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 Claim 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 Defendants enjoining them from

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

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

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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).

October 9, 2015, would be held to consider objections to the Settlement Agreement and to consider the reasonableness of the Settlement Agreement.

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

'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

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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 factors used by the bankruptcy courts, as approved by the Eleventh Circuit, to determine if the Settlement Agreement should be approved.

[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

$1 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.

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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.

[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).

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 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

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.

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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.

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 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 15th day of October, 2015.

WILLIAM S. DUFFEY, JR.
UNITED STATES DISTRICT JUDGE