

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

<p>SECURITIES AND EXCHANGE COMMISSION,</p> <p style="text-align:center">Plaintiff,</p> <p>v.</p> <p>MOBILE BILLBOARDS OF AMERICA, INC., INTERNATIONAL PAYPHONE COMPANY, RESERVE GUARANTY TRUST, MICHAEL A. LOMAS and MICHAEL L. YOUNG,</p> <p style="text-align:center">Defendants.</p>	<p style="text-align:center">CIVIL ACTION NO.</p> <p style="text-align:center">1:04-CV-2763-WBH</p>
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ORDER APPROVING RECEIVER'S SETTLEMENT AGREEMENT
WITH HEISER & JESKO

S. Gregory Hays, the Receiver for Mobile Billboards of America, Inc. and other affiliated entities, filed a Motion for Approval of Settlement Agreement and Release with Heiser & Jesko, CPA's. Upon consideration of the Motion and the relevant facts, the Court finds as follows:

Findings of Fact

1. Pursuant to Orders entered in this action on September 21, 2004, October 18, 2004 and February 7, 2005 ("the Receivership Orders"), this Court appointed S. Gregory Hays to serve as Receiver for Defendants Mobile Billboards of America, Inc. ("MBA"); International Payphone Corporation d/b/a Outdoor Media

Industries; Reserve Guarantee Trust; Tiger Media, Inc.; California Mobile Billboards, Inc. ("CMBI"); and Western Reserve Guarantee Trust, all of whom are collectively referred to as "the Receiver Entities" or "the Receiver Estate."

2. In accordance with the Receivership Orders, the Receiver is, inter alia, authorized and directed to "... pursue ... all suits, actions, claims and demands which may ... be brought by" the Receiver Entities.

3. In the course of investigating claims and pursuing recoveries, the Receiver and the professionals working with him have obtained and analyzed documents, taken deposition testimony and engaged in informal exchanges of information regarding Heiser & Jesko (referred to as "H&J"), an Ohio accounting firm, which acted as auditor for MBA and its predecessor in interest in audits for the years 2001, 2002 and 2003, and as auditor for CMBI for an audit in 2003 (collectively referred to as "the Audits").

4. Based upon the facts discovered during the course of his investigation of the Audits, the Receiver made a monetary demand upon H&J asserting that the Audits had not been performed in accordance with the applicable standards of care.

5. In addition to the claims asserted by the Receiver in his demand, H&J has been sued in not less than three separate civil actions by various investors who purchased mobile billboard investments from MBA ("the Investor Lawsuits").

6. H&J denies that it is liable to the Receiver's or to investors, including the plaintiffs in the Investor Lawsuits, and has engaged counsel to defend the pending litigation, as well as the claims asserted by the Receiver.

7. H&J has filed Motions to Dismiss each of the Investor Lawsuits, one of which was granted on grounds related to personal jurisdiction, while another was dismissed without prejudice by the plaintiff. H&J and its counsel believe this motion should also be granted in the one Investor Lawsuit in which it remains pending.

8. Despite H&J's denial of any liability whatsoever, counsel for H&J and the Receiver have engaged in extensive negotiations regarding the settlement and compromise of the Receiver's claims. As a result, the Receiver and H&J have entered into a Settlement Agreement dated March 29, 2006, a copy of which is attached to this Order as Exhibit "A."

9. The Receiver also made a thorough investigation of the financial resources of H&J, as well as the compensation paid to H&J's principals and employees during the relevant time period. As a result, the Receiver determined that, with the exception of a professional liability insurance policy, H&J has no readily available assets with which to pay any substantial amount on claims against it.

10. H&J's professional liability insurance policy, issued by Philadelphia Indemnify Insurance Company ("PIIC"), has an aggregate policy limit of \$500,000, which limit includes attorneys' fees and expenses used in the defense of any claims

against H&J, including claims asserted by the Receiver and those asserted in the Investor Lawsuits. Accordingly, the proceeds of the PIIC policy are being eroded by the cost of defending those claims. As of the date of the Settlement Agreement, the remaining coverage available under the insurance policy shall be slightly in excess of \$325,000.

11. Despite the Receiver's belief that the value of his claims against H&J is well in excess of \$325,000, he believes that because of the overall circumstances of this claim, including the cost and risk of litigation and H&J's inability to respond to a larger judgment, the Receiver Estate and other investors would be best served by a settlement and compromise with H&J.

12. Though H&J denies any liability to the Receiver or any other claimant, H&J and PIIC wish to resolve the Receiver's claims if they can be assured that they will not be subject to further litigation related to the Audits after the proceeds of the subject insurance policy are completely used for the purposes of the proposed settlement with the Receiver.

13. Absent a settlement that precludes further litigation against H&J, it is evident that the remaining proceeds of the subject insurance policy will be consumed in defending the Receiver's claim and the Investor Lawsuits. Such a result would deprive any investor of the benefit of those funds. Conversely, if the claims against H&J are settled and compromised in accordance with the terms of the Settlement

Agreement, those proceeds will be available for distribution to investors and other creditors and/or to fund the administration of the Receiver Estate.

14. As a group, the investors are likely to suffer substantial harm if the Investor Lawsuits and possible future investor litigation are not enjoined. To the extent that the insurance proceeds are not completely used in defending such claims, any recovery resulting from a successful action against H&J would further erode the PIIC policy. An injunction, therefore, actually works to preserve the proceeds against which any creditor, including the investors, may ultimately recover. By preserving the entirety of the remaining balance of the PIIC policy, this Court's injunction works to increase the likelihood of a fair resolution between H&J, the investors and the Receiver Estate. Accordingly, the Court finds that given the current posture of the available funds, allowing the Investor Lawsuits and possible future investor litigation to proceed would frustrate the ability of this Court and the Receiver in the administration of the Receiver Estate.

15. In accordance with the Court's direction, the Receiver has given written notice of the filing of the Motion to Approve the Settlement Agreement and Release to the parties in this action and to all known investors. Pursuant to the terms of the notice, any person objecting to the Settlement Agreement, including the injunction and stay of other investor claims against H&J, was required to file a written objection with the Court.

16. No investor or other person so notified filed any written objections with the Court.

[OR, ALTERNATIVELY]

_____, _____ and _____, investors in mobile billboards with MBA and/or CMBI made objections to the Settlement Agreement. The Court, after careful consideration of such objections, finds that none of the persons making objections should have any greater rights than any other investor, and, thus, should be limited to their prorated share of available Receivership proceeds, when, as and if such proceeds are made available to investors. None of such objectors having demonstrated to the Court any special circumstances which would entitle them greater recovery than any other investors;

17. H&J submits itself to the jurisdiction of this Court solely for the purposes of the Receiver's Motion and has not waived objections to jurisdiction with respect to any other matter.

Conclusions of Law

1. The Court has jurisdiction over the subject matter and over the parties, including all matters affecting the Receiver Estate.

2. Each known investor has been properly notified of the hearing and of the terms of the settlement and has been given the opportunity to be heard.

3. The Settlement Agreement and Release is in the best interests of the Receiver Entities and its creditors, including investors. The payment made by H&J will inure to the benefit of investors in that they will be distributed to investors pursuant to a Plan of Distribution and/or used in the administration of the Receiver Estate. Absent a settlement and compromise in accordance with the terms of the Settlement Agreement, the pending Investor Lawsuits, as well as claims asserted by the Receiver against H&J, will result in a race among plaintiffs to obtain a judgment. At the same time, the proceeds of the subject insurance policy will continue to be depleted in the defense of these actions. The Court finds that no investor, including the plaintiffs in the Investor Lawsuits, is well served by such a circumstance.

4. This Court may grant an injunction where it is necessary in aid of its jurisdiction. As indicated above, if the Investor Lawsuits and possible future investor actions are not enjoined, then such actions will so interfere with this Court's jurisdiction over the Receiver Estate as to seriously impair this Court's flexibility and authority in the administration of the Receiver Estate. Accordingly, this court has the authority to enjoin the Investor Lawsuits and possible future investor litigation. All-Writs Act, 28 U.S.C. § 1651; Anti-Injunction Act, 28 U.S.C. § 2283.

5. The Receiver has concluded, and such findings are adopted by this Court, that H&J was not a knowing participant in or beneficiary of the securities fraud and "Ponzi" scheme alleged by the SEC in the Complaint filed in this case.

Though disputed, H&J was, at most, negligent in the performance and supervision of the Audits.

6. The Receiver's willingness to enter into the Settlement Agreement is, in large part, based upon his analysis of the cost of litigating his claims against H&J compared to his ability to recovery substantially more than is being paid now, even if he were to obtain a judgment in a significantly higher amount. His agreement to these terms, as well as this Court's approval of the Settlement Agreement, shall not in any way release, waive, limit or otherwise the Receiver's rights, if any, to pursue claims against other third-parties, including those who may have participated in the Audits.

In light of the foregoing findings of fact and conclusions of law, IT IS HEREBY ORDERED as follows:

1. The Settlement Agreement and Release dated March 29, 2006 is hereby approved and the parties are directed to perform in accordance with its terms.

2. Any and all persons who purchased investments from MBA, CMBI, or any of the other Receiver Entities, are hereby enjoined from filing and/or further prosecution of claims against H&J or any of its principals and employees or PIIC, its insurer, that in any way relate to, arise because of, or are in connection with, the Audits.

3. Any party, attorney or other person involved in the Investor Lawsuits, or otherwise, who acts in a manner contradictory to this Order shall be in contempt of this Order and 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 and performance of the Settlement Agreement.

SO ORDERED, this ____ day of _____, 2006.

Willis B. Hunt, Judge
United States District Court for the
Northern District of Georgia
Atlanta Division