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 Legare & Bailey, LLC ("Legare & Bailey"), Daniel O. Legare ("Legare"), J. Mark Bailey ("Bailey"), Gloria S. Legare, Melissa C. Legare, and Christina F. Bailey (collectively, the "Settling Parties") as set forth in the executed Settlement Agreement, a copy of which is attached hereto as Exhibit "A" and, (2) enjoin the filing of or continued prosecution of claims against the Settling Parties that arise from or relate to Legare & Bailey's engagement to prepare income

tax returns for Parish Economics, LLC ("Parish Economics") and/or their alleged involvement the Defendants, Albert E. Parish, Jr. ("Parish"), Parish Economics, and/or Summerville Hard Assets, LLC or the fraudulent investment schemes that the Defendants perpetrated. 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 and, possibly, investors could assert claims against the Settling Parties in connection with the preparation of income tax returns and related Form K-1's for Parish Economics and related entities. The Receiver readily acknowledges that, in the context of this settlement, there are no known facts that in any way indicate that Legare & Bailey, Legare, Bailey or any of the other Settling Parties were aware of or were knowingly complicit in the perpetration of the fraudulent investment scheme by Al Parish. While the Settling Parties vigorously deny any wrongdoing and vigorously deny that they are liable to the Receiver or anyone else, they desire to resolve all potential claims and allegations, known and unknown, contingent or otherwise, without incurring the time, expense and distraction of litigation, as well as the related risk of substantial damage awards. Accordingly, as more fully described in the Settlement Agreement, the Receiver and the Settling Parties have agreed to resolve these issues as follows:

- The Settling Parties will pay $952,000 to the Receiver. This payment includes $925,000 from Legare & Bailey's professional liability insurance policy, which is 92.5% of the $1,000,000 policy limit of Legare & Bailey's professional liability coverage. The remaining $27,000 will be paid by or on behalf of Gloria S. Legare, Melissa C. Legare, and Christina F. Bailey.
- The Settling Parties will waive any potential or actual rights or entitlement to payment on any claim they may have against the assets of Defendants Albert E. Parish, Jr., Parish Economics, LLC and/or Summerville Hard Assets, LLC (collectively the assets of the "Receivership Estate").
- The Receiver will release the Settling Parties from any and all claims related to or arising from their alleged association with, involvement with, and/or representation of one or more of the Defendants, including Parish's investment activities and/or schemes, as well as his relationship with Legare & Bailey and/or any professional services rendered by Legare & Bailey, Legare, and/or Bailey to any of the Defendants.
- The payments and releases are conditioned upon this Court's entry of a "bar order" enjoining the filing of and/or continued prosecution of claims by all third-parties (including investors) against the Settling Parties that relate to or arise from their association with, involvement with, and/or representation of one or more of the Defendants.

- If the settlement is approved and the bar order is entered, the Receiver will agree to indemnify the Settling Parties against "barred" claims by third-parties. This indemnity obligation is limited to the lesser of: $952,000 (i.e., the amount of the Settling Parties' 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, 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 the Settling Parties will successfully defeat any claims and, at the same time, eliminates the risk to the Settling Parties that the Receiver and/or investors will obtain judgments in amounts that would exceed their insurance coverage and bankrupt the Settling Parties. Finally, resolving these claims within the structure of the receivership permits all investors with allowed claims against the Receivership Estate to participate equally in this recovery and removes the possibility of disparate recoveries and "competing" litigation among investors and other creditors of the Receivership Estate.

Factual Background

The Receiver and his counsel have engaged in an extensive investigation of the subject investment offerings conducted by Parish, Parish Economics, and

Summerville Hard Assets, LLC, which has included an examination of the relationship between Parish and Legare & Bailey and its two principals, Messrs. Legare and Bailey. This investigation has included limited formal and informal document and deposition discovery, forensic computer analysis, and interviews and less formal conversations with various individuals, including investors.

Based on their investigation, the Receiver and his counsel believe that the following allegations could be proven regarding the relationship between Parish and Legare & Bailey, and its principals:

1. From 1997 until 2004 Parish employed the professional services of Legare & Bailey to prepare income tax returns for Parish Economics. There were significant issues associated with the income tax returns that allegedly should have alerted Legare and Bailey to Parish's fraudulent activity. In sum, Legare & Bailey received information and representations from Parish that should have raised "red flags" about whether Parish Economics was actually engaged in legitimate investment activities. Rather than looking into issues raised by these "red flags" or insisting upon documentation to verify the accuracy of the information provided by Parish and Parish Economics, Legare & Bailey simply relied upon schedules and other information prepared by Parish.

2. In connection with the preparation of the tax returns for Parish Economics, Legare & Bailey produced a Form K-1 for each investor. As with the

tax returns, Legare & Bailey relied exclusively on Parish's schedules and spreadsheets in preparing the K-1's.

3. In 2003, Parish provided Legare with several years of individual income tax returns, which revealed that Parish's annual income was approximately $76,000. Legare was or should have been familiar with Parish's extravagant lifestyle and knew or should have known that this stated annual income was far below the amount that would be necessary to support Parish's lifestyle. After receiving allegedly unsatisfactory explanations from Parish about the source of his wealth, Legare did not insist upon seeing independent information supporting or verifying Parish's explanations or confirming that investors' money was being properly handled and invested in accordance with the representations made by Parish.

4. Legare was aware that Parish purportedly was engaging in like-kind exchanges in one of his "investment pools," the "hard asset" pool. Nevertheless, he neither requested nor reviewed any independent, verifiable information or data regarding these exchanges.

5. Legare was privy to communications between Parish and his attorney in 2004 in which Parish's attorney raised various concerns about the way in which Parish was conducting the business of Parish Economics. Legare did nothing to assure himself that Parish Economics was being run properly.

In addition, some of the Settling Parties were investors in one or more of the "investment pools." The Receiver contends that, over a number of years, some of those Settling Parties made substantial withdrawals of their investment and ultimately withdrew more than the principal amount of their investment. At least one of these withdrawals was made shortly before the above-styled suit was filed.

Importantly, the Settling Parties *do not admit that any of the Receiver's factual allegations are true and, in fact, vigorously deny that the Receiver's allegations and conclusions are correct.* Significantly, of primary importance to the Receiver and his counsel in the context of a settlement, there are no facts known that in any way indicate that Legare & Bailey, Legare, Bailey or any of the Settling Parties were aware of or were knowingly complicit in the perpetration of the Defendant's fraudulent investment scheme.

Possible Causes of Action

Based upon these facts, the Receiver and his counsel believe that he could assert the following causes of action against the Settling Parties under South Carolina law:

- Professional negligence/malpractice. See Folkens v. Hunt, 290 S.C. 194, 200 (S.C. Ct. App. 1986);
- Negligent misrepresentation. See Kelly v. S.C. Farm Bureau Mut. Ins. Co., 316 S.C. 319, 323-324 (S.C. Ct. App. 1994);

- Unjust enrichment/constructive trust/fraudulent conveyance. See Myrtle Beach Hosp. v. City of Myrtle Beach, 341 S.C. 1, 8-9 (S.C. 2000); and
- Action to set aside conveyance. S.C. Code Ann. §§ 27-25-10, 20.

The Settling Parties Defenses and Other Factors

In or about January 2008, Receiver's counsel informed counsel for the Settling Parties of the results of the Receiver's investigation, including the possible claims that could be asserted, and made a demand for payment. While the Settling Parties have denied any liability to the Defendants or to the Receiver, counsel for the Receiver and the Settling Parties 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, the Settling Parties would assert defenses that include, without limitation, the following:

- The Settling Parties did not know, and in the exercise of reasonable care, could not have known that Parish was perpetrating the fraudulent investment scheme;
- Other professionals and investors had knowledge of and access to the same facts that were available to the Settling Parties;
- Parish intentionally deceived Legare, Bailey, and Legare & Bailey and the other Settling Parties as well as the investors in his fraudulent investment

schemes;

- Legare, Bailey, and Legare & Bailey were never engaged to audit, review, or otherwise attest to the accuracy and/or completeness of the underlying financial records of any of the Defendants including Parish Economics nor Parish's investment activities;
- The engagement letter with Legare & Bailey, signed by Parish, for the income tax preparation engagement for Parish Economics specifically places responsibility on Parish for proper recording of transactions, safeguarding of assets, substantial accuracy of the financial records, as well as the full and accurate disclosure of all relevant facts affecting the income tax return of Parish Economics;
- This engagement letter specifically stated that work related to the preparation of the Parish Economics tax returns did not include any procedures designed to discover defalcations or other irregularities, should any exist;
- Legare, Bailey, and Legare & Bailey resigned from the tax preparation engagement for Parish Economics after preparing the 2004 income tax returns and were no longer privy to information related to Parish Economics' investment activities, for unrelated investors, after that date;
- In the preparation of the income tax returns and Form K-1s for Parish Economics, Legare, Bailey, and Legare & Bailey made no express

representations and gave no express assurances regarding Parish Economics' investment activities nor the alleged returns generated;

- For 2004, the final year Legare, Bailey, and Legare & Bailey prepared income tax returns for Parish Economics, the number of investors was represented by Parish to be approximately 100 with capital account balances amounting to approximately $29.8 million; substantially less that the reported approximately 600 investors with in excess of $79 million of losses; and
- Investors relied on Parish, not Legare, Bailey or Legare & Bailey, in making their investment decisions.
- When communicating with taxpayers, who had received K-1s, Legare & Bailey made explicit statements that they could not attest to the accuracy of the income tax returns of Parish Economics. On at least one occasion this was communicated to an investor in writing.

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 Receivership Estate and all investors who lost money as a result of Parish's fraudulent investment schemes. In light of the amounts being paid by the Settling Parties, the Receiver and his counsel also believe that the entry of a "bar order" is both fair and appropriate.

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

a. Legare & Bailey has a single $1 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.

b. A very large percentage (92.5%) 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 Legare & Bailey or its insurer would ever be willing or able to pay significantly more from the policy to resolve the subject claims by agreement.

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

related to these matters, against any of the Settling Parties.

d. The Receiver is the only prospective plaintiff that can use the Settling Parties' waiver of claims as "cash" for the benefit of all investors.

e. 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 alleged claims against the Settling Parties is by no means certain.

The "Bar Order"

Understandably, the Settling Parties are willing to enter into this settlement only if they are not exposed to further potential liability from investors or others as a result of their alleged relationship with, association with and/or involvement with Parish and/or the other defendants. As such, a condition of the settlement is the entry of a bar order

> permanently enjoining prosecution of any pending lawsuits and the filing of any third party claims or causes of action, including, but not limited to, claims by investors in and creditors of the Defendants in the [the above-styled action], against Legare & Bailey, LLC, Daniel O. Legare, Gloria S. Legare, Melissa C. Legare, J. Mark Bailey, Christina

> F. Bailey, their heirs, successors, agents or assigns arising out of or in any way connected with: (a) the investment-related activities of Parish, Parish Economics, LLC and/or Summerville Hard Assets, LLC or any affiliated "investment pool"; (b) professional services rendered by Legare & Bailey, LLC, Daniel O. Legare and/or J. Mark Bailey; and/or (c) any investment made by any person or entity in the investment pools that are the subject of the [the above-styled action].

(Settlement Agreement, ¶ 1(b), p. 3-4.) This is the same concept and structure used in effecting the Receiver's settlement with Charleston Southern University and Yolanda Yoder, Parish's wife. (See, Order And Final Judgment Approving Receiver's Settlement Agreement With Yolanda Yoder, January 11, 2008, Doc. No. 157; Order Granting the Receiver's Motion to Approve the Settlement Agreement with Charleston Southern University, May 12, 2008, Doc. No. 196.) Accordingly, this Court has already addressed and decided the fundamental issues raised below. There is no reason for a different result here.

The Receiver believes that the proposed settlement and related termination of all issues and claims regarding the Settling Parties' potential liability in connection with their alleged association with the Defendants and/or Parish's investment pools is fundamentally fair and in the best interest of all concerned. All investors will share in this recovery. There are no special circumstances that dictate that some Parish investors should receive a disproportionate share of the amounts available to be paid by or on behalf of Settling Parties. Not only does the proposed settlement resolve all allegations related to the Settling Parties including Legare & Bailey, and

its principals' relationships with Parish, it provides for an orderly and effective way to administer the monies paid by the Settling Parties 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 Settling Parties.

1. The Court Has Broad Equitable Power To Fashion The Appropriate Relief Tailored To The Specific Circumstances Of This Case

The "bar order" is ancillary relief in furtherance of this Court's equitable jurisdiction and, in particular, its jurisdiction over this Receivership. The Ninth Circuit dealt with a comparable situation - where a group of investors challenged the district court's injunction against the prosecution of claims against entities placed in receivership - and 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).

Not only is this Court's authority to fashion injunctive relief derivative of its inherent equitable power, that 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; Wencke II, 783 F.2d at 837; 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). 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.

2. 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).

Investors will have an opportunity to review and object to the terms of the Settlement Agreement before it is approved. Attached hereto as Exhibit "B," is a Notice of Motion that will be sent to each known investor informing them of the proposed Settlement Agreement. However, if approved, it is obvious that the prosecution by investors and others of claims against the Settling Parties 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").

3. The Anti-Injunction Act Does Not Preclude The "Bar Order"

Because there are no state court cases currently pending against the Settling Parties, the Anti-Injunction Act is not applicable, and therefore does not preclude the bar order sough in this case. The law is clear that the Anti-Injunction Act does not preclude injunctions of 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 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.")

Even if it were applicable, the facts of this case clearly fall within the enumerated exceptions to this statute. Specifically, the exceptions apply and 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 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.[1] 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 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

[1] 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

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 above-styled, "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.) The prosecution of claims against the Settling Parties would 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.

(citing Wenke, 622 F.2d at 1368).

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 the Settling Parties because if those 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 Legare & Bailey, LLC, Daniel O. Legare, J. Mark Bailey, Gloria S. Legare, Melissa C. Legare, and Christina F. Bailey and grant this Motion for Approval of Settlement Agreement and enter an order enjoining further prosecution of all claims against them.

Respectfully submitted, this 16th day of July, 2008.

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CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of July, 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
Merle R. Arnold III