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

S. GREGORY HAYS, Receiver for Mobile Billboards of America, Inc., California Mobile Billboards, et al., Plaintiff, v. PAUL, HASTINGS, JANOFSKY & WALKER LLP, Defendant.	CIVIL ACTION FILE No. 1:06-CV-0754-CAP

ORDER APPROVING THE RECEIVER'S SETTLEMENT AGREEMENT WITH PAUL, HASTINGS, JANOFSKY & WALKER LLP

Plaintiff S. Gregory Hays, the Receiver for Mobile Billboards of America, Inc. and other affiliated entities ("Receiver"), filed a Motion for Approval of Settlement Agreement and General Release with Defendant Paul, Hastings, Janofsky & Walker LLP ("Paul Hastings"). Upon consideration of the Motion and the relevant facts, the Court finds as follows:

FINDINGS OF FACT

1. The Receiver was appointed by the United States District Court for the Northern District of Georgia in a civil enforcement action styled *Securities and*

Exchange Commission v. Mobile Billboards of America, Inc., et al., Civil Action File No. 1:04-CV-2763-WBH (the "SEC Enforcement Action").

2. Pursuant to Orders entered in the SEC Enforcement Action on September 21, 2004, October 18, 2004, and February 7, 2005 (the "Receivership Orders"), the Receiver was appointed to serve as receiver for Mobile Billboards of America, Inc. ("MBA"); International Payphone Corporation d/b/a/ Outdoor Media Industries; Reserve Guaranty Trust; Tiger Media, Inc.; California Mobile Billboards, Inc. ("CMBI"); and Western Reserve Guaranty Trust (collectively, the "Receiver Entities").

3. In accordance with the Receivership Orders, the Receiver was, *inter alia*, authorized by this Court to "pursue . . . all suits, actions, claims and demands which may . . . be brought by" the Receiver Entities. *SEC v. Mobile Billboards, et al.*, Civil Action File No. 1:04-CV-2763-WBH, September 21, 2004 Order, at VII.C [Doc. No. 3]. The Receiver was also authorized to "engage and employ others (without Court approval), including but not limited to . . . attorneys . . . to assist him in his duties, except that any payment to others for their services shall be subject to Court approval." *Id.* at VII.F.

4. Consistent with that authorization, the Receiver engaged the law firm of Troutman Sanders LLP to pursue the Receiver Entities' claims against Paul

Hastings. On February 27, 2006, the Receiver entered into an agreement with Troutman Sanders for representation on a contingent fee basis, which entitles Troutman Sanders to 33⅓% of any recovery from a lawsuit against Paul Hastings.

5. On March 31, 2006, the Receiver, together with five individuals who purchased mobile billboards from MBA, filed this lawsuit against Paul Hastings, a law firm that performed certain legal services for MBA and CMBI from August 2002 through September 2004.

6. On September 14, 2006, this Court dismissed the claims brought by two purchasers for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). The remaining purchasers then voluntarily dismissed their claims against Paul Hastings. The Court declined to dismiss the Receiver's claims and noted that the Receiver would be permitted to pursue claims against Paul Hastings "for the (ultimate) benefit of the defrauded investors." (Order [Doc. No. 31] at 26.)

7. Based upon the facts discovered during the course of extensive discovery in this case, the parties agreed to engage in formal settlement discussions. As a result of these settlement discussions, the Receiver and Paul Hastings entered into a Settlement Agreement and General Release (the "Settlement Agreement") on November 12, 2007. The Settlement Agreement represents a compromise of claims asserted by the Receiver and is not an admission of liability by Paul Hastings.

8. The Receiver has determined that the terms of the Settlement Agreement are in the best interest of the Receiver Entities, allowing their creditors—namely, all persons who purchased billboards from MBA and CMBI ("Purchasers")—to recover money now, instead of waiting for a potential recovery at the end of protracted litigation.

9. In accordance with the Court's direction, the Receiver has given written notice of the filing of the Motion to Approve Settlement Agreement and General Release, along with all supporting documentation, to all known Purchasers. Pursuant to the terms of the Notice of Motion, any Purchaser objecting to the Settlement Agreement, including the injunction of claims by Purchasers against Paul Hastings, was required to file a written objection with the Court.

10. No Purchaser filed any written objections with the Court.

[OR, ALTERNATIVELY]

[Number] _____ Purchasers filed written objections and appeared at a hearing on [Date] _____ to perfect their objections. These "Objecting Purchasers" will not receive any proceeds from the settlement, and they are not bound by this Order approving settlement: _____

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CONCLUSIONS OF LAW

1. Because this action is ancillary to the receivership and the SEC Enforcement Action, this Court has jurisdiction over the subject matter of this litigation. *Haile v. Henderson Nat'l Bank*, 657 F.2d 816, 822 (6th Cir. 1981) (stating that actions initiated by a receiver in furtherance of a receiver's duties are ancillary to the primary action in which the receiver was appointed).

2. This Court's power to supervise an equity receivership and determine the appropriate action to be taken in the administration of the receivership is "extremely broad." *SEC v. Hardy*, 803 F.3d 1034, 1038-39 (9th Cir. 1986); *see also SEC v. Safety Fin. Serv., Inc.*, 674 F.2d 368 (5th Cir. 1982) (noting the broad powers inherent in a federal court supervising an equity receiver).

3. In reviewing the Settlement Agreement, this Court is hesitant to substitute its judgment for that of counsel. *In re Smith*, 926 F.2d 1027, 1028 (11th Cir. 1991) ("A trial judge ought not try the case during a settlement hearing and should be hesitant to substitute his or her judgment for that of counsel."). Furthermore, this Court "must guard against the temptation to become an advocate—either in favor of the settlement because of a desire to conclude the litigation, or against the settlement because of the responsibility to protect the rights of those not parties to the settlement." *Id.* at 1029 (citing *Moore's Federal*

Practice, Manual for Complex Litigation 2d § 23.14, at 160 (1986)). Instead, in reviewing the Settlement Agreement, this Court is called upon to be impartial and neutral, favoring neither the proponents of the settlement nor those who are opposed or absent. *Id.*

4. The volume and substance of the Receiver's knowledge of this case are unquestionably adequate to support the Settlement Agreement. The Receiver entered into the Settlement Agreement with a clear understanding of the strengths and weakness of his claims against Paul Hastings based on (1) an extensive investigation, both prior to and during the litigation of this case; (2) research of the law with regard to the claims asserted in the case and the possible defenses thereto; (3) consultation with experts; (4) depositions of numerous witnesses; (5) review and analysis of voluminous paper and electronic documents produced by Paul Hastings; and importantly (6) arm's-length negotiations with Paul Hastings during a two-day mediation.

5. The Receiver's claims involve numerous complex legal and factual issues. Although considerable discovery has occurred, continued pursuit of the Receiver's claims will require extensive expert discovery and testimony, adding significantly to the complexity, expense, and duration of this case.

6. Even at the completion of expert discovery, recovery of any amount for the benefit of the Purchasers is far from certain. The Court recognizes that trial is a risky proposition, particularly the risks associated with establishing causation and damages. *See, e.g.*, *Perez v. Asurion Corp.*, 501 F. Supp. 2d 1360, 1381 (S.D. Fla. 2007) ("[T]he reasonable possibility that Plaintiffs would not have recovered *anything* if they had proceeded to trial . . . weigh[s] heavily in favor of approving this Settlement.") (emphasis in original).

7. The Court, therefore, agrees the settlement is fair, adequate, and reasonable and is not the product of collusion between the parties. The Settlement Agreement is in the best interest of the Receiver Entities and allows the Receiver Entities, and ultimately the Purchasers, to recover money now, instead of a potential recovery after years of protracted litigation. Each known Purchaser has been properly notified of the terms of the Settlement Agreement and has been given the opportunity to object and be heard.

8. Under the All Writs Act, "[t]he Supreme Court and all courts established by Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651. This Court may grant a writ under this act whenever it is "calculated in [the court's] sound judgment to achieve the ends of justice entrusted

to it," and not only when it is "'necessary' in the sense that the court could not otherwise physically discharge its . . . duties." *Klay v. United Healthgroup, Inc.*, 376 F.3d 1092, 1100 (11th Cir. 2004) (quoting *Adams v. United States*, 317 U.S. 269, 273 (1942)).

9. Furthermore, such writs may be directed to not only the immediate parties to a proceeding, but to "persons who, though not parties to the original action . . . are in a position to frustrate the implementation of a court order or the proper administration of justice . . . ." *Id.* (quoting *United States v. New York Tel. Co.*, 434 U.S. 159, 174 (1977)).

10. The Eleventh Circuit has ruled, for example, that a district court may issue an injunction under the All Writs Act to prevent prosecution of an action "that had already been settled under the terms of a federal settlement agreement" because proceedings in other courts "that involve the same facts as already issued judgments and orders . . . threaten the jurisdiction of the district court enough to warrant an injunction." *Klay*, 376 F.3d at 1104; *see also In re Baldwin-United Corporation*, 770 F.2d 328, 337 (2d Cir. 1985) (affirming district court's issuance of post-settlement injunction barring "anyone else [from] seeking recovery of money to be paid to the plaintiffs"); *TBK Partners, Ltd v. Western Union Corp.*, 675 F.2d 456, 460-62 (2d Cir. 1982) (finding it permissible for a judgment on a settlement to bar

later claims based on "the identical factual predicate" as that under the settled claims); *Horton v. Metro., Life Ins. Co.*, 459 F. Supp. 2d 1246, 1252 (M.D. Fla. 2006) (barring, under the All Writs Act, claims premised upon the same factual predicate as settled claims).

11. As indicated above, it is this Court's opinion that settlement of this litigation is necessary and appropriate to the orderly and efficient administration of the receivership and is in the best interest of the Receiver Entities. Paul Hastings, however, would have little incentive to pay $4.25 million to the Receiver Entities, for the benefit of the Purchasers, absent assurances that Paul Hastings would not be subject to further liability from Purchasers seeking the very same damages being settled herein, including but not limited to, MBA's and CMBI's unpaid obligations to them.

12. The settlement amount represents, in large part, payment of MBA's and CMBI's unpaid obligations to the Purchasers and will inure to the ultimate benefit of the Purchasers. The Purchasers have been provided an opportunity to object to the terms of the settlement, including the injunction. Further filing and prosecution by Purchasers of claims against Paul Hastings seeking damages already settled herein would frustrate the implementation of the Settlement Agreement and

"threaten the jurisdiction of the district court enough to warrant an injunction." *Klay*, 376 F.3d at 1104.

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

1. The Settlement Agreement and General Release between the Receiver and Paul Hastings, dated November 12, 2007, is hereby approved, and the parties are directed to perform in accordance with its terms.

2. Any and all persons who purchased billboards from MBA or CMBI, except the Objecting Purchasers, are hereby enjoined from filing any claim against Paul Hastings that arises under the same facts or relates to the underlying claims settled herein, including but not limited to, claims that in any way relate to, or arise because of, Paul Hastings' representation of MBA and CMBI.

3. Any person 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.

4. The Receiver is authorized to pay Troutman Sanders a contingent fee in the amount of 33⅓% of the settlement amount, pursuant to the terms of the engagement agreement between the Receiver and Troutman Sanders, dated February 27, 2006.

SO ORDERED, this 7 day of March, 2008.

Charles A. Pannell, Jr.
United States District Court Judge