UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

SECURITIES AND EXCHANGE COMMISSION, **Plaintiff,** **v.** **ALBERT E. PARISH, JR., PARISH ECONOMICS, LLC, and SUMMERVILLE HARD ASSETS, LLC,** **Defendants.**	**CIVIL ACTION NO. 2:07-cv-00919-DCN**

RECEIVER'S MOTION TO APPROVE SETTLEMENT AND FOR RELATED INJUNCTIVE RELIEF AND BRIEF IN SUPPORT THEREOF

The Receiver, S. Gregory Hays, files this motion asking this Court to: (1) approve his settlement with Charleston Southern University ("CSU") as set forth in the executed Settlement Agreement, a copy of which is attached hereto as Exhibit "A"; and, (2) enjoin the filing and further prosecution of claims against CSU and related individuals that arise from or relate to fraudulent investment schemes that

are the subject of this action. In support of this motion, the Receiver shows this Court as follows:

Summary of Settlement

As more fully set forth below, the Receiver believes that he, as well as investors and other creditors of the Receiver Estate, could assert viable claims against CSU in connection with the fraudulent investment schemes perpetrated by Albert E. Parish. While CSU denies that it is liable to the Receiver or anyone else, it desires to resolve all of these issues without incurring the time, expense and distraction of litigation, as well as the related risk of substantial damage awards that could threaten its continued operations. Accordingly, as more fully described in the Settlement Agreement, the Receiver and CSU have agreed to resolve these issues as follows:

- CSU will pay $3,910,000 to the Receiver. This payment includes $3,750,000 from CSU's insurance policy, which is 93.75% of the $4,000,000 policy limit of CSU's Officers and Directors coverage.[1] The remaining $160,000 will be paid by CSU, which is approximately 10% of its current cash reserves.

[1] CSU's insurer has reserved its rights with respect to all coverage issues under the subject policy in the event that this settlement is not approved.

- The Receiver and CSU have confirmed that CSU lost $8,400,000 as a result of investments CSU made with Parish and, therefore, it has an "allowed claim" in that amount. As a part of this settlement, CSU waives its entitlement to payment on this claim unless and until all other investors are paid 18% of their allowed claims. While a distribution to other investors equal to 18% of their losses would be a remarkable result under the circumstances of this case, it is clear that this waiver has cash value to the Receiver Estate and, ultimately, to investors and other creditors. For example, if the ultimate distribution is 10% of all losses, this waiver would result in the availability an additional $840,000 for other investors and creditors. If, in fact, the ultimate distribution reaches or exceeds 18% of all losses, the value of this waiver is $1,512,000.
- The Receiver releases CSU and all affiliated individuals from any and all claims related to or arising from Parish's investment activities, as well as his employment by and relationship with CSU.
- The payments and releases are conditioned upon this Court's entry of a "bar order" enjoining the filing and further prosecution of claims by third-parties (including investors) against CSU that relate to or arise from Parish's

investment activities and/or as his employment by and relationship with CSU.

- If the settlement is approved and the bar order is entered, the Receiver agrees to indemnify CSU and other released parties against "barred" claims by third-parties. This indemnity obligation is limited to the lesser of: $3,910,000 (i.e., the amount of CSU's cash payment), or the net value of the Receiver Estate at the time that the indemnity claim is made.

The Receiver and his counsel are confident that this settlement is in the best interest of all concerned. First, and most importantly, this provides for a significant cash benefit that will inure to the benefit of all investors who lost money as a result of their dealings with Parish. Second, it avoids the delay and expense of protracted litigation. Third, the settlement eliminates the risk to investors that CSU will successfully defend claims and, at the same time, eliminates the risk to CSU that the Receiver and/or investors will obtain judgments in amounts that would cripple its ability to operate. Finally, resolving these claims within the structure of the receivership permits all investors with allowed claims to participate in this recovery and removes the possibility of disparate recoveries and "competing" litigation among investors and other creditors of the Receiver Estate.

Factual Background

The Receiver and his counsel have engaged in an extensive investigation of the subject investment offerings conducted by Albert E. Parish, Parish Economics, LLC and Summerville Hard Assets, LLC, which has included an examination of the relationship between Parish and CSU. This investigation has included formal and informal document and deposition discovery, forensic computer analysis, and interviews and less formal conversations with various individuals, including investors.

As a result of their investigation, the Receiver and his counsel believe that the following facts could be proven regarding the relationship between Parish and CSU:

1. Parish was employed by CSU from the early 1990s until April 2007, when the SEC filed this action revealing the fraudulent nature of the subject "investment pools."

2. As a member of CSU's faculty, Parish purportedly performed research in the field of mathematical economics. He also was the director of the Center of Economic Forecasting, which was located at and sponsored by CSU, along with The Post and Courier and the Charleston Metro Chamber of Commerce.

3. Parish perpetrated the fraudulent investment offering throughout the term of his employment by CSU.

4. Over time, much of Parish's conduct related to the "investment pools" actually occurred in his office at CSU. For example, the principal computer used by Parish to manipulate and manufacture investor account information and other data was located in Parish's office at CSU. On occasion, Parish met with investors in his office at CSU and took delivery of purchased "hard assets" at that location.

5. CSU knew of and consented to Parish's conducting investment activities from his CSU office.

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

7. Parish expressly represented to investors that he was paid no fee for management of the "investment pools" and, instead, they were operated in connection with his research as a mathematical economist.

8. Since late 2002, CSU invested in various "investment pools." Over time, CSU invested more than $10,000,000 with Parish. As of the date of the filing of this case (i.e., the SEC "Enforcement Action"), the principal amount of CSU's investment in the "pools" was $8,400,000.

9. CSU's investments and investment policies were ultimately adopted and approved by CSU's Board of Trustees. These actions were taken in response to and accordance with the recommendations of its Investment Management Committee. Investments, including the investments with Parish, were managed by an Investment Management Team, which included members of CSU's administration and others, including Parish (though Parish did not vote on matters related to making investments in his "pools").

10. Individuals affiliated with CSU, including its President and Vice-President for Business Affairs, invested in Parish's "investment pools."

11. 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 (which, presumably, were being done as a member of CSU's faculty and/or as director of the Center for Economic Forecasting). Moreover, CSU was aware over time that Parish was making unconventional representations to investors about the manner in which the "pools" were operated (which the Receiver contends should have been "red flags" regarding Parish's conduct).

12. As Parish's employer, CSU was in a position, over time, to obtain information from Parish regarding the operation of the "investment pools" that was

not available to other investors. However, CSU did very little diligence at the time of its investments and did nothing to monitor Parish's investment activities.

13. CSU publicly embraced Parish and affirmed his expertise as a mathematical economist (despite doing very little, if anything, to determine the efficacy of his work, including the operation of the "investment pools").

14. CSU's public embrace and affirmation of Parish provided many, if not all, investors with assurance and comfort regarding Parish's competence and integrity.

15. Though unknown to CSU's trustees and administration, a member of CSU's faculty issued an opinion letter on CSU letterhead 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. The legal conclusions reached regarding the nature of the "investment pools" are incorrect.

16. Parish used investors' money (less than $1,000,000) to make contributions to CSU and to fund the operation of the Center for Economic Forecasting.

17. Not later than some time in 2006 (and, possibly, earlier), CSU and senior members of its administration became aware of facts that should have

indicated that Parish was not operating the "investment pools" in accordance with the representations made to investors. The Receiver contends that these facts presented additional "red flags" that should have caused CSU to take immediate action with respect to Parish and investigate the operation of the "investment pools."

Importantly, *CSU does not admit that all of the Receiver's factual allegations are true and, in fact, denies that certain of the Receiver's conclusions are correct.* Even more important to the Receiver and his counsel in the context of a settlement, there are no facts known to them that in any way indicate that CSU or any member of its administration or other affiliated individual was knowingly complicit in the perpetration of the fraudulent investment scheme. To the contrary, the facts demonstrate that CSU and affiliated individuals were "true believers" in Parish's investment acumen and ability.

In addition, the Receiver believes that the following facts weigh heavily in favor of the proposed settlement:

a. All of the evidence indicates that CSU and senior members of its administration believed that Parish was operating the "investment pools" in accordance with the representations he made to investors and that returns were being realized in the

amounts reflected in account statements.

b. CSU has a single $4 million insurance policy that would be available to respond to the types of claims that could be asserted based upon the facts set forth above. CSU's insurer, while participating in the settlement, has reserved all of its rights with respect to coverage positions in the event that the settlement is not approved.

c. A very large percentage (93.75%) of the subject insurance policy is being committed to this settlement. It is highly unlikely (and, in the opinion of the Receiver and his counsel, impossible) that CSU or its insurer would ever be willing to pay significantly more from the policy to resolve the subject claims by agreement.

d. The revelations of Parish's fraudulent conduct have had a significant detrimental impact on CSU. Not only has CSU lost $8,400,000 in funds invested with Parish, this circumstance has caused certain donors and prospective donors to withdraw or reduce financial support, which is critical to CSU's ability to operate.

e. The $160,000 cash component of the settlement comprises approximately 10% of CSU's cash reserves. Under the circumstances, it appears that if CSU is required to use more cash to resolve these claims, its mission and programming could be further damaged and its ability to operate could be threatened.

f. As a practical matter, CSU and its insurer are paying as much as can ever be expected to be realized by agreement. Moreover, the amounts being paid effectively leave CSU unable to respond to additional claims for damages arising from or related to Parish's investment activities. Therefore, it is reasonable for CSU to impose a condition that the settlement is effective only upon the entry of a "bar order" enjoining the further prosecution of claims by third-parties related to these matters.

g. CSU is a 43 year old church-supported educational institution serving a diverse student body.

h. The majority of CSU's students are first generation South Carolinians and 28% of its students are minorities.

i. Putting CSU out of business would result in discontinuing the

education of 2,300 students, the loss of 400 faculty, staff and coaching jobs, and a loss of a significant contribution to the Charleston tri-county area.

j. The Receiver is the only prospective plaintiff that can use CSU's claim of loss as "cash" for the benefit of investors.

k. When the cost of litigation (by either the Receiver or investors) is taken into account, it is difficult to imagine that any possible future recovery would net more to investors than the proposed settlement.

The Receiver and his counsel have many years of experience in prosecuting and defending litigation and well understand that a successful prosecution of claims against CSU is by no means certain.

Possible Causes of Action and Defenses

The orders of appointment entered in the early days of this action expressly authorize and direct the Receiver to ". . . file and prosecute . . . any civil actions or other proceeding that could be filed by" the Receiver Entities. (Order dated April 5, 2007 at § IX; Order dated April 12, 2007 at § VIII, the "Receivership Orders.") Moreover, the Receiver's authority includes the discretion to "to settle, compromise or adjust any pending or future action or proceeding as may be advisable or proper

for the protection and administration of the Receiver Estate." (Id.).

As "new management" for Parish Economics and Summerville Hard Assets, the Receiver has standing to assert claims against CSU. In addition, it is evident that investors and, quite possibly, other third-parties could assert claims against CSU. The causes of action that would most likely be successful under South Carolina law are:

- Negligent supervision of Parish as a CSU employee (Restatement of Torts Second § 317, which has been cited with approval numerous times by South Carolina courts; see e.g., Davis v. United States Steel Corp., 779 F.2d 209, 212 (4th Cir. 1985));
- Negligent misrepresentation as a result of the public embrace and affirmation of Parish (Kelly v. S.C. Farm Bureau Mut. Ins. Co., 316 S.C. 319, 323-324 (S.C. Ct. App. 1994)); and,
- Control person liability in connection with Parish's investment scheme while an employee of CSU (S.C. Code Ann. § 35-1-509 (g)(1) and (2)).

In fact, similar claims already have been asserted in two complaints filed against CSU on behalf of investors, and those cases are presently pending in state

court.[2] (These two cases are collectively referred to below as the "Investor Lawsuits.") Importantly, it is clear that *all investors who lost money* could assert some or all of these claims, not just the select few who have joined as plaintiffs in the Investor Lawsuits.

In or about September 2007, Receiver's counsel informed CSU's attorneys of the results of the Receiver's investigation, including the possible claims that could be asserted against CSU, and made a demand for payment from CSU. While CSU has denied any liability to the Receiver or investors (including the Plaintiffs in the Investor Lawsuits), counsel for the Receiver and CSU have engaged in extensive settlement negotiations since that time.

Among other things, the Receiver and his counsel expect that in response to any lawsuit filed by the Receiver, CSU would assert defenses that include, without limitation, the following:

- Parish was not acting as an employee or other representative of CSU in perpetrating the fraudulent investment scheme;
- CSU did not know, and in the exercise of reasonable care, could not have

[2] Smith v. Charleston S. Univ., Case No. 07-CP-08-809, South Carolina Court of Common Pleas, Berkely County; and, Elrod, et al. v. Charleston S. Univ., et al., Case No. 07-CP-10-1465, South Carolina Court of Common Pleas, Charleston County.

known that Parish was perpetrating the fraudulent investment scheme;

- Other investors had knowledge of and access to the same facts that were available to CSU;
- CSU made no express representations and gave no express assurances regarding Parish's investment activities;
- Investors relied on Parish, not CSU, in making their investment decisions; and,
- CSU did not control or otherwise assist Parish in the activities related to his fraudulent investment scheme.

Taking into account all of the factual circumstances, as well as the nature of the claims and defenses described above, the Receiver and his counsel believe that the proposed settlement is in the best interest of the Receiver Estate and all Parish investors who lost money as a result of the fraudulent investment schemes. In light of the amounts being paid by CSU and its insurer, the Receiver and his counsel also believe that the entry of a "bar order" is appropriate.

The "Bar Order" and the Receiver's Indemnity

Understandably, CSU is willing to enter into this settlement only if it is not exposed to further potential liability from investors or others as a result of its relationship and involvement with Parish. As noted above, CSU has already been

sued in two separate actions filed on behalf of investors ("the Investor Lawsuits"), and it has been threatened with other litigation arising from the circumstances discussed above. Hence, a condition of the settlement is the entry of a bar order "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." (See, Settlement Agreement, ¶ 1(b), p. 5.) This is the same concept and structure used in effecting the Receiver's settlement with Yolanda Yoder, Parish's wife. (See, Order And Final Judgment Approving

Receiver's Settlement Agreement With Yolanda Yoder, January 11, 2008, Doc. No. 157.)

The Receiver believes that the proposed settlement and related termination of all issues and claims regarding CSU's potential liability in connection with the subject investment offering is fundamentally fair and in the best interest of all concerned. In fact, it is difficult to imagine how anyone could object to such a result. All investors will share in this recovery. There are no special circumstances that dictate that some investors should receive a disproportionate share of the amounts available to be paid by or on behalf of CSU. Not only does the proposed settlement resolve the numerous issues related to CSU's relationship with Parish, it provides for an orderly and effective way to administer the monies paid by CSU for the benefit of all investors and other creditors without interference by competing claimants. The reality is that the settlement with the Receiver is the best and, quite likely, the only way for all investors to benefit from a recovery against CSU.

1. The All Writs Act Authorizes The "Bar Order"

The All Writs Act, 28 U.S.C. § 1651, authorizes federal courts to "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; In re Consol. Welfare Fund "ERISA" Litig., 798 F. Supp. 125, 127 (D.N.Y. 1992). This Court may issue an

injunction 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)); "ERISA" Litig., 798 F. Supp. at 127. The All Writs Act authorizes this Court "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." Miller v. Brooks, 315 F.3d 417, 437 (4th Cir. 2003) (citing Penn. Bureau of Corr. v. United States Marshals Serv., 474 U.S. 34, 40 (1985)). This authority includes enjoining prosecution of state court litigation that may frustrate the implementation of a court order (such as the Receivership Orders in this case), or the proper administration of justice or orderly resolution of litigation in federal court, or impair the federal court's flexibility and authority to decide a case. In re: Inter-Op Hip Prosthesis Prod. Liab. Litig., 176 F. Supp. 2d 758, 763 (N.D. OH 2001) (*vacated in part,* on other grounds); "ERISA" Litig., 798 F. Supp. at 127; In re Asbestos Sch. Litig., 1991 U.S. Dist. LEXIS 5142, *3 (D. Pa. 1991); In re Baldwin-United Corp., 770 F.2d at 335.

"The power conferred by the [All Writs] 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." United States v. New York Tel. Co., 434 U.S. 159, 173-174 (1977); "ERISA" Litig., 798 F. Supp. at 127. The Fourth Circuit has ruled, for example, that a district court may issue an injunction under the All Writs Act to prevent repeated attacks of matters resolved under the terms of a settlement agreement and to prevent "direct frustration of [a] district court's Settlement Approval Order." Miller, 314 F.3d at 438-439; Scardelletti v. Rinkwitz, 68 Fed. Appx. 472, 480 (4th Cir. 2003); see also Klay, 376 F.3d at 1104 (11th Cir. 2004); Baldwin-United Corp., 770 F.2d at 337 (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).

This Court's authority and 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). In this regard, it is important to remember that, chief among the Receiver's responsibilities is to marshall assets and make recoveries that can be distributed to investors and other creditors of the Receiver Estate. Accordingly, this aspect of the receivership is fundamental to this Court's jurisdiction in this case.

It is clear that this Court's jurisdiction extends over any action that the Receiver might file against CSU, and that such an action would be ancillary to the Receivership and the Enforcement Action. Haile v. Henderson Nat'l Bank, 657 F.2d 816, 822 (6th Cir. 1981); see also 15 U.S.C.S. § 77v; 15 U.S.C.S. §§ 78u(d), (e), 78aa; 15 U.S.C.S. § 80b-14; 28 U.S.C. 754. Equally important, this Court has jurisdiction over the Receiver's activities in connection with analyzing and administering the claims of investors and other creditors and with making distributions to those who lost money here. If the claims against CSU are settled and compromised in accordance with the terms of the Settlement Agreement, the

proceeds will become part of the Receivership Estate and inure to the ultimate benefit of all investors.

Investors will have an opportunity to review and object to the terms of the Settlement Agreement before it is approved. However, if approved, it is obvious that further filing and prosecution by investors and others of claims against CSU 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 (11th Cir. 2004); see also Baldwin-United Corp., 770 F.2d at 337 (affirming district court's issuance of post-settlement injunction barring "anyone else [from] seeking recovery of money to be paid to the plaintiffs").

2. The Anti Injunction Act Does Not Preclude The "Bar Order"

Because there are state court cases currently pending (i.e., the Investor Lawsuits), this Court must be mindful of the Anti-Injunction Act, which expressly prohibits federal courts from enjoining the prosecution of *pending* state court actions.[3] 28 U.S.C. § 2283. However, the statute makes clear that there are

[3] The Anti-Injunction Act is not applicable to, and therefore does not preclude, injunctions against state court actions that have not yet been filed, but only addresses stays of lawsuits already filed. Dombrowski v. Pfister, 380 U.S. 479, 485, n.2 (1965) ("This statute and its predecessors do not preclude injunctions against the institution of state court proceedings, but only bar stays of suits already

exceptions to this prohibition. Specifically, a district court may enjoin pending state court proceedings: (1) as expressly authorized by Congress, or (2) where necessary in aid of its jurisdiction, or (3) to protect or effectuate its judgments. 28 U.S.C. § 2283; see also, In re: Inter-Op, 176 F. Supp. 2d at 762.

In this case, the entry of an injunction against the pending state court litigation is necessary and appropriate to preserve and aid this Court's jurisdiction over the administration of the Receivership and the Receiver Estate.[4] See In re Wireless Tel. Fed. Cost Recovery Fees Litig., 2003 U.S. Dist. LEXIS 26070, *13-14 (D. Mo. 2003) ("This Court may rely on the Anti-Injunction Act's 'necessary in aid of its jurisdiction' exception to 'support the court's power to effectuate a final settlement.'") The "necessary to aid its jurisdiction" exception, means that an injunction may be issued where "necessary to prevent a state court from so interfering with a federal court's consideration or disposition of a case as to

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instituted."); BGW Assocs., Inc. v. Valley Broad. Co., 532 F. Supp. 1115, 1117 (D.N.Y. 1982) ("This limitation on federal judicial power relates only to actions already instituted in state courts.").

[4] At least two jurisdictions have held that the Anti-Injunction Act is not applicable to cases such as this where a receiver has been appointed after a lawsuit was brought by the Securities Exchange Commission seeking to enforce securities law. SEC v. Wencke, 622 F.2d 1363, 1368 (9th Cir. 1980) ("[S]ection 2283 does not apply to injunctions issued at the request of the United States or administrative agencies enforcing applicable federal law."); "ERISA" Litig., 798 F. Supp. at 127 (citing Wenke, 622 F.2d at 1368).

seriously impair the federal court's flexibility and authority to decide that case." Winkler v. Eli Lilly & Co., 101 F.3d 1196, 1201 (7th Cir. 1996) (quoting Atlantic Coastline R.R. v. Bhd. of Locomotive Eng'rs, 398 U.S. 281, 295 (1970)). "The exception thus parallels the federal courts' power under the All Writs Act '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.'" Id. (quoting New York Tel., 434 U.S. at 173); Winkler, 101 F.3d at 1202 ("We agree that the 'necessary in aid of jurisdiction' exception should be construed 'to empower the federal court to enjoin a concurrent state proceeding that might render the exercise of the federal court's jurisdiction nugatory.'").

This Court took exclusive jurisdiction over the all aspects of the receivership when the SEC filed the Enforcement Action. (See April 5 Receivership Order at § VI; April 12 Receivership Order at § V.) Subsequently, through the Receivership Orders, the court authorized and directed the Receiver to engage in various activities for the ultimate benefit of investors and other creditors. Moreover, the Court enjoined third-parties from interfering with the Receiver and the administration of the Receiver Estate. (April 5 Receivership Order at §§ VII, XIX; April 12 Receivership Order at §§ VI, XVIII.) Though likely unintended, it is evident that the continued prosecution of the Investor Lawsuits, as well as other

efforts by competing claimants, will interfere with this Court's exercise of jurisdiction over the Receiver Estate and impede the Receiver's efforts.

Conversely, allowing the Receiver to recover and eventually distribute funds from the Settlement Agreement to all investors aids this Court's jurisdiction over the Receivership and further effectuates the provisions of the Receivership Orders. Approval of the terms of the Settlement Agreement also will enhance the Receiver's and, ultimately, the Court's, ability to develop and implement a plan of distribution. See "ERISA" Litig., 798 F. Supp. at 128 (upholding an injunction of state court proceedings where the court found that it would be unable to develop an equitable plan for the distribution of the assets of a fund to protect the rights of all potential creditors if a "race to the courthouse" was permitted, depleting some or all of the fund's remaining assets). Hence, the injunction sought here is not precluded by the Anti-Injunction Act.

Accordingly, as expressly authorized by the All-Writs Act, 28 U.S.C. § 1651, and the Anti-Injunction Act, 28 U.S.C. § 2283, this Court should enjoin any state court proceeding against CSU (including the Investor lawsuits) because if those lawsuits and possible future actions are not enjoined, 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.

Competing orders from different courts "would only serve to make ongoing federal oversight [of the Receiver Estate] unmanageable," and "threatens to frustrate proceedings and disrupt the orderly resolution of the federal litigation." Winkler, 101 F.3d at 1202; Klay, 376 F. 3d at 1104 (finding an injunction appropriate where state court action would "threaten the jurisdiction of the district court enough to warrant injunction.").

Conclusion

Based on the facts and authority cited herein the Receiver respectfully requests that this Court approve the terms of a Settlement Agreement with CSU and grant this Motion for Approval of Settlement Agreement and enter an order enjoining further prosecution of all claims against CSU.

Respectfully submitted, this 5th day of February, 2008.

/s/ David Popowski
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CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of February, 2008, I electronically filed the foregoing document with the Clerk of this Court using the CM/ECF system, which will automatically send email notification of such filing to all case parties via email.

TROUTMAN SANDERS LLP

/s/ Merle R. Arnold
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