver to recover and secure the assets of the Receivership Entities (the "Modified Receivership Order").

On May 21, 2015, the Receiver filed the Motion and Bar Order seeking the Court's approval of the proposed settlement of an insurance coverage dispute with Federal Insurance Company ("Federal"). The Compromise Settlement and Policy Release Agreement [103.1 at Ex. A] (the "Settlement Agreement"), if approved, will result in Federal paying $1,487,500 into the Receivership Estate, and will allow the Receiver to propose a plan of interim distribution to claimants of the Receivership Estate. (Settlement Memorandum at 1-2). The Settlement Agreement concerns coverage extended to Summit for the liability of its directors, officers and employees under a policy of insurance issued by Federal (the

"Policy").[2] If approved, the Settlement Agreement will extinguish the Policy and a Bar Order will be entered "against all insureds, potential insureds, or any other claimants in and to any proceeds of" the Policy (the "Bar Order"). (Id. at 2).

On July 13, 2015, the Receiver filed his "Motion for Approval of Form of Notice of Receiver's [Motion and Bar Order]" [108] (the "Notice Motion"). On July 15, 2015, the Court granted the Notice Motion, finding the proposed notice adequately summarized the Settlement Agreement, its terms, and the impact of the Bar Order. (July 15, 2015, Order, at 1). The Court ordered the Receiver, on or before July 24, 2015, to send the Notice to each person who will or could be impacted by the Settlement Agreement and Bar Order. (Id.).[3] The Court set September 11, 2015, as the deadline for objections to the Settlement Agreement or Bar Order to be filed. The Notice also advised that a hearing, set for October 9, 2015, would be held to consider objections to the Settlement Agreement and to consider the reasonableness of the Settlement Agreement.

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[2] The "Policy" includes all Asset Management Protector insurance policies issued to Summit and/or NASI by Federal and all policies issued under policy number 8210-5886, including renewed policies issued under policy number 8210-5886 for 2008, 2009, 2010, 2011, and 2012.

[3] The Court further ordered the Receiver to file, on or before July 24, 2015, a list of each person to whom the Notice was sent. (July 15, 2015, Order at 2). On July 24, 2015, the Receiver filed his Notice of Mailing [110] which certified that the Notice was mailed to the persons listed in Exhibit B [110.1], "such persons being the persons known to the Receiver who will or could be impacted by the approval of the Settlement and the Bar Order, as defined in such Notice." (Notice of Mailing at 1-2).

No objections were filed before October 9, 2015, and none were asserted at the October 9, 2015, hearing. At the hearing, counsel for the Receiver summarized the background of the settlement, the Settlement Agreement terms, the notification process, and the effect of the Bar Order.

II. DISCUSSION

A. Legal Standard

"The district court has broad powers and wide discretion to determine relief in an equity receivership." S.E.C. v. Elliott, 953 F.2d 1560, 1566 (11th Cir. 1992); see also S.E.C. v. Kaleta, 530 F. App'x 360, 362 (5th Cir. 2013). In determining whether to approve a proposed settlement in a receivership, a district court must consider:

> (a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

See In re Justice Oaks II, Ltd., 898 F.2d 1544, 1549 (11th Cir. 1990).[4] The district court's powers to fashion relief in an equity receivership include "the court's

[4] In re Justice Oaks II addressed the approval of a settlement in a bankruptcy matter. The Receiver has not provided, and the Court has not found, any specific guidance from the Eleventh Circuit on approving settlements in a receivership. Because a receivership estate is comparable to the estate administered in a bankruptcy case, the Court will consider the facts used by the bankruptcy courts, as approved by the Eleventh Circuit, to determine if the Settlement Agreement should be approved.

'inherent equitable authority to issue a variety of 'ancillary relief' measures in actions brought by the SEC to enforce the federal securities laws.'" Kaleta, 530 F. App'x at 362 (quoting S.E.C. v. Wencke, 622 F.2d 1363, 1369 (9th Cir. 1980)). "Such 'ancillary relief' includes injunctions to stay proceedings by non-parties to the receivership." Id. To approve a bar order, a district court must determine if the bar order is fair and equitable. See Munford v. Munford Inc., (In re Munford), 97 F.3d 449, 455 (11th Cir. 1996).

B. Analysis

1. Probability of Success on the Merits

In considering the In re Justice Oaks II, factors, the Court notes first that success on the merits is uncertain, including because Federal possesses legal and factual defenses to any claims under the Policy. Federal's defenses include: (1) the Policy is void *ab initio* for fraud or material misrepresentations or omissions; (2) the Knowledge Exclusion excludes all claims;[5] (3) the limit of liability is $1

[5] The Knowledge Exclusion allows Federal to deny coverage under the Policy if the insured, at the time the insurance application was signed, "had any knowledge or information of any fact, circumstance or situation that might reasonably be expected to give rise to any claim that would fall within the scope of the proposed insurance." (Settlement Memorandum, Ex. 2 [104.2] at 13). There is arguable evidence to support Federal's claim that, at the time the insurance application was signed, Alleca had knowledge that he expected would give rise to a claim.

million due to the false Warranty Letters;[6] and (4) all claims against Summit, Alleca, and likely other individual insureds, are excluded under the Fraud Exclusion.[7] Because there is an arguable possibility that Federal could show that the Policy is void, or that some or all of the claims are barred by the Knowledge Exclusion, Warranty Letters, or Fraud Exclusion, the Receiver's success on the merits is uncertain. This factor favors approval of the Settlement Agreement.

2. Difficulties in Matter of Collection

There are no apparent difficulties in collecting a judgment against Federal if the Receiver prevailed in litigation. This is a neutral approval factor.

3. Complexity, Expense, Inconvenience, and Delay of Litigation Involved

If the Settlement Agreement is not approved, Summit's action to establish coverage, and Federal's defenses to coverage, would have to be decided in a

[6] To renew the Policy, Summit provided letters on Summit letterhead in which Summit agreed that "no person proposed for coverage under this Policy is aware of any facts or circumstances which he or she has reason to suppose might give rise to a future claim." (Settlement Memorandum, Ex. 3 [104.3] and Ex. 4 [104.4] (the "Warranty Letters")). The Warranty Letters conditioned the increase in liability coverage above $1 million on Summit's agreement no facts or circumstances were known to Summit that would give rise to a claim under the Policy. (See id.) (stating, "[i]t is further agreed that if such facts or circumstances exist, whether or not disclosed, any claim or action arising from them is excluded from this proposed coverage")

[7] The Policy excludes, with certain limitations, claims arising from a deliberately fraudulent act or omission by an insured. (Settlement Memorandum at 7-8).

separate lawsuit. The litigation would be time consuming and expensive because the issues involved are complex. If Federal was ultimately required to provide coverage on the claims, there could be a substantial delay in the Receiver collecting the insurance proceeds. This factor favors approval.

4. Interest of Creditors and Deference to Their Reasonable Views

The creditors of the Receivership Entities or potential claimants under the Policy have not objected to the Settlement Agreement. In the absence of objections, the Court concludes they do not oppose approval of the Settlement Agreement or the Bar Order.[8] See LR 41.3(A)(2), NDGa. ("Failure to file a

[8] Based on the representations made by the Receiver and Federal at the October 9, 2015, hearing, the Court concludes that all persons who will or could be impacted by approval of the Settlement Agreement and the Bar Order received notice of the Settlement Agreement and Bar Order. The Notice was sent to all potential insureds under the Policy, all former and current employees of Summit, and all persons who filed a lawsuit or an arbitration against Summit or any of its current or former employees. The Receiver identified 107 individuals who may be impacted by the approval of the Settlement Agreement and the Bar Order, and sent a copy of the Notice to each of them. Eight (8) notices were returned as undeliverable. The Receiver identified alternative addresses for seven (7) of those individuals and successfully resent the Notice to them. The Receiver discovered that the eighth person moved to England but contact information for her is not available. This eighth person, however, was an intern at Summit and, in light of her position, it is doubtful she would have any sort of claim under the Policy. The Receiver also posted a copy of the Notice on the website he maintains for this case. The Receiver and Federal concluded that all that all potentially interested parties received the Notice. The Court agrees, and concludes that proper notice of the Settlement Agreement and Bar Order was sent to all interested parties.

response shall indicate that there is no opposition to the motion."). This factor favors approval.

5. Bar Order

Federal would not have agreed to settle the coverage dispute without the Bar Order. Federal is paying the Receiver $1,487,500, which constitutes 49% of the maximum policy coverage of $3 million. On these facts, the Court concludes that a Bar Order preventing potential claimants from seeking coverage under the Policy, in exchange for a settlement payment of $1,487,500, is fair and equitable. See Munford, 97 F.3d at 455.

Having considered the In re Justice Oaks II, factors, the Court concludes that the Settlement Agreement and the Bar Order is a reasonable, fair, and equitable resolution of the dispute between the Receiver and Federal. The Court, considering the litigation risk to the Receiver and the expenses associated with it, concludes that a settlement in the amount of $1,487,500, is fair, reasonable, and equitable. The Court determines that the Settlement Agreement and Bar Order should be approved.

III. CONCLUSION

For the foregoing reasons,

IT IS HEREBY ORDERED that Receiver Robert D. Terry's "Motion for Approval of Settlement of Disputed Claim and Settlement Agreement and for Entry of Bar Order" [103] is **GRANTED**.

IT IS FURTHER ORDERED that the Settlement Agreement [103.1 at Ex. A] between the Receiver and Federal Insurance Company is **APPROVED**.

IT IS FURTHER ORDERED that the Receiver's request for the entry of the Bar Order is **GRANTED**.

IT IS FURTHER ORDERED that, except as otherwise provided herein, any and all persons, including without limitation Summit Wealth Management, Inc., Summit Investment Fund LP, Asset Class Diversification Fund, LP, Private Credit Opportunities Fund, LLC, National Advisory Services, Inc., and any of their current or former employees or agents, and all other persons falling under the definition of "Insured" under the Policy issued by Federal Insurance Company that is the subject of the Settlement Agreement, and each of their heirs, successors, and assigns (collectively, the "Insureds"), plus all "Investors" (as that term is defined in the Settlement Agreement), and all "Third Parties" (as that term is defined in the Settlement Agreement), are all, separately and severally, except as provided in the following paragraph of this Order, hereby enjoined and restrained from:

A. the filing, commencing, conducting, supporting or continuing in any manner, any suit, action, or other proceeding (including, without limitation, any proceeding in any judicial, arbitral, administrative, or other forum) that directly, indirectly, derivatively, or in any other form

or manner, is adverse to or against the interests of Federal Insurance Company, with regard to any matter (i) arising out of or relating to the Policy, (ii) arising out of or relating to any "Wrongful Act" (as defined in the Policy) by any Insured, or (iii) arising out of or relating to any advice, recommendation, opinion, or act by any Insured in providing "Investment Adviser Services" (as defined in the Policy); and from

B. enforcing, levying, or employing legal process, whether pre- or post-judgment, and against attaching, garnishing, sequestering (including any prejudgment attachment, garnishment or sequestration), and from bringing proceedings supplementary to execution, collection, or otherwise seeking any recovery against Federal Insurance Company by any means or in any manner, with regard to any claim, (i) arising out of or relating to or alleged to be covered under the Policy, (ii) arising out of or relating to any alleged Wrongful Act (as defined in the Policy) by any Insured, or (iii) arising out of or relating to any advice, recommendation, opinion, or act by any Insured in providing Investment Adviser Services (as defined in the Policy); and from

C. bringing or participating in any action brought by any person or entity seeking recovery, contribution, reimbursement, and/or indemnity in any form from Federal Insurance Company, with regard to any claim, (i) arising out of or relating in any way to, or alleged to be covered under, the Policy, (ii) arising out of or relating to any Wrongful Act (as defined in the Policy) by any Insured, or (iii) arising out of or relating to any advice, recommendation, opinion, or act by any Insured in providing Investment Adviser Services (as defined in the Policy) (the "Bar Order Terms").

IT IS FURTHER ORDERED that the scope of the Bar Order and the injunction described above is limited to those claims against Federal Insurance Company arising out of, resulting or to result from, or in any way connected with the Receivership Entities, including but not limited to the operations of the Receivership Entities, or with regard to any and all claims relating or allegedly relating in any way to the Policy. The Bar Order Terms are not intended to, and

shall not, bar or impair Third Party claims against any Insureds, except insofar as any such claim is sought to be collected through the proceeds of the Policy. All previous Orders entered with respect to any such claims remain in effect unless expressly modified by this Order.

IT IS FURTHER ORDERED that any and all liability of Federal Insurance Company under the Policy shall, upon the receipt by the Receiver of the Payment consideration described in the Agreement, be fully and finally extinguished.

IT IS FURTHER ORDERED that the rights of the Insureds and of the Investors and Third Parties to participate in the claims process for the Receiver's ultimate plan of distribution for the Receivership Estate are not impaired by this Order.

IT IS FURTHER ORDERED that, there being no just cause for delay, this Order is, and is intended to be, a final, appealable decision of the Court within the meaning of Rule 54(b) of the Federal Rules of Civil Procedure.

IT IS FURTHER ORDERED that the Court shall have and retain jurisdiction over all matters related to the administration, interpretation, effectuation, or enforcement of this Order, the Settlement Agreement, and any related disputes.

SO ORDERED this ____ day of December, 2015.

WILLIAM S. DUFFEY, JR.
UNITED STATES DISTRICT JUDGE