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 REPLY IN SUPPORT OF HIS MOTION TO APPROVE SETTLEMENT AND FOR RELATED INJUNCTIVE RELIEF

On February 5, 2008, the Receiver filed a Motion to Approve Settlement and For Related Injunctive Relief [Doc. No. 159] (the "Motion"). In short, the Receiver has entered into an agreement with Charleston Southern University that will result in the Receiver Estate receiving in excess of $5 million in cash benefits that will ultimately inure to the benefit of aggrieved investors.

The Motion and Settlement Agreement have been posted on the Receiver's website. Notice of the filing of the Motion was sent to 632 investors, as well as other parties that might be affected by this Court's approval of the settlement and entry of the requested injunctive relief. The hearing date regarding the Motion has

twice been extended, in part, to make certain that investors have time to analyze the Motion.

As of the filing of this reply, three objections from a total of nine investors ("the Objecting Investors") have been filed.[1] Apparently, these investors prefer the chaos and expense associated with a "race to the courthouse" – i.e., with investors competing against each other to obtain judgments against CSU – instead of the finality, fairness and substantial benefit that will be realized by all investors if the proposed settlement is approved. In support of their objections, the Objecting Investors make three basic arguments:

- The Receiver does not have standing to assert claims against CSU and, therefore, has no authority to enter into a settlement with CSU.
- This Court does not have authority to enter a bar order enjoining further litigation against CSU.
- The proposed settlement is insufficient and/or somehow unfair to certain investors.

As more fully set forth below, these objections ignore the nature of this proceeding and this Court's inherent equitable jurisdiction to administer this receivership.

[1] This Reply responds collectively to Steven L. Smith's Opposition to the Proposed Settlement of Claims ("Smith Objection") [Doc. No. 164], the Objection of L.G. Elrod, Mary Elrod, Tommie Williams, Amy Williams and Jerry R. Williams ("Elrod Objection") [Doc. No. 167], and the Objection of Richard Brown, Ryan Brown, and Louis Mancuso ("Mancuso Objection") [Doc. No. 168] (collectively referred to as the "Objecting Investors").

Moreover, their legal arguments are misinformed. Accordingly, the objections should be overruled and the Receiver's Motion granted.

I. This Court Has Extremely Broad Equitable Power To Fashion And Implement Remedies Appropriate To The Specific Circumstances Of This Case.

As the merits of the Receiver's Motion and the three objections are considered, it is critically important to remember that this receivership is an equitable proceeding. It is not a bankruptcy, nor is it in any way a class action. Simply stated, the Objecting Parties' reliance on bankruptcy and class action principles is misplaced.

The bar order, which is the focal point of the dispute here, is ancillary relief in furtherance of this Court's equitable jurisdiction and, in particular, its jurisdiction over this receivership. In a case in which investors objected to the district court's injunction against further prosecution of claims against entities placed in receivership, the Ninth Circuit clearly articulated this basic premise:

> The federal courts have inherent equitable authority to issue a variety of "ancillary relief" measures in actions brought by the SEC to enforce the federal securities laws. This circuit has repeatedly approved imposition of a receivership in appropriate circumstances. The power of the district court to impose a receivership *or grant other forms of ancillary relief* does not in the first instance depend on a statutory grant of power from the securities laws. Rather, *the authority derives from the inherent power of a court of equity to fashion effective relief.*

SEC v. Wencke, 622 F.2d 1363, 1369 (9th Cir. 1980) (emphasis added); see also, SEC v. Wencke, (Wencke II) 783 F.2d 829, 837 (9th Cir. 1986). While the injunctive relief requested here is slightly different, this fundamental tenet is equally compelling here.

Moreover, this Court's authority to administer this receivership and to determine appropriate ancillary relief is extremely broad. "It is a recognized principle of law that the district court has broad powers and wide discretion to determine the appropriate relief in an equity receivership." SEC v. Lincoln Thrift Ass'n, 577 F.2d 600, 606, 609 (9th Cir. 1978); Lundy v. Hochberg, 79 Fed. Appx. 503, 505 (3d Cir. 2003); U.S. v. Vanguard Inv. Co., 6 F.3d 222, 226 (4th Cir. 1993); SEC v. Elliott, 953 F.2d 1560, 1566 (11th Cir. 1992) (" This discretion derives from the inherent powers of an equity court to fashion relief.").

Understanding that receiverships are complex and factually specific and that multiple parties are involved in and affected by their administration, appellate courts have shown great deference to the district court's supervisory role. SEC v. Am. Capital Invs., Inc., 98 F.3d 1133, 1144 (9th Cir. 1996); Vanguard, 6 F.3d at 226; Elliott, 953 F.2d at 1569-70; SEC v. Wencke, 783 F.2d 829 (9th Cir. 1986); SEC v. Hardy, 803 F.2d 1034, 1037 (9th Cir. 1986); SEC v. Safety Fin. Serv., Inc., 674 F.2d 368, 373 (5th Cir. 1982); SEC v. An-Car Oil Co., 604 F.2d 114, 119 (1st Cir. 1979).

Equally important, it is well recognized that "the primary purpose of equity receiverships is to promote orderly and efficient administration of the estate by the district court *for the benefit of creditors*." Hardy, 803 F.2d at 1038 (emphasis added); Vanguard, 6 F.3d at 226 (recognizing that a district court has broad discretionary authority to supervise an equity receivership and affirming the trial court's denial of otherwise appropriate remedies or claims in order to effect a more equitable result for the investors); Elliott, 953 F.2d at 1569-70 (affirming district court's denial of investors' otherwise appropriate claims for rescission where that remedy would allow an individual investor to elevate his position over that of other investors similarly "victimized" and "would create inequitable results, in that certain investors would recoup 100% of their investment while others would receive substantially less."); Wencke II, 783 F.2d 829, 837 n.9 (9th Cir. 1986); First Empire Bank-New York v. FDIC, 572 F.2d 1361, 1368 (9th Cir. 1978), cert. denied, 439 U.S. 919 (1978). At a personal level, the Receiver has no stake in this outcome. He is simply acting in his role as a court-appointed fiduciary endeavoring to achieve a result that is fair and in the best interest of all creditors of the Receiver Estate, which primarily consists of aggrieved investors.

In light of these equitable principles governing federal receiverships, it is clear that this Court has the power to enter the requested relief. Because the

settlement with CSU is, in fact, in the best interest of all aggrieved investors, that power should be exercised, and the Receiver's Motion should be granted.

II. The Receiver Has Standing to Pursue Claims Against CSU.

The Objecting Investors make the blanket assertion that the Receiver does not have standing to assert claims against CSU. (See Smith Objections at 2-7; Mancuso Objections at 2-5; Elrod Objections at 2-3.) Simply stated, they are wrong.[2]

With respect to standing, the Receiver may assert claims available to the defendants in receivership. See e.g., Scholes v. Lehmann, 56 F.3d 750, 753-54 (7th Cir. 1995); Stenger v. World Harvest Church, No. 1:04-CV-00151-RWS, 2006 U.S. Dist. LEXIS 15108, at *17 (N.D. Ga., March, 31 2006); Quilling v. Grand St. Trust, 2005 WL 1983879, *5-6 (W.D.N.C., Aug. 12, 2005); Obermaier, 2002 U.S. Dist. LEXIS 22855, at *12 (M.D. Fla., Nov. 20, 2002). In this case, specifically, this Court has clearly empowered the Receiver with the broad

[2] One or more of the Objecting Investors rely upon cases involving bankruptcy trustees. All of those cases are distinguishable from this circumstance on various grounds. However, the critical distinction is that an equity receiver is different from a trustee in bankruptcy. The statutory authority conferred upon a trustee has limitations different from and not applicable to an equity receiver. See Obermaier v. Arnett, 2002 U.S. Dist. LEXIS 22855, *8 (M.D. Fla., Nov. 20, 2002) ("Since the current action does not involve a bankruptcy trustee or bankruptcy law, E.F. Hutton and Caplin are not controlling precedent . . . ."). For instance, many of the cases analyze a trustee's authority to bring suit under bankruptcy law, which is arguably more limited than the law governing equity receiverships. See In re Derivium Capital, LLC, 2007 Bankr. LEXIS 3760, *12-13 (S.C. October 26, 2007).

authority to bring claims on behalf of the any of the Defendants – i.e., Albert E. Parish, Jr., Parish Economics, LLC, and Summerville Hard Assets, LLC:

> To the broadest extent allowed under applicable law, the Receiver, in his sole discretion, is authorized to file and prosecute any civil action or other proceeding that could be filed by a receiver, generally, or by any defendant or entity subject to this Receivership. This authority includes, but is in no way limited to, prosecuting actions or proceedings to impose a constructive trust, obtain possession and/or recover judgment with respect to persons or entities who received assets or funds traceable to investors monies… Moreover, the Receiver, in his discretion, is authorized to prosecute, defend, 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.

(Receivership Order § VIII.) Apparently, the Objecting Investors fail to appreciate the distinction between Parish, individually, and the two entities in receivership.

Not only does the Receiver "stand in the shoes" of Al Parish, he also represents "new management" for the two LLC's in the receivership. See Scholes, 56 F.3d at 754-55 (holding that the appointment of the receiver removed the wrongdoer from the scene and the entities in receivership were no more the "evil zombies" of the perpetrator of the fraud). This distinction is critical, especially as it relates to Parish Economics. Parish Economics is not Al Parish. Because it was the actual "seller" of the unregistered securities, Parish Economics is liable to investors under a variety of state and federal causes of action. See e.g., 15 U.S.C. §§ 77e(a) and 77e(c); SEC v. Calvo, 378 F.3d 1211, 1215 (11th Cir. 2004); 15 U.S.C. § 78o and 78l; S.C. Code Ann. §§ 35-1-301, 401.

Parish Economics was a legally formed entity. Yolanda Yoder, Parish's wife, was a member and officer.[3] (Declaration of S. Gregory Hays ¶ 5, Exs. A-C.) As originally designed, it was intended that all investors would also become members of Parish Economics. (Id., Exs. A-E.) In fact, it appears that a few early investors may have been admitted as members. (See e.g., Id., Ex. E.) Moreover, Parish Economics operated as a partnership for federal income tax purposes, and filed partnership returns from 1998 through 2004, including K-1's indicating that the investors were "Limited Partners" or "other LLC Members." (Id. ¶ 6, Ex. F.) Parish Economics did not file a tax return for 2005 or 2006, but it still issued K1's to investors as "Members." (Id.)

Parish Economics has been damaged by the conduct of Al Parish and other third-parties, including CSU. As "new management," the Receiver is entitled to pursue claims on behalf of Parish Economics. In this capacity, he has various claims against CSU including fraudulent conveyance, unjust enrichment, constructive trust, professional negligence and negligent supervision. That the ultimate beneficiaries of any recovery would be the aggrieved investors does not mean that the Receiver cannot assert these claims. See Scholes, 56 F.3d at 754 ("That the return would benefit the [investors] . . . is just to say that anything that

[3] By virtue of her position, Ms. Yoder also was exposed to significant liability. This Court has already approved a settlement between Ms. Yoder and the Receiver employing an identical structure, including a bar order. [Doc. 154]

helps a corporation helps those who have claims against its assets."); Hays v. Adam, 512 F. Supp.2d 1330, 1341 (N.D. Ga. March 15, 2007); Quilling, 2005 WL 1983879, *5-6 ("While the [receiver's] Complaint alleges that investors were ultimately harmed and defrauded by [the scheme's perpetrator] . . . , the [fraudulent transfer] claims are brought on behalf of [a receivership entity] . . ."); Marwil v. Farah, 2003 U.S. Dist. LEXIS 23140, *18 (S.D. IN. 2003) ("[F]raud on the receivership entity that operates to its damage is for the receiver to pursue . . . and to the extent that investors . . . may ultimately benefit from such pursuit . . . does not alter the proposition that the receiver is the proper party to enforce the claim.").

Fraudulent Conveyance, Unjust Enrichment And Constructive Trust

CSU invested more than $10 million with Parish. (Hays Decl. ¶ 12.) Over time, it was paid $2,360,529 by Parish Economics in investment and principal returns and other support for programs and faculty. (Id. ¶ 17.) Of this total amount, Parish Economics paid $1.5 million to CSU in March 2007. (Id.) All of the monies paid to CSU were from an account comprised primarily of funds obtained from investors. (Id. ¶ 17.) Given the relationship between Parish and CSU, the Receiver and his counsel believe that all payments to CSU could be recovered under the related theories of fraudulent conveyance, unjust enrichment and constructive trust.

These claims belong to the Receiver. In fact, these types of recoveries are critical to the effective administration of a receivership. See e.g., Hays, 512 F. Supp.2d at 1341, 1342-44; SEC v. Shiv, 379 F. Supp. 2d 609, 618-19 (D.N.Y. 2005); Quilling, 2005 WL 1983879, *5-6; In re Alpha Telecom, Inc., Civil File No. 01-1283, 2004 U.S. Dist. LEXIS 20002 (D. Or. August 18, 2004), rev'd sub nom. on other grounds, SEC v. Ross, 504 F.3d 1130, 1151 (9th Cir. 2007).

Clearly, then, the Receiver has standing to assert these claims and, in the order appointing him, this Court has authorized him to do so (and to settle those claims). For the Objecting Investors to argue to the contrary misinterprets apprehends both the law and the facts relevant to this circumstance.

Professional Negligence

CSU consented to David Mack, a member of its faculty who was also a lawyer, using his CSU office in connection with his law practice. (See Deposition of David Mack, pp. 15-16, 29-31; Hays Decl. ¶ 15.)[4] Mack issued an opinion letter on CSU's letter head indicating that the subject securities were not subject to the registration requirements of federal of state laws. (See Mack Dep., pp. 14-20, Exhibit CSU 30; Hays Decl. ¶ 14.) The Receiver and his counsel (as well as the SEC) believe that this opinion is wrong. (See Compl. [Doc. No.1], ¶ 21, 26, 29, 32

[4] The cited portions of the deposition of David Mack, taken on June 13, 2007, are being filed contemporaneously herewith.

and 34.) The subject securities were not registered. (See Hays Decl. ¶ 11, Ex. G, ¶ 16.)

The Receiver now stands in the shoes of Mack's client(s). As a result of his erroneous legal advice, the Receiver has claims against both Mack and his employer, CSU, for professional negligence. See Ellis v. Davidson, 358 S.C. 509, 523 (S.C. Ct. App. 2004) (finding sufficient evidence presented on the issue of legal malpractice to survive the firm's motion for summary judgment).

Negligent Supervision

South Carolina recognizes a cause of action against an employer for negligent supervision. Rickborn v. The Liberty Life Ins. Co., 321 S.C. 291, 302-303 (1996) (citing Comer v. Tandy Corp., 295 S.C. 133 (Ct. App. 1988)). While investors would clearly be able to assert such a claim against CSU, so, too, may the Receiver.

As more fully set forth in the Receiver's Motion, it is undisputed that Parish was an employee of CSU, who was authorized to conduct his investment business out of his office at CSU. There are numerous other facts that connect Parish's employment by CSU with his investment activities – e.g., the terms of the investor contracts; the location of Parish's primary computer in his CSU office; meetings with investors in his office. (Hays Decl. ¶¶ 7-11.)

As noted in his original Motion, the Receiver and his counsel believe that the facts support a claim against CSU based on its negligent supervision of Parish. Similarly, there is factual support for a negligent supervision claim against CSU regarding Mack's conduct. Parish Economics was damaged by the conduct of both Parish and Mack. Accordingly, the Receiver, as "new management" for Parish Economics, has a claim against CSU for negligent supervision.

CSU's Defenses Irrelevant

The Mancuso objection argues that the Receiver lacks standing because his claims would be barred by the defense of *in pari delicto,* which is an affirmative defense based on an equitable doctrine that precludes a plaintiff from recovering damages from a defendant for an alleged wrongdoing when the plaintiff has participated in that wrongdoing. Banco Indus. d. Venezuela, C.A. v. Credit Suisse, 99 F.3d 1045, 1050 (11th Cir. 1996). The policies underlying the doctrine are that "courts should not lend their good offices to mediating disputes among wrongdoers," and "denying judicial relief to an admitted wrongdoer is an effective means of deterring illegality." Bateman Eichler, Hill Richards, Inc. v. Berner, 472 U.S. 299, 306 (1985). Mancuso's attempt to undermine this settlement invoking this defense, which might or might not be available to CSU, should fail for several reasons.

First, *in pari delicto* is an affirmative defense and has absolutely no bearing on whether or not the Receiver has standing to bring a lawsuit against CSU. In fact, the Fourth Circuit has made clear that affirmative defenses, like *in pari delicto*, go to the merits of the parties' claims and should not even be considered at the motion to dismiss stage unless they "clearly appear on the face of the complaint." Richmond, F. & P. R.R. Co. v. Forst, 4 F.3d 244, 250 (4th Cir. 1993); Obermaier, 2002 U.S. Dist. LEXIS 22855, at *12 ("[Equitable defenses] may be appropriate for a summary judgment motion, but must be rejected at the motion to dismiss stage because the facts pled do not compel a finding in defendants' favor on such defenses.").

Second, because the individual who masterminded the underlying fraudulent investment scheme – i.e., Parish – has been removed from control of Parish Economics and Summerville Hard Assets, they are no longer tarnished with Parish's conduct, and the policies underlying the application of *in pari delicto* are not applicable to claims brought the Receiver. See Scholes v. Lehmann, 56 F.3d 750, 754 (7th Cir. 1995)("Put differently, the defense of *in pari delicto* loses its sting when the person who is *in pari delicto* is eliminated."); Campbell v. Cathcart (In re Derivium Capital, LLC), 2006 Bankr. LEXIS 3592, at *12 (D.S.C. Dec. 22, 2006) ("However, in South Carolina, wrongs of an agent are not imputed to a principal where the agent is acting adverse to the interests of the principal. . . . The

doctrine also does not apply when a receiver is seeking recovery of diverted funds for a corporation [*13] from the beneficiaries of wrongdoing."); Vieira v. AGM II, LLC (In re Worldwide Wholesale Lumber, Inc.), 372 B.R. 796, 810 (Bankr. D.S.C. 2007) (same).

Finally, the one case cited in the Mancuso objection in support of this argument, Myatt v. RHBT Financial Corp., 370 S.C. 391 (S.C. Ct. App. 2006), actually confirms that, even under South Carolina law, not all claims of a receiver are subject to being denied based on *in pari delicto*.[5]

III. This Court Has Authority to Enter a Bar Order Under the All Writs Act.

An express condition of the Receiver's settlement with CSU is that this Court enter an order enjoining the filing and further prosecution of claims against CSU arising from or related to the Parish investment schemes. The Receiver believes that this is reasonable and appropriate given the amount of the settlement and CSU's financial and operational circumstances. Despite the clear language of

[5] It is important to note that the Receiver does not necessarily agree that South Carolina law controls this issue. In the context of receiverships, some federal courts have recognized the concept of federal "common law of equity receiverships." See, e.g., Am. Capital Invs., Inc., 98 F.3d at 1144; Cutler v. 65 Sec. Plan, 831 F. Supp. 1008, 1022 (D.N.Y. 1993). Moreover, the Fourth Circuit has recognized in equitable receiverships, the court has the discretionary power to deny the application of equitable doctrines "as inimical to receivership purposes even though they are or might be warranted under controlling law." Vanguard, 6 F.3d at 226. However, because the Receiver's standing to sue CSU is not affected by this issue, there is no reason to address this issue here.

the All Writs Act, 28 U.S.C. § 1651, and no holding to the contrary, the Objecting Investors argue that this Court is not authorized to enter such an injunction.

The grant of authority under the All Writs Act is plainly broad and, on its face, makes no distinction between parties and non-parties. See United States v. New York Tel. Co., 434 U.S. 159, 173-174 (1977) ("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."). Indeed, an "important feature" of the All Writs Act is its grant of authority "to enjoin and bind non-parties to an action when needed to preserve the court's ability to reach or enforce its decision in a case over which it has proper jurisdiction." In re Baldwin-United Corp., 770 F.2d 328, 331, 338 (2d Cir. 1985) (affirming the issuance of an injunction against thirty-one states who, with the exception of the State of Maine were "neither parties nor intervenors in the district court proceedings below"); see also New York Telephone Co., 434 U.S. at 174 (1977) (order directed at non-party telephone company); United States v. Hall, 472 F.2d 261, 265 (5th Cir. 1972) (upholding a contempt citation based on an injunction enjoining a non-party in a school desegregation case). That the All Writs act may extend to bind non-parties to a suit is without question. This

authority exists, however, only "under appropriate circumstances." New York Telephone, 434 U.S. at 174. This case presents an appropriate circumstance.

Although this precise issue has not been addressed in the Fourth Circuit, the Second Circuit's decision in In re Baldwin-United Corp., 770 F.2d 328 (2d Cir. 1985), provides persuasive authority in support of the requested injunction.

Although the injunction in Baldwin was issued in the court of a multi-district class action, the Second Circuit specifically noted that the district court's authority for the issuance of the injunction did not derive from Federal Rule of Civil Procedure 23, which is "a rule of procedure [that] creates no substantive rights or remedies." Id. at 335. Instead, authority for the injunction derived from the All Writs Act. Id.

In Baldwin, the plaintiffs were holders of Baldwin single-premium deferred annuities (SPDAs) asserting claims under the Securities Act of 1933 and the Securities Exchange Act of 1934 against 26 broker-dealers and related individuals who sold the SPDAs by representing them to be safe and desirable investments. Id. at 331. Settlement negotiations proved successful as to 18 of the 26 broker-dealer defendants. In consideration of the settlement sum, plaintiffs released all state and federal claims against the settling defendants. Id. at 332.

Upon hearing of the proposed settlement, representatives of 40 states in the National Association of Attorneys General concluded that the proposal did not adequately compensate the plaintiffs for the release of their claims. Id. When the

State of New York notified the defendants of its intent to bring suit "seeking restitution for New York citizens who held Baldwin SPDAs," the defendants sought and obtained an injunction from the district court to enjoin the imminent New York action. Id. at 333. The order enjoined the New York Attorney General and "all other persons having actual knowledge of th[e] Order" from

> Commencing any action or proceedings of any kind against any defendant . . . on behalf of or derivative of the rights of any plaintiff or purported class member . . . or which action or proceeding may in any way affect the rights of any plaintiff . . . or which action or proceeding seeks money damages arising out of the sale to any plaintiff. . [of Baldwin annuities]. . . or which action or proceeding seeks any declaratory relief with respect to any of the above. . . .

Id. at 334. Notably, the district court entered the injunction before the certification of any settlement class, and before 8 of the 26 defendants even reached any settlement. Id.

In affirming the issuance of the injunction as to all 26 defendants, the Second Circuit agreed with the district court's finding that "[u]nder the circumstances . . . the injunction protecting the settling defendants was unquestionably 'necessary or appropriate in aid of' the federal court's jurisdiction." Id. at 338. This is because "as a practical matter no defendant . . . could reasonably be expected to consummate a settlement of those claims if their claims could be reasserted under state laws, whether by states or on behalf of plaintiffs or by anyone else, seeking recovery of money to be paid to the plaintiffs." Id. at 336-37.

Regardless of whether the state represented itself to be acting as a "sovereign" in such a suit or described its prayer as one for "restitution" or a "penalty," the effect would be "to threaten to reopen the settlement" so long as "the recovery sought by the state was to be paid over to the plaintiffs." Id. at 337.

The underpinning of the holding in Baldwin, therefore, was not the status of the case as a class action; rather, the principal rationale for upholding the injunction in Baldwin was that the claims being enjoined would have sought damages for the benefit of the same plaintiffs. See, In re Visa Check/Mastermoney Antitrust Litig., No. 96 CV 5238 (JG), 2005 WL 21008930, at *3-6 (E.D.N.Y. Aug. 31, 2005) (discussing the basis for the holding in Baldwin). Because members of the proposed class would receive benefits of the settlement, the prospect of further proceedings by states or anyone else "to obtain additional money, over and above the settlement amounts" for distribution to the same individuals would amount to payment of "double damages" by defendants, warranting an injunction "protecting the settling defendants." Baldwin, 770 F.2d at 333 n.1, 338.

In fact, the circumstances here are even more compelling. This action is not a class action, and the Receiver is not a class representative. Unlike a class action, all of the aggrieved investors, including the Objecting Investors, are before this Court. Not only do they have the right to be heard on this issue, this Court has

personal jurisdiction over them. East v. Crowdus, 302 F.2d 645, 647 (8th Cir. 1962)("[A] claimant who files and undertakes to prove his claim in an equitable receivership proceeding becomes a party thereto by intervention and thereby fully submits himself to the jurisdiction of the Court appointing the receiver."); Alexander v. Hillman, 296 U.S. 222, 238-39 (1935) (holding that parties who filed claims against a receivership estate had submitted themselves to the jurisdiction of the equity court presiding over the receivership for purposes of any counterclaims for affirmative relief that the receivers might assert against them). Moreover, in this case, it is clear that all of the settlement funds, along with any other similar recoveries by the Receiver, will be distributed to the investors.[6] Finally, and quite importantly, this is an equitable proceeding in which this Court can and must fashion remedies that aid the administration of the receivership for the benefit of *all* aggrieved investors. See, Section I, above.

Clearly, an injunction protecting CSU from further suit is "necessary or appropriate in aid of" this Court's jurisdiction. Baldwin, 770 F.2d at 338. So long as the recovery sought by the Receiver is "to be paid over to the [investors]," the effect of permitting direct suits by investors would "threaten to reopen the settlement" and subject CSU to payment of double damages. Id., 770 F.2d at 337.

[6] See Receiver's Third Interim Report filed on March 14, 2008. As that report makes clear, this recovery will not be eroded by the administrative expenses of this estate.

As recognized by the Second Circuit, "as a practical matter no defendant . . . could reasonably be expected to consummate a settlement of those claims" absent the protection of an injunction. Id. at 336-37.

The same reasoning that authorizes the bar order under the All Writs Act allows this Court to enjoin the Smith and Elrod investors from pursuing the

pending state court actions against CSU under the second exception to the prohibitions of the Anti-Injunction Act. Simply stated, the second exception to the Anti-Injunction Act is identical to the language of the All Writs Act – i.e., "necessary or appropriate in aid of the federal court's jurisdiction," and explains why it is applicable in this case. Accordingly, federal courts have applied similar analysis where, as here, this is the exception being relied upon to issue such an injunction. Newby v. Enron Corp., 302 F.3d 295, 301 (5th Cir. 2002); see also Baldwin, 770 F.2d at 335, 338 (recognizing that the language of the second exception to the Anti-Injunction Act was identical to the language of the All Writs Act and cases construing the exception were helpful in understanding the meaning of the All Writs Act).

This Court's authority is clear. The Objecting Investors arguments notwithstanding, both the logic and fairness of the settlement and attendant bar order are compelling. Accordingly, the settlement should be approved and the bar order entered.

IV. Proposed Settlement Fair To All Investors, Including The Objecting Investors.

The Objecting Investors claim that the Receiver's settlement will somehow result in inequitable treatment for certain investors. Apparently, they hope to convince this Court that they are entitled to pursue recoveries from CSU, while some or all of the other investors are not. On its face, this position strains credulity. Obviously, the opposite is true. The *only* structure that is fair to all investors is the one proposed by the Receiver – i.e., allow him to effect the recovery from CSU and distribute to all aggrieved investors in accordance with a court-approved plan of distribution.

As pointed out in the Receiver's Motion, each and every investor could assert claims against CSU for negligent supervision, negligent misrepresentation and control person liability. (See, Receiver's Motion, p. 13.) With respect to these or any other claims that might be asserted against CSU, there is no meaningful difference between investors. Neither of the two complaints pending in South Carolina state courts highlights any facts that would distinguish any of other investors. (See, copies of the Smith and Elrod Complaints attached to the Hays Decl. as Exs. "H" and "I".) In his supporting Affidavit, Objecting Investor Smith attempts to draw some distinction between his circumstance and, at least, some of the other Parish investors. (Smith Aff., Id. ¶¶ 7-11.) However, this attempt fails. In fact, in his Amended Complaint, Smith makes a specific allegation that is

precisely consistent with the Receiver's position here: "CSU had a duty to Plaintiff *and other members of the public at large* to properly supervise Parish in the performance of his job duties, including the operation of stock pools, investment pools, and other similar entities." (Hays Decl., Ex. "I," ¶ 55.)

While the efforts of the Objecting Investors are understandable, their position is untenable. There is no reason that they should be treated differently from any other investor. The result of their prevailing here will be that additional investor lawsuits will be filed against CSU and the "race to the courthouse" will be on. And, most importantly, if CSU prevails in any one of the investor's cases and establishes that it had no duty to investors, then the benefit of this settlement – more than $5 million – will be lost altogether. Finally, if the Objecting Investors prevail here, it will virtually guarantee that the Receiver will be unable to effect recoveries from other third-parties. Obviously, such a result would be catastrophic and have a significant and negative impact on the amount of money ultimately available to be distributed to investors.

CONCLUSION

This Court's equitable powers afford it broad authority to fashion remedies that aid in the effective administration of this receivership. The proposed settlement with CSU and attendant bar order is such a remedy. The Receiver's standing to sue and, therefore, settle with CSU is clear. The Court's authority to

enter the bar order is clear. This is imminently fair to all investors, including the few who have filed objections. Hence, the Receiver's Motion should be granted.

Respectfully submitted this 14th day of March, 2008.

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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**

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of March, 2008, I electronically filed the ***Receiver's Reply In Support Of His Motion To Approve Settlement And For Related Injunctive Relief*** 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 III
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