

## SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Agreement and Mutual Release is entered into as of the \_\_\_ day of December, 2009 by, between and among S. Gregory Hays, as Receiver of Albert E. Parish, Jr. ("Parish"), Parish Economics, LLC and Summerville Hard Assets, LLC ("Receiver"), Battery Wealth Management, Inc. f/k/a Battery Investment Company, Inc. ("BWM") and Wayne Cassaday ("Cassaday"), and BWM's and Cassaday's professional liability insurer, Continental Casualty Company ("Continental") all on behalf of themselves and their current and/or former trustees, officers, administrative officers, parents, subsidiaries, affiliates, shareholders, members of BWM's Investment Management Team and Investment Team (except Parish, who is not a party to this Settlement Agreement and Mutual Release and not entitled to benefit from it, other than through the Receiver's assertion or release of any of Parish's rights herein) (collectively the "Parties").

WHEREAS, Parish, through Parish Economics, LLC and Summerville Hard Assets, LLC, operated a fraudulent investment scheme through which numerous investors – who thought they were investing in legitimate "investment pools" managed by Parish – were defrauded; and

WHEREAS, Parish was criminally prosecuted and pled guilty to federal and state fraud charges for which he currently is serving time in prison; and

WHEREAS, on April 5, 2007, the United States Securities and Exchange Commission filed a civil enforcement action in the United States District Court for the District of South Carolina (the "Court"), styled *Securities and Exchange Commission v. Albert E. Parish, et. al.*, Civil Action File No. 2:07-919-DCN, against Parish, Parish Economics, and Summerville Hard Assets, LLC seeking temporary, preliminary, and permanent injunctive relief, as well as disgorgement and other monetary sanctions (the "Enforcement Action"); and

WHEREAS, the Court in the Enforcement Action appointed the Receiver and authorized him to "pursue all suits, actions, claims and demands which may be brought by" Parish, Parish Economics, LLC, and Summerville Hard Assets, LLC (the "Receiver Entities"); and,

WHEREAS, pursuant to and in accordance with the authorizations and orders of the Court in the Enforcement Action, the Receiver and his counsel investigate, assert and, where necessary and appropriate, prosecute claims against third parties in an effort to effect recoveries for the benefit of creditors of the Receiver Entities, including investors in the fraudulent investment scheme; and,

WHEREAS, Parish was vice president and part owner of BWM, of which Wayne Cassaday was also co-owner and president during the time period that Parish operated the fraudulent investment scheme that is the subject of the Enforcement Action; and,

WHEREAS, over time, many of BWM's clients invested or maintained money in Parish's investment scheme; and,

WHEREAS, individuals affiliated with and employed by BWM, including Cassaday, and clients of BWM invested and lost significant amounts of their own (or family members') money in Parish's investment scheme; and,

WHEREAS, the Receiver contends that BWM and Cassaday had access to information not generally available to others who invested in Parish's investment scheme; and,

WHEREAS, the Receiver believes that he, as well as Parish's other investors and creditors could assert, or have asserted, causes of action such as negligence and negligent misrepresentation against BWM and Cassaday; and,

WHEREAS, BWM and Cassaday have been named as defendants or third-party defendants in not less than seven (7) civil actions filed in the South Carolina Court of Common Pleas and United States District Court for South Carolina by various investors (collectively the "Investor Lawsuits") arising from and related to the investment scheme that is the subject of the Enforcement Action, including the following

- Pearlman v. Battery Wealth Management f/k/a Battery Investment Company, Inc., et al Case No. 2007-CP-10-1419;
- Brown, et al v. Charles Schwab & Co., Inc. C/A No.: 2:07-CV-3852-DCN;
- Crosland v. Battery Wealth Management f/k/a Battery Investment Company, Inc., et al Case No. 2007-CP-10-1421;
- White v. Battery Wealth Management f/k/a Battery Investment Company, Inc., et al Case No. 2007-CP-10-1420;
- Beard v. Battery Wealth Management f/k/a Battery Investment Company, Inc., et al Case No. 2007-CP-10-4132;
- Woolen v. Battery Wealth Management f/k/a Battery Investment Company, Inc., et al Case No. 2008-CP-10-1605;
- Elrod et al v. Charleston Southern University, et al., Case No. 07-CP-10-1465.

WHEREAS, BWM and Cassaday have been notified of additional potential lawsuits by other investors and investor groups; and

WHEREAS, BWM and Cassaday believe that they have meritorious defenses to the Investor Lawsuits, as well as any potential allegations by the Receiver or any investors, donors, benefactors or other creditors, and they deny any liability whatsoever, and,

WHEREAS, the Parties recognize that litigation is often expensive and time-consuming, and the results are difficult to predict with accuracy; and,

WHEREAS, the following individuals, in addition to the claimants in the Investor Lawsuits, were invited to, participated in or were represented in a mediation in an attempt to resolve their claims against BWM and/or Cassaday: Malcolm Crosland, Meggett B. Lavin, Thomas S. White, Carolyn White, David Pearlman, Janet Pearlman, L.G. Elrod, Mary Elrod,

Carol M. Graf, individually and as assignee of T. Alexander Beard, T. Alexander Beard, Charles W. Woolen and Pamela W. Woolen, Richard Brown, Robert Brinson and Louis Mancuso, Charles Schwab & Co., Inc., Marilyn Powell, Mary Alice Hardee and the Estate of John Hardee, Ron Wiseman, Ann Wiseman, Karen Plaehn, Bobby Medlin, George and Ursula Stocko and Rev. William S. and Mary Eaton (these individuals, as well as the claimants in the Investor Lawsuits, shall collectively be referred to as the "Active Claimants"); and,

WHEREAS, the cumulative amount of legal fees and expenses, coupled with the damages that might be alleged by the Receiver, Active Claimants, investors, investor groups or others, would likely exceed BWM and Cassaday's ability to pay; and,

WHEREAS, Continental has filed a declaratory judgment action captioned Continental Casualty Company v. Battery Wealth, Inc. and Wayne Cassaday in the United States District Court for the District of South Carolina, Charleston Division, Case No. 2:09-CV-00605-DCN (the "Declaratory Judgment Action"), and

WHEREAS, the Declaratory Judgment Action, *inter alia*, seeks a determination of whether coverage is available to BWM and/or Cassaday coverage under Tax and Financial Services Professional Liability Policy Number TFS-253996244, issued to BWM for the periods May 1, 2006 to May 1, 2007 ("Policy No. 1") and May 1, 2007 to May 1, 2008 ("Policy No. 2") (collectively, "the Policies");

WHEREAS, the Active Claimants, BWM, Cassaday, and Continental have entered into a Settlement Agreement dated December 21, 2009 fully resolving any and all disputes that they have with each other, including without limitation the Investor lawsuits (the "Active Claimants Settlement Agreement"); and

WHEREAS, the Active Claimants Agreement, *inter alia*, provides a procedure for the allocation of funds, if any, in the event that the Court determines that coverage exists in the Declaratory Judgment;

WHEREAS, Receiver, BWM and Cassaday desire, through this Settlement Agreement, to fully resolve any and all disputes that they have with each other, including without limitation the Investor Lawsuits as set forth in the Active Claimants Agreement, in accordance with the terms hereof;

WHEREAS, BWM, Cassaday and Continental desire, through this Settlement Agreement, to fully resolve any and all disputes that they have with each other that have been asserted in the Declaratory Judgment Action, in accordance with the terms hereof;

WHEREAS, based upon the known relevant facts and circumstances, all parties, including the Receiver and his counsel, believe that the terms of the settlement and compromise set forth herein are in the best interests of all Parties and, ultimately, all of the investors who invested in the subject investment scheme;

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, along with other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Conditions Precedent. As a condition precedent, this Agreement shall only be effective and binding on all Parties hereto:

- a. The Receiver's filing of a motion with the Court in the Enforcement Action seeking approval of this Agreement, which shall include a request by the Receiver for entry of an 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 clients or former clients of BWM and Cassaday, against BWM, Cassaday and Continental, 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 BWM and Cassaday; (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 BWM or any of its current and/or former employees, officers or principals (the "Bar Order"); and,

- b. Upon the entry of an Order of the Court in the Enforcement Action approving the terms of this Agreement and authorizing the Receiver to execute same.

2. Effective Date. The Effective Date shall be the date that the Order described in Paragraph 1(b), above, becomes final and not subject to appeal, even though the permanent injunction set forth in Paragraph 1 shall be in effect between the date the Order is signed and the Effective Date.

3. The Parties to the settlement will use their best efforts to obtain Court approval of this Agreement and the inclusion of the Bar Order as set forth in Paragraph 1(a) above.

4. Continental and Cassaday and BWM agree that all disputes regarding whether insurance coverage exists and, if so, in what amounts, with regard to the claims that are the subject of this Settlement Agreement, will be asserted and decided in the Declaratory Judgment Action.

5. The Court's decision in the Declaratory Judgment Action will determine the amount of settlement funds to be made available for the benefit of the Active Claimants and other BWM clients who invested with Parish, up to, and not to exceed two million, eight

hundred fifty thousand dollars (\$2,850,000) (“Settlement Funds”). The Receiver acknowledges and agrees that should the Court decide that no or less coverage is available, he will be barred from pursuing any additional recourse against BWM, Cassaday or Continental.

6. Should Continental seek an appeal from the decision of the Declaratory Judgment Action and not prevail, Continental agrees to pay into the Settlement Funds, in addition to the amount of coverage awarded, if any, interest accruing on the amount ultimately awarded at the current federal rate during the time period beginning on the date of the filing of the appeal, not to exceed the lesser of the amount of the calculated interest or fifty thousand dollars (\$50,000), but in no event should the interest paid exceed \$50,000.

7. Upon final resolution of the Declaratory Judgment Action, in the event that some amount of coverage is found to exist, the right to a claim against the Settlement Funds and a procedure for the allocation of the Settlement Funds (“Allocation Determination Procedure”) will be established by a an independent arbiter appointed by the Court (“Neutral”) and shall be binding on all claimants asserting claims against BWM, Cassaday or Continental. The Neutral shall be authorized to decide how the Settlement Funds, if any, shall be paid to those entitled to make a claim against such funds. The Receiver shall not serve as the Neutral.

8. All interested investors, which shall include Active Claimants and other BWM clients who invested with Parish, will be provided with a reasonable opportunity to participate in the Allocation Determination Procedure. The Allocation Determination Procedure established by the Neutral will be provided to all Active Claimants and other BWM clients who invested with Parish and will be binding and not subject to appeal. The Receiver acknowledges and agrees that the Allocation Determination Procedure will be separate and distinct from the remainder of the assets recovered by the Receiver. However, the Settlement Funds, if any, will be paid into the Receiver Estate and will be distributed by the Receiver in accordance with the

Allocation Determination Procedure and distribution decision by the Neutral. Nothing contained in this Paragraph is intended nor shall it be construed to indicate that any investor has a claim against BWM or Cassaday that would be subject to coverage under one or more of the Policies nor the weight to be given to any factor(s) in the Allocation Determination Procedure.

9. Cooperation. BWM, Cassaday and their counsel agree that, upon execution of this Agreement and continuing thereafter, they shall, without charge to the Receiver or the Receiver Estate use their best efforts to assist the Court, the Parties, their counsel and other professionals working with them in the Allocation Determination Procedure with discovery related to issues arising out of the determination of individual coverage and allocation procedures for such covered claimants. However, BWM and Cassaday shall be entitled to reimbursement for assistance in the Allocation Determination Procedure for reasonable out-of-pocket expenses such as travel and significant copying or duplication of records as well as reimbursement of all necessary attorney fees in excess of \$7,500 incurred by BWM and Cassaday in connection with said cooperation ("Assistance Expenses"). The Assistance Expenses shall be paid by the party or parties - i.e., the Receiver or the Active Claimant or Active Claimants - making the request.

10. Release of BWM, Cassaday and Continental by the Receiver. The Receiver, on behalf of himself, his successors and assigns, as well as on behalf of Parish and the Receiver Entities, hereby forever releases, discharges and acquits BWM, Cassaday, and Continental, as well as any other BWM employees (except Parish), from any and all claims, demands or causes of action that the Receiver may now have or which may hereafter accrue on account of, in connection with, or which in any way may grow out of: (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 BWM or Cassaday; (c) any investment made by any person or entity in or with Parish or any of the Receiver Entities, (d) any other affiliation with or support of



Parish by BWM or any of its current and/or former employees, officers or principals; and/or (e) any claim for insurance coverage from Continental, or for any claim involving or related to any claim handling by or on behalf of Continental. Notwithstanding the foregoing, nothing herein is intended to be nor should be construed to be a release of any other person or entity, specifically including, but not limited to, individuals and entities that worked on or provided professional services to or in connection with Parish's investment activities, the Receiver Entities and/or the subject "investment pools." The Receiver hereby expressly reserves such claims against any such person or entity not expressly released herein.

11. Release of Receiver and Receiver Entities. Except as expressly set forth herein, BWM, Wayne Cassaday and Continental hereby release, discharge and acquit the Receiver, his employees, agents, attorneys and assigns, as well as the Receiver Entities, from any and all claims, demands or causes of action that they may have in connection with the claims that are the subject of this Settlement Agreement.

12. Reservation of All Rights Regarding Investor Claims. Other than with regard to Continental, notwithstanding the releases provided for in Paragraphs 10 and 11 above, nothing herein is intended to release, limit or otherwise modify any right, claim or defense that the Receiver or any individual investor (including Wayne Cassaday and any individuals employed by or affiliated with BWM) may have with respect to individual claims filed with the Receiver to recover their or their family's individual investment losses as a part of the receivership claims administration process.

13. Claims Administration. Except as expressly set forth herein, the claims of the Active Claimants and any other BWM clients who participate in the Allocation Determination Procedure, filed in the receivership, like all other investors, will be administered in accordance

with the processes and plan for distribution approved by the Court in the Enforcement Action. The Parties understand and agree that it is the Receiver's intent to make an initial distribution from the Receiver estate in late 2009 or early 2010, although the Receiver is under no obligation to do so ("Initial Distribution"). The Receiver agrees that reasonable attorney's fees incurred by the Active Claimants relating to the Declaratory Judgment Action in an amount to be determined by the Court or Neutral, at the Court's discretion, shall not be credited against or towards any payment to investors from other assets recovered by the Receiver. The attorney's fees determined by the Court or Neutral, if any, shall be paid from the Settlement Funds and shall not be paid separately by Continental. Any distributions from the Settlement Funds will be treated as an Amount Previously Received in accordance with the processes and plan for distribution approved by the Court in the Enforcement Action; however, the Receiver shall not seek to recover amounts previously paid in the Initial Distribution from any investor who receives payment under the Allocation Determination Procedure. The Receiver expressly acknowledges that the consideration and covenants provided for herein shall not be construed to confer any rights under the Policies on anyone who is not an insured under the Policies, including the Active Claimants.

14. Approval Process. Upon the execution of this Agreement by BWM and Continental, the Receiver shall file a motion or motions in the Enforcement Action seeking approval of the terms of this settlement and compromise and requesting the relief set forth in Paragraph 1(b) above. Notice of the filing of the motion, or motions, and any hearing date set by the Court shall be posted on the Receiver's website and served upon each person known to the Receiver who invested with Parish or one of the Receiver Entities. Moreover, BWM and Cassaday shall serve a copy of the Notice on any client or former client that has threatened to assert a claim against BWM or Cassaday that might be affected by the entry of the injunction

provided for above. If the Court approves this settlement and compromise in accordance with Paragraph 1(a), above, the terms of this Agreement shall become binding on the parties hereto. If the Court does not approve this settlement and compromise, this Settlement Agreement shall terminate immediately upon the entry of an order denying the Receiver's motion seeking approval. However, as set forth above, the Parties agree and understand that the Court's approval, disapproval or modification of the Receiver's motion for a Bar Order does not, in any way, affect the terms of this Agreement and the obligations of the Parties hereto.

15.     No Admissions. The Parties acknowledge and agree that this Settlement Agreement is entered into for the purpose of compromising disputed claims and that the giving and receiving of the consideration and covenants provided for herein shall not be construed as an admission of any liability or wrongdoing of any kind by BWM, Cassaday and Continental, or any of their current and/or former employees, officers and principals. To the contrary, BWM, Cassaday and Continental, and their current and/or former employees, officers and principals expressly deny and contest any alleged liability for any wrongful acts. Conversely, the Receiver believes that the monetary liability and investor losses resulting from the investment-related activities of Parish, Parish Economics and/or Summerville Hard Assets and affiliated "investment pools" far exceeds the amounts being received pursuant to the terms of this Agreement. Other than as set forth herein, by entering into this Agreement with BWM, Cassaday and Continental, the Receiver does not intend to release, waive, limit or otherwise modify their rights and claims against others (i.e., non-Parties) who were in any way involved with Parish or the Receiver Entities.

16.     This Settlement Agreement shall be binding upon and inure to the benefit of the Receiver, BWM, Cassaday, and Continental, and their respective successors and assigns, along with BWM and Cassaday's current and/or former employees, officers and principals (except

Parish).

17. This Settlement Agreement in all respects shall be interpreted, enforced and governed by and under the laws of the State of South Carolina. The Parties agree that the United States District Court for the District of South Carolina, Charleston Division shall have exclusive jurisdiction over all issues related to this Agreement.

18. This Settlement Agreement contains the entire agreement between the parties hereto and may not be amended or modified except by a written agreement signed by each of them. The Parties acknowledge that no representations, inducements, promises, or agreements have been made by or on behalf of any party except those covenants and agreements embodied in this Agreement. No agreement, statement, or promise not contained in this Agreement shall be valid or binding.

19. The Parties stipulate that each term and condition of this Agreement is material to each of the Parties and that, in the event the Court does not approve this Agreement in *toto* without modification, no party shall be bound hereby.

20. The Parties warrant and represent that in executing this Agreement, they have relied upon legal advice from their attorneys of choice, that the terms of this Agreement, and its consequences, have been completely read and explained by their attorneys, and that they fully understand the terms of this Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals as of the day and year first written above.

\_\_\_\_\_  
S. Gregory Hays, Receiver

\_\_\_\_\_  
Witness

BATTERY WEALTH MANAGEMENT, INC.  
F/K/A BATTERY INVESTMENT COMPANY, INC.

By: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Wayne Cassaday

\_\_\_\_\_  
Witness

CONTINENTAL CASUALTY COMPANY

By: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
Witness