

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

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

vs.

STANLEY J. KOWALEWSKI and  
SJK INVESTMENT MANAGEMENT,  
LLC

Defendants.

CIVIL ACTION  
NO. 1:11-cv-0056-TCB

**RECEIVER'S INVESTOR DISTRIBUTION PLAN**

S. Gregory Hays (“Receiver”), the court-appointed Receiver for Stanley J. Kowalewski (“Kowalewski”), SJK Investment Management, LLC (“SJK”), and the SJK Special Opportunities Fund (the “Special Opportunities Fund”), files his Investor Distribution Plan and shows the Court as follows:

**I. INTRODUCTION**

1. Pursuant to Orders dated February 2, 2011 [ECF No. 37] and March 8, 2011 [ECF No. 59] (the “Receivership Orders”), S. Gregory Hays was appointed as Receiver for Kowalewski, SJK, the Special Opportunities Fund, and all of their assets (collectively, the “Receiver Estate”). The Receivership Orders grant the

Receiver broad authority over the organization, management, control, and disposal of the assets of the Receiver Estate.

2. In addition to administering the affairs of Kowalewski, SJK, and the Special Opportunities Fund, this receivership involves the administration of four hedge funds (and the amounts invested therein) that are managed by SJK: (1) the SJK Absolute Return Fund, Ltd. (the “Offshore Absolute Return Fund”); the SJK Absolute Return Fund, LLC (the “Onshore Absolute Return Fund”); the SJK Long/Short Equity Fund, Ltd. (the “Offshore Long/Short Equity Fund”); and the SJK Long/Short Equity Fund, LLC (the “Onshore Long/Short Equity Fund”). Collectively, these four funds are referred to as the “SJK Funds.”

3. On March 3, 2011, the Receiver filed his First Interim Report [ECF No. 55], which described, among other things: (a) the structure of the SJK Funds; (b) the relationship between Kowalewski, SJK, the Special Opportunities Fund, and each of the SJK Funds; and (c) the investors and amounts invested by each investor in each of the SJK Funds. (First Interim Report ¶¶ 21-53.) The First Interim Report is incorporated herein by reference.

4. The First Interim Report also provided general information regarding the Receiver’s expected plan of distribution, which will be accomplished in several stages. (First Interim Report ¶¶ 71-89.)

5. The SJK Funds are not in receivership; however, as receiver for SJK, the Receiver is responsible for the management of those funds. The management of those funds, including the distributions provided for herein, has continued in accordance with the governing agreements since the Receiver's appointment.

6. The purpose of this Plan is to propose a plan of distribution to investors in the SJK Funds of the assets of each of these four funds that are invested with third-party managers (the "Investor Distribution Plan" or the "Plan"). The Investor Distribution Plan, which requires approval by this Court, is set forth in Section II below. As part of this Plan, the Receiver proposes a resolution of certain ownership issues regarding the SJK Funds and the Special Opportunities Fund, which must be addressed and resolved before any distributions can be made.

7. As the assets and liabilities of the receivership are liquidated (including those of the Special Opportunities Fund), the Receiver anticipates that one or more distributions will be made to investors in the SJK Funds, as well as other creditors of Kowalewski, SJK, and the Special Opportunities Fund. At the appropriate time, the Receiver will file a second (or supplemental) plan of distribution, which also will require approval by this Court. Section III, below, provides updated information about certain critical issues regarding the assets and

liabilities of Kowalewski and SJK, which will require resolution prior to the Receiver filing the second, supplemental plan.

8. As indicated in the First Interim Report, the investments of the Georgia Ports Authority (“GPA”) were not part of the SJK Funds. Hence, the distribution and turnover of monies to GPA is the subject of a separate motion.

## **II. RECEIVER’S PLAN OF DISTRIBUTION OF INVESTMENT PROCEEDS TO INVESTORS IN THE SJK FUNDS**

9. The majority of the money invested in the SJK Funds was invested by SJK in various third-party hedge funds. The Receiver sent withdrawal or redemption notices to the majority of these third-party funds, seeking to “redeem” the SJK Funds’ investments in the third-party funds effective June 30, 2011.<sup>1</sup>

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<sup>1</sup> Attached hereto as Exhibit A is a chart showing: (a) the third-party funds in which each of the SJK Funds is invested; and (b) whether the third-party funds are being redeemed on June 30, 2011. Notably, the Offshore Long/Short Equity Fund’s investment in the Artis Partners 2X Ltd. fund and the Onshore Long/Short Equity Fund’s investment in the Artis Partners 2X LP fund would have been subject to a four percent (4%) “soft lock-up” fee if redeemed as of June 30, 2011. This fee drops to two percent (2%) later this year, and the Receiver has informed investors of his intent to redeem the SJK Funds’ interests in the Artis funds effective December 31, 2011. In addition, the Onshore Absolute Return Fund’s investment in Double Black Diamond LP – Series D is subject to a “hard lock-up” that expires on September 30, 2011 and can be redeemed only after that date. Finally, the Offshore Long/Short Equity Fund’s investment with Alphabet Management was frozen in a bank account prior to investment and does not require notice to be redeemed.

10. As a result of the redemption of the SJK Funds' interests in these third-party funds, the Receiver anticipates that, by late July or early August 2011, he will have a significant amount of cash available in each of the SJK Funds for distribution to the investors in each fund, with additional amounts available in the future for later distributions. The Receiver plans to hold the money received from third-party funds in a fully insured non-interest bearing transaction account until it is distributed.

11. If approved by this Court, the Investor Distribution Plan will govern the process for the distribution of all assets available for distribution to investors in the SJK Funds (except as modified by a subsequent Court order, if necessary and appropriate). In drafting this Plan, the Receiver and his counsel have endeavored to address all issues related to ownership in the SJK Funds and the Special Opportunities Fund and distributions from the third-party fund redemptions to investors in the SJK Funds. It is possible, however, that additional issues will arise that require minor changes to the Plan in order to complete the distributions contemplated herein. To avoid additional time and expense, the Receiver does not intend to seek the approval of this Court for any minor changes if he can obtain the consent of all affected investors.

**A. ALLOCATION OF OWNERSHIP INTERESTS IN THE SJK FUNDS AND THE SPECIAL OPPORTUNITIES FUND FOR PURPOSES OF INVESTOR DISTRIBUTIONS**

12. Pursuant to the governing documents for each of the SJK Funds, ownership interests (i.e., units, shares, or membership interests) were issued or allocated to each investor for each investment made. Under the governing documents, investments generally became effective on the first business or calendar day of a month or calendar quarter. The allocation of ownership interests for an investment was based on the net asset value of the particular SJK Fund in which the investment was made as of the last business or calendar day of the month or quarter that ended immediately prior to the effective date of the investment.<sup>2</sup> SJK, as investment manager, was responsible for determining the net asset value for each of the SJK Funds.

13. Given the timing of the filing of this action in early January 2011, the last date for which SJK calculated a net asset value for any of the SJK Funds was November 30, 2010.

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<sup>2</sup> For ease of reference, this Plan refers to net asset values being calculated on the last calendar day of a month and new investments becoming effective on the first calendar day of a particular month. The Receiver's analysis, and this Investor Distribution Plan, would not be affected by using the last and first business days.

14. In late December 2010, two new investors made investments in certain SJK Funds. These investments were to become effective as of January 1, 2011. Specifically, the Amended and Restated Hickory Springs Retirement Plan (“Hickory Springs”) invested \$7,000,000 in the Offshore Absolute Return Fund, and Shelter Bay Fund, L.P. (“Shelter Bay”) invested \$600,000 in the Onshore Absolute Return Fund. In addition, Stanley and Traci Kowalewski made three purported investments effective January 1, 2011:<sup>3</sup> \$500,000 in the Onshore Absolute Return Fund; \$500,000 in the Onshore Long/Short Equity Fund; and \$1,500,000 in the Special Opportunities Fund. Pursuant to the governing documents of each fund, the ownership interest for each of these investments was to be based on each fund’s net asset value as of December 31, 2010.<sup>4</sup>

15. Because SJK did not calculate a net asset value as of December 31, 2010 for any of the SJK Funds or the Special Opportunities Fund, the respective

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<sup>3</sup> Section B of the Investor Distribution Plan addresses the Receiver’s proposal for distributions allocated to investments in the SJK Funds by the Kowalewskis.

<sup>4</sup> On December 30, 2010, the SJK Investment Management LLC 401(k) Plan transferred \$15,550 to a JP Morgan Chase bank account in the name of the Onshore Absolute Return Fund. The Receiver assumes that this transfer was in connection with a planned investment to be effective January 1, 2011; however, the Receiver has been unable to locate a subscription agreement for this transfer and the money does not appear to have been invested with third-party funds. Therefore, the Receiver does not intend to treat the \$15,550 as an investment and intends to return the transfer to a trust account in the name of the SJK Investment Management LLC 401(k) Plan.

ownership interests of Hickory Springs, Shelter Bay, and the Kowalewskis were unresolved as of the date of the Receiver's appointment.

16. As receiver for SJK, the Receiver was responsible for determining the net asset values for the SJK Funds and the Special Opportunities Fund as of December 31, 2010 (and for each month thereafter). This valuation was a prerequisite to allocation of ownership interests to Hickory Springs, Shelter Bay, and the Kowalewskis.

17. After his appointment, the Receiver endeavored to calculate the correct net asset value, as of December 31, 2010, for each of the SJK Funds. Because both the Offshore Absolute Return Fund and Onshore Absolute Return Fund are investors in the Special Opportunities Fund, the net asset value of these funds is based in part on the net asset value of the Special Opportunities Fund.

18. The last net asset value calculated by SJK for the Special Opportunities Fund was for the month ended November 30, 2010. SJK valued the Special Opportunities Fund at \$24,416,706.29.

19. As a result of his investigation, the Receiver determined that SJK's November 30, 2010 valuation of the Special Opportunities Fund was greatly inflated and that the purported assets of the Special Opportunities Fund had relatively little value. The Receiver also determined that the net asset value



attributed by SJK to the Special Opportunities Fund had been overstated for the majority of 2010,<sup>5</sup> with the amount of the overstatement increasing on a monthly basis over the latter part of 2010.

20. Given the overall circumstances of the case and the Receiver's knowledge of the facts as they existed as of December 31, 2010, the Receiver determined that the net asset value of the Special Opportunities Fund as of December 31, 2010 was \$4,655,447.19.<sup>6</sup> The Receiver informed investors of his determination in a memorandum dated May 5, 2011, a copy of which is attached hereto as Exhibit B.

21. After calculating the Special Opportunities Fund's net asset value as of December 31, 2010, the Receiver determined the net asset value of each of the other SJK Funds as of December 31, 2010. The net asset value for each of the SJK Funds and the Special Opportunities Fund as of November 30, 2010 and December 31, 2010 and the difference between the two net asset values is shown in the following table:

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<sup>5</sup> The Special Opportunities Fund was created on November 30, 2009 and did not engage in any significant activity prior to 2010.

<sup>6</sup> There were no material changes to the assets of the Special Opportunities Fund between November 30, 2010 and December 31, 2010.

<b>Fund</b>	<b>November 30, 2010 Net Asset Value</b>	<b>December 31, 2010 Net Asset Value<sup>7</sup></b>	<b>Difference</b>
Offshore Absolute Return Fund	\$48,335,788	\$34,069,355	(\$14,266,433)
Onshore Absolute Return Fund	\$22,848,123	\$18,759,573	(\$4,088,550)
Offshore Long/Short Equity Fund	\$21,182,936	\$21,689,730	\$506,794
Onshore Long/Short Equity Fund	\$9,961,789	\$10,234,198	\$272,409
Special Opportunities Fund	\$24,416,706	\$4,655,447	(\$19,761,259)

22. As shown in the table in Paragraph 21, the net asset values of the Offshore Absolute Return Fund and Onshore Absolute Return Fund declined. Almost all of this decline was a direct result of the adjustment to the net asset value of the Special Opportunities Fund as of December 31, 2010. Because the Offshore Long/Short Equity Fund and the Onshore Long/Short Equity Fund were not investors in the Special Opportunities Fund, their net asset values were not affected by the downward adjustment to the Special Opportunities Fund's net asset value.

23. After adjusting the net asset value of the Special Opportunities Fund, which also resulted in a decline in the reported net asset values of the Offshore Absolute Return Fund and the Onshore Absolute Return Fund, the Receiver determined that it likely would be inequitable for Hickory Springs and Shelter Bay to be granted ownership interests based on these funds' December 31, 2010 net

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<sup>7</sup> The Offshore Absolute Return Fund received investments totaling \$141,500 effective December 1, 2010, and the Onshore Absolute Return Fund received investments totaling \$107,888 effective December 1, 2010.

asset values. These same issues are present with respect to the purported Kowalewski investments in the Onshore Absolute Return Fund and Special Opportunities Fund. Moreover, given the nature of the investments in the Special Opportunities Fund and the grossly inflated net asset values for that fund over time, the Receiver determined it would be inequitable to determine ownership of any investors' interest in that fund based on its apparent net asset value.

24. As a result of these circumstances, the Receiver and his counsel developed proposed resolutions regarding Hickory Springs', Shelter Bay's, and the Kowalewskis' respective ownership interests in these funds, which are set forth below. The facts regarding each fund and investment are different. Hence, the proposed solution for each is different. The Receiver, through counsel, has communicated with the affected investors as this proposal has been developed.

**1. Hickory Springs**

25. On December 27, 2010, Hickory Springs wired \$7 million into a JP Morgan Chase account in the name of the Offshore Absolute Return Fund. Hickory Springs intended the entire \$7 million to be an investment in the Offshore Absolute Return Fund and completed a Subscription Agreement to that effect. Hickory Springs was to be admitted as an investor in the Offshore Absolute Return

Fund as of January 1, 2011. As indicated above, Hickory Springs was never issued shares of the Offshore Absolute Return Fund in connection with this investment.

26. On January 3, 2011, \$6.2 million of Hickory Springs' investment was transferred to a JP Morgan Chase account in the name of the Offshore Long/Short Equity Fund. Of this amount, it appears that \$6.18 million was invested with third-party fund managers and that the majority of the remaining \$20,000 remained on deposit in the Chase account. The \$6.18 million appears to have been invested by the Offshore Long Short Equity Fund as follows:

- \$2.15 million – Alphabet Management – these funds were frozen in a JP Morgan Chase account prior to being invested in any of Alphabet's hedge funds and remain frozen;
- \$2.775 million – Glazer Enhanced Offshore Fund Ltd.; and
- \$1.255 million – SES Offshore Ltd.

27. Also on January 3, 2011, \$800,000 of Hickory Springs' investment was transferred to a First Citizens Bank account in the name of the Special Opportunities Fund. It appears that these funds subsequently were transferred to SJK.

28. Because \$6.2 million of Hickory Springs' investment was transferred to the Offshore Long/Short Equity Fund and the remaining \$800,000 was

transferred to the Special Opportunities Fund, the Receiver has determined that it would be fair for Hickory Springs to receive ownership interests in those funds.

29. On May 11, 2011, the Receiver explained his proposal to, and sought the agreement of, Hickory Springs and the existing investors in both the Offshore Absolute Return Fund and Offshore Long/Short Equity Fund. A copy of the May 11, 2011 proposal is attached hereto as Exhibit C.

30. Since May 11, 2011, counsel for the Receiver has communicated extensively with Hickory Springs and the other affected investors regarding his proposal. As of the date of this filing, Hickory Springs, GeeChee Reinsurance Co., St. Joseph's/Candler Funded Depreciation, and St. Joseph's Candler Health Systems, Inc. have agreed to the Receiver's proposal. Pension Benefit Guaranty Corp., the only other affected investor, has indicated that it does not object to the Receiver's proposal. Each investor's agreement or lack of objection is conditioned upon the agreement or lack of objection by all other investors and each investor also has reserved its right to object to the Receiver's proposal should any other investor object.

31. Upon approval of this Investor Distribution Plan, the Receiver will work with Cayman Islands counsel to complete documents necessary to issue Hickory Springs' ownership interests in the Offshore Long/Short Equity Fund and

Special Opportunities Fund.<sup>8</sup> Ultimately, Hickory Springs will receive a 22.23% ownership interest in the Offshore Long/Short Equity Fund, as of January 1, 2011, and a 4.36% ownership interest in the Special Opportunities Fund.

## **2. Shelter Bay**

32. On December 27, 2010, Shelter Bay wired \$600,000 into a JP Morgan Chase account in the name of the Onshore Absolute Return Fund. Shelter Bay intended the entire \$600,000 to be an investment in the Onshore Absolute Return Fund and completed a Subscription Agreement to that effect. Shelter Bay was to be admitted as an investor in the Onshore Absolute Return Fund as of January 1, 2011. As indicated above, Shelter Bay was never issued units of the Onshore Absolute Return Fund in connection with this investment.

33. On January 3, 2011, \$600,000 was transferred from the Onshore Absolute Return Fund's JP Morgan Chase account to an account in the name of the Special Opportunities Fund at First Citizens Bank. Based on the Receiver's analysis, it appears that some or all of this \$600,000 can be attributed to Shelter Bay's investment in the Absolute Return Fund.

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<sup>8</sup> The Offshore Funds are Cayman Islands entities and must comply with Cayman Islands laws and regulations in completing the steps necessary to effect the Receiver's proposed allocation of Hickory Springs' investment. Hickory Springs and the other investors in the Offshore Funds may be required to execute consents or similar documents as part of this process.

34. Based on the December 31, 2010 net asset value, Shelter Bay would be entitled to a 3.021% ownership interest in the Onshore Absolute Return Fund as of January 1, 2011; however, to avoid potential objections from other investors in the Onshore Absolute Return Fund, the Receiver and Shelter Bay agreed that the Receiver would propose that Shelter Bay receive a 2.90% ownership interest in the Onshore Absolute Return Fund as of January 1, 2011.

35. Because Shelter Bay's \$600,000 investment is relatively small compared to the net asset value of the Onshore Absolute Return Fund, Shelter Bay's ownership interest – whether 2.90%, 3.021%, or some other amount – will not materially affect the ownership interests of any of the other investors in the Onshore Absolute Return Fund.

36. Shelter Bay's agreement not to request the full 3.092% ownership interest to which it would be entitled based on the December 31, 2010 net asset value of the Onshore Absolute Return Fund is conditioned upon other investors' not objecting to Shelter Bay's receipt of a 2.90% interest.

37. On June 16, 2011 and June 22, 2011, the Receiver informed the other Onshore Absolute Return Fund investors of his agreement with Shelter Bay. Copies of these communications are attached hereto as Exhibits D & E.

38. Upon approval of this Investor Distribution Plan, Shelter Bay will receive a 2.90% in the Onshore Absolute Return Fund as of January 1, 2011.

**3. The Kowalewskis' Investment in the Onshore Absolute Return Fund**

39. On January 1, 2011, Stanley and Traci Kowalewski executed an Additional Subscription Request, purporting to invest \$500,000 in the Onshore Absolute Return Fund. On January 4, 2011, \$500,000 was transferred from a First Citizens Bank account in the name of Stanley Kowalewski to a JP Morgan Chase account in the name of the Onshore Absolute Return Fund.

40. It appears that, at all relevant times, Kowalewski had knowledge of facts regarding the overvaluation by SJK of the Special Opportunities Fund, and, in turn, the diminished value of the Onshore Absolute Return Fund. Because of this unique circumstance, the Receiver believes that it would be inappropriate for the Kowalewskis to benefit in any way as a result of the diminished value of the net asset value of the Onshore Absolute Return Fund as of December 31, 2010 – i.e., the Kowalewskis would be entitled to a greater percentage ownership interest based on the December 31, 2010 net asset value than based on the November 30, 2010 net asset value (which incorporated the inflated Special Opportunities Fund net asset value). Accordingly, the Receiver proposes that the Kowalewskis'



ownership interest for their January 1, 2011 investment in the Onshore Absolute Return Fund be based on the fund's inflated November 30, 2010 net asset value.

41. The Receiver's proposed treatment will result in the Kowalewskis receiving a 2.038% ownership interest, as of January 1, 2011, for this investment.

42. On June 22, 2011, the Receiver informed the Onshore Absolute Return Fund investors of his planned treatment of the Kowalewskis' investment.

*See Exhibit E.*

43. Upon approval of this Investor Distribution Plan, the Kowalewskis will hold a 2.4525% ownership interest in the Onshore Absolute Return Fund as of January 1, 2011 (.4145% from previous investments and 2.038% from their January 1, 2011 investment).

#### **4. The Kowalewskis' Investment in the Onshore Long/Short Equity Fund**

44. On January 1, 2011, Stanley and Traci Kowalewski executed Subscription Documents purporting to invest \$500,000 in the Onshore Long/Short Equity Fund. On January 4, 2011, \$500,000 was transferred from a First Citizens Bank account in the name of Stanley Kowalewski to a JP Morgan Chase account in the name of the Onshore Long/Short Equity Fund.

45. As discussed above, the Onshore Long/Short Equity Fund was not an investor in the Special Opportunities Fund and did not experience losses as a result

of the Receiver's downward adjustment to the Special Opportunities Fund's net asset value, effective December 31, 2010. Therefore, the Receiver intends to issue ownership interests for the Kowalewskis' January 1, 2011 investment based on the Onshore Long/Short Equity Fund's December 31, 2010 net asset value.

46. Upon approval of this Investor Distribution Plan, the Kowalewskis will hold a 4.55% ownership interest in the Onshore Long/Short Equity Fund effective January 1, 2011.

#### **5. Allocation of Ownership Interest in the Special Opportunities Fund**

47. As with the four SJK Funds, the Special Opportunities Fund's governing documents call for the issuance of ownership units for new investments based on the Special Opportunities Fund's net asset value as of the last business day prior to the investment.

48. As of December 31, 2010, there were three investors in the Special Opportunities Fund: (a) the Offshore Absolute Return Fund (80.73%); (b) the Onshore Absolute Return Fund (17.98%); and (c) the Kowalewskis (1.29%). Based on filings in this case and communications between the Receiver's counsel and investors and their counsel, it appears that none of the investors in the SJK Funds, other than those investors affiliated with Kowalewski and SJK, were even aware of the existence of the Special Opportunities Fund prior to this action.

49. SJK's records show that the number of Special Opportunities Fund partnership units issued to investors was based on the net asset value attributed to the Special Opportunities Fund by SJK at the time of each investment. As discussed above, the Special Opportunities Fund was overvalued by SJK during a significant portion of its existence, and was grossly overvalued during the latter part of 2010. Therefore, the distribution of ownership interests between the Offshore Absolute Return Fund, Onshore Absolute Return Fund, and the Kowalewskis as of December 31, 2010 did not accurately reflect the proper ownership interest of each of these investors.

50. On January 1, 2011, an additional \$2.9 million was invested in the Special Opportunities Fund: (a) \$800,000, which will be attributed to Hickory Springs if this Investor Distribution Plan is approved by the Court;<sup>9</sup> (b) \$600,000 by the Onshore Absolute Return Fund; and (c) \$1.5 million by the Kowalewskis.

51. Because the Receiver's analysis shows that the Special Opportunities Fund was worth only a fraction of the value SJK assigned to it, the Receiver cannot fairly calculate the ownership interests of the new investments in the Special Opportunities Fund using the December 31, 2010 net asset value.

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<sup>9</sup> If the Receiver's Investor Distribution Plan is not approved and Hickory Springs is deemed to be an investor in the Offshore Absolute Return Fund, this \$800,000 would be an investment of that Fund in the Special Opportunities Fund.

52. In light of the overvaluation of the Special Opportunities Fund throughout the entirety of the relevant time period, and because the Special Opportunities Fund never experienced any true gains (other than the investment of new money), the Receiver believes the most fair way to determine all investors' ownership interests in the Special Opportunities Fund is to allocate ownership interests based on the amount of principal invested by each investor in the Special Opportunities Fund – i.e., each investor's percentage ownership interest should be determined by dividing the investor's principal amount invested by the total amount invested by all investors. For example, using the December 31, 2010 net asset value, the \$2.9 million in new investments would own approximately a 25% interest in the Special Opportunities Fund, and the previous \$15.5 million in investments would represent only a 75% ownership interest. Under the Receiver's proposal, however, the \$2.9 million in new investments will receive a 15.8% ownership interest in the Special Opportunities Fund.

53. The Investor Distribution Plan yields the following ownership interests in the Special Opportunities Fund:

- Offshore Absolute Return Fund – 67.97%
- Onshore Absolute Return Fund – 18.41%
- Hickory Springs – 4.36%
- Kowalewskis – 9.26%

54. Upon the Court's approval of this Investor Distribution Plan, ownership interests in the Special Opportunities Fund will be allocated as described in Paragraph 53 for purposes of distribution.

**6. Allocation of Ownership Interests Based on the Receiver's Proposal**

55. If the Receiver's Investor Distribution Plan is approved, the ownership interests of the investors in the SJK Funds and the Special Opportunities Fund, as of January 1, 2011, will be as follows:

<b>Offshore Absolute Return Fund</b>	<b>%</b>
GeeChee Reinsurance Co.	13.07
Sea Island Company Retirement Plan (Pension Benefit Guaranty Corp., Statutory Trustee)	20.65
St. Joseph's/Candler Funded Depreciation	15.22
St. Joseph's/Candler Health Systems, Inc.	51.06

<b>Onshore Absolute Return Fund</b>	<b>%</b>
Brandon Smith and Mishanagqus Mills Smith	0.0455
Community Foundation of NE Georgia	20.2995
Ernest V. Montford TTEE Montford Associates PS Trust	1.0277
Fieldale Farms Corp.	31.10273
Holy Family Hospital of Bethlehem Foundation	5.4899
Resort Hotel Insurance Co.	3.2460
Savannah Country Day School	6.3915
Shelter Bay Fund, LP	2.9000

<b>Onshore Absolute Return Fund</b>	<b>%</b>
SJK Investment Management LLC 401(k) Plan <sup>10</sup>	0.2125
Stanley and Traci Kowalewski	2.9251 <sup>11</sup>
Tallulah Falls School	26.3593

<b>Offshore Long/Short Equity Fund</b>	<b>%</b>
Amended and Restated Hickory Springs Retirement Plan	22.23
GeeChee Reinsurance Co.	9.00
St. Joseph's/Candler Funded Depreciation	19.09
Offshore Absolute Return Fund	49.68

<b>Onshore Long/Short Equity Fund</b>	<b>%</b>
Onshore Absolute Return Fund	95.45
Stanley and Traci Kowalewski	4.55

<b>Special Opportunities Fund</b>	<b>%</b>
Amended and Restated Hickory Springs Retirement Plan	4.36
Offshore Absolute Return Fund	67.97
Onshore Absolute Return Fund	18.41
Stanley and Traci Kowalewski	9.26

<sup>10</sup> Any distributions to the SJK Investment Management LLC 401(k) plan will be held by the Receiver in trust on behalf of the participants and beneficiaries of the plan; however, the Receiver reserves any and all rights and claims that the Receiver Estate may have against plan participants and beneficiaries.

<sup>11</sup> The subscription documents executed by the Kowalewskis show that all investments made by them were made jointly. Prior to the appointment of the Receiver, however, the Kowalewskis' initial \$100,000 investment (0.4726% ownership interest as of January 1, 2011), was listed by the SJK Funds' administrators as an individual investment in the name of Stanley Kowalewski. Consistent with the subscription documents, the Receiver is treating all of the Kowalewskis' investments as joint investments.

56. In effect, distributions from each of the SJK Funds will be made based upon these ownership interests; however, the percentage ownership interests in the Onshore Absolute Return Fund and Offshore Long/Short Equity Fund will change slightly over time. This change is due to the fact that certain investments in these funds were made pursuant to subscription documents that call for the payment of fees to SJK while other investments were made pursuant to subscription documents that do not provide for the payment of fees to SJK. As fees are accrued and paid to SJK, the percentage ownership interest of those investors paying fees will decrease marginally in comparison to the ownership interest of those investors not paying fees. This reallocation of percentage ownership interests will not have a material impact on distributions received by any investor.<sup>12</sup>

## **B. DISTRIBUTIONS TO INVESTORS**

### **1. Distributions to All Investors Other than the Kowalewskis**

57. This Investor Distribution Plan will apply to all distributions to investors in the SJK Funds.

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<sup>12</sup> Because there are unresolved tax issues regarding SJK, and due to the need to observe the distinct nature of each entity and individual in receivership, the Receiver is not in a position to waive SJK's fees, which could be used to satisfy tax liabilities.

58. Unless otherwise specified herein, the timing and amount of distributions will be within the Receiver's discretion, based upon the amount of money available for distribution at any given time.

59. With respect to any distributions made to investors in a particular SJK Fund: (1) all investors will receive distributions at the same time; and (2) each investor will receive a pro rata portion of the distributions in accordance with the ownership allocations set forth in Paragraph 55, as adjusted from time to time pursuant to the process identified in Paragraph 56. Moreover, with the exception of the Kowalewskis, whose investments are addressed in Section II.B.4 below, distributions will be made via wire transfer or check, as directed by the investor.

60. Each investor will be entitled to distributions only from the assets available for distribution of the specific SJK Fund(s) in which that investor has an ownership interest. No investor will be entitled to any distributions from an SJK Fund in which the investor does not have an ownership interest. Moreover, no investor will be entitled to a distribution directly from the assets of SJK or Kowalewski.

61. As described below, other than the SJK Funds' investments in third-party funds, all recoveries by the Receiver Estate that result in money being available for distribution to investors will be administered through the Special



Opportunities Fund and will be distributed to investors in that fund on a pro rata basis in accordance with the allocation of ownership interests set forth in Paragraph 55.

**2. Distributions to Investors in the SJK Funds**

62. The Receiver will administer the four SJK Funds in accordance with their existing structure and governance, subject to the exceptions and modifications described herein.

63. Generally, consistent with the terms of this Plan and subject to the authority of the boards of directors of the Offshore Absolute Return Fund and Offshore Long/Short Equity Fund, distributions to investors in the Offshore Absolute Return Fund and Offshore Long/Short Equity Fund will be made under the compulsory redemption provisions contained in those funds' governing documents.

64. The Receiver Team will work with Cayman Islands counsel for the Offshore Funds to comply with Cayman Islands laws and regulations. Upon completion of the redemption process and after all distributions have been made to investors, the Offshore Absolute Return Fund and Offshore Long/Short Equity Fund will be liquidated under Cayman Islands law.

65. Distributions to investors of the Onshore Absolute Return Fund and Onshore Long/Short Equity Fund will be made in accordance with this Plan, which generally is consistent with the governing documents of those funds.

66. After all distributions have been made to investors, the Receiver will seek to dissolve the Onshore Absolute Return Fund and Onshore Long/Short Equity Fund.

67. The SJK Funds will continue to pay their ordinary fees and expenses, including fees owed to SJK as they become due. Moreover, although the Receiver, Hays Financial Consulting, and Troutman Sanders (the “Receiver Team”) do not anticipate charging their fees directly to any of the SJK Funds, circumstances may arise under which it is appropriate for the Receiver Team to charge certain fees and expenses to a particular fund. In applying to the Court for authorization of such fees and expenses, the Receiver will specify which fees and expenses he seeks to charge to an individual fund.

68. The Receiver expects to make an initial interim distribution to investors in the four SJK Funds in or around August 2011 from the money obtained in connection with the redemption of the SJK Funds’ interests in the

third-party funds identified in Exhibit A.<sup>13</sup> The timing of distributions to investors in the Offshore Funds will be dependent in part on Cayman Islands law.

69. As a whole, the distribution process likely will take over one year to complete. Each of the third-party funds in which the SJK Funds invested “hold back” a percentage – usually 5% to 10% – of the amount being redeemed until the completion of the audit for the year during which the redemption was made. Accordingly, the SJK Funds will not receive their full redemption amounts from most third-party funds until mid-2012.

70. Moreover, the distribution process will be affected by the timing and amount of recoveries obtained by the Special Opportunities Fund, the majority of which will be distributed to investors in the Offshore Absolute Return Fund and Onshore Absolute Return Fund. (*See* Section II.B.3 *infra.*)

71. The Receiver will keep investors apprised of the status of distributions and, at the appropriate time, the winding up and dissolution of the SJK Funds.

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<sup>13</sup> All distributions to investors will be coordinated with and processed by SS&C Technologies, which will also be involved in other aspects of executing the Investor Distribution Plan, including the allocation of ownership interests in accordance with the Plan.

**3. Distributions to Investors in the Special Opportunities Fund**

72. The Special Opportunities Fund did not invest in any third-party funds. Rather, it “invested” in a series of real estate and other business ventures. These assets are in the process of being liquidated.

73. In addition to the assets already in the Special Opportunities Fund, the majority of the Receiver Estate’s potential recoveries likely will belong to the Special Opportunities Fund, including recoveries obtained by the SEC in its enforcement action.

74. Unless specifically provided for in an application for the payment of professional fees, the professional fees and other expenses of the receivership shall be paid from the assets in SJK and the Special Opportunities Fund and recoveries of the Receiver Estate, including any recoveries from the Kowalewskis.

75. Unless prohibited by law, the approved professional fees and expenses of the receivership shall have priority over the claims of investors and creditors of SJK and the Special Opportunities Fund.

76. The net proceeds of the Receiver’s liquidation efforts and the recoveries allocated by the Receiver to the Special Opportunities Fund will be maintained by the Special Opportunities Fund, pending further distribution.

77. Generally, the net cash and other proceeds available for distribution to investors from the Special Opportunities Fund will be distributed to investors in that Fund on a pro rata basis pursuant to the percentage ownership interests set forth in Paragraph 55, as adjusted from time to time pursuant to the process identified in Paragraph 56. Given the way that the Special Opportunities Fund actually operated, however, there could be other creditors entitled to distributions from its assets.

78. Any distributions from the Special Opportunities Fund to the Onshore Absolute Return Fund and Offshore Absolute Return Fund will be managed and distributed to investors of those Funds in the same manner as other assets of those two Funds. The distribution to Hickory Springs will be made directly to Hickory Springs. Any distribution to the Kowalewskis will be held in trust pursuant to Section II.A.4 of this Investor Distribution Plan.

79. Before making any distributions to investors in the Special Opportunities Fund, the Receiver shall seek the Court's approval of a supplemental plan, which will include, among other things: the Receiver's plan for claims administration and distribution for claims made by creditors of Kowalewski, SJK, and the Special Opportunities Fund; and the Receiver's proposed allocation of the

Receiver Estate's recoveries between Kowalewski, SJK, and the Special Opportunities Fund.

**4. Distributions to the Kowalewskis**

80. Kowalewski and his wife, Traci, purportedly invested a total of \$2.9 million in three of the SJK Funds: (1) the Onshore Absolute Return Fund; (2) the Onshore Long/Short Equity Fund; and (3) the Special Opportunities Fund. The Kowalewskis executed subscription documents in connection with each of their investments.

81. Based on the Receiver's analysis to date, it appears that most or all of the Kowalewskis' investments in the SJK Funds were made with the proceeds of the investment offerings at issue in this case – i.e., they were made with investor money transferred from the Special Opportunities Fund to SJK and then from SJK to Kowalewski.

82. The Kowalewskis' right to their purported ownership interests in these investments has not been determined yet. While Kowalewski's portion of the investments is subject to disgorgement in this action, Traci Kowalewski testified in this action that she did not contribute any of the investment money and that she does not know from where the money came. (T. Kowalewski Dep. 81:3-17, 83:22-

86:25, Apr. 20, 2011.) Accordingly, there are significant issues regarding her interest, if any, in these investments.

83. Regardless of whether the Kowalewskis have a legitimate interest in these investments, the Internal Revenue Service (and perhaps other potential creditors) may have a priority claim to these and other assets of the Kowalewskis. Currently, the Receiver is working on various tax issues related primarily to Kowalewski and SJK, but does not anticipate that any of these issues will be resolved in the near term.

84. Given the uncertainty surrounding the Kowalewskis' investments, the Receiver is constrained at this time to treat them as true investments in the SJK Funds. Consequently, the Receiver intends to make distributions on these investments according to the procedures set forth herein. The Receiver maintains, however, that it is inappropriate for the Kowalewskis to receive any of these distributions unless and until: (a) this Court determines that the Kowalewskis have a legitimate ownership interest in the investments and are entitled to the distributions; and (b) all federal tax and other potential priority claims are resolved.

85. Upon approval of this Plan, all distributions made on these investments will be held in an escrow account under the control of the Receiver

until the Kowalewskis' rights with respect to their investments in the SJK Funds have been adjudicated.

86. In the event this Court ultimately determines that the Kowalewskis have a legitimate interest in some or all of their investments in the SJK Funds, and all tax and priority claims against those investments are resolved, the Receiver will distribute to the Kowalewskis the amounts to which they are entitled.

### **III. ISSUES TO BE RESOLVED PRIOR TO FILING A SUPPLEMENTAL PLAN**

87. Upon the Court's approval of the Investor Distribution Plan, the Receiver will be able to distribute to investors the net proceeds of third-party fund redemptions. These distributions represent the majority of all distributions that the Receiver anticipates making to investors.

88. This Investor Distribution Plan is the first part of the Receiver's plan to administer the assets of the Receiver Estate and does not include provisions for, among other things: (a) claims asserted by creditors of Kowalewski, SJK, or the Special Opportunities Fund; (b) claims asserted by one party in receivership against another party in receivership – *e.g.*, claims of the Special Opportunities Fund against Kowalewski or SJK; (c) the allocation of recoveries by the Receiver Estate between Kowalewski, SJK, and the Special Opportunities Fund – *i.e.*, specifying which assets will be available to satisfy claims against Kowalewski,



SJK, and the Special Opportunities Fund; and (d) the interrelationship between each of these factors. A number of issues must be resolved before the Receiver can file a supplemental plan that includes these provisions.<sup>14</sup>

89. The most complex remaining issues relate to: (a) assets in which Kowalewski, individually or jointly with his wife, claims an ownership interest; and (b) Kowalewski's tax liability.

90. The most significant assets at issue are:

- \$2.9 million "invested" by the Kowalewskis in the SJK Funds;
- the Kowalewskis' personal residence, which they purchased for \$2.9 million from the Special Opportunities Fund on October 21, 2010;
- the residence of Kowalewski's parents, which Kowalewski purchased for \$315,000 from the Special Opportunities Fund on October 21, 2010. Although not named on the title, Kowalewski claims an ownership interest in this property;
- \$97,938.11 in cash; and
- various watercraft purchased directly by the Special Opportunities Fund but titled in Kowalewski's name. These watercraft are described in more detail in the Receiver's Notice of Intent to Sell Watercraft [ECF No. 80].

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<sup>14</sup> The Receiver has provided a Non-Investor Claim Form to known and possible creditors of Kowalewski, SJK, and the Special Opportunities Fund and an Employee Claim Form to employees of SJK and the Special Opportunities Fund. The Receiver will file a motion to establish a claims bar date for these claims.

91. All of these assets appear to have been acquired with money transferred from the Special Opportunities Fund to SJK and then from SJK to Kowalewski. The Receiver, however, is constrained in his ability to liquidate and distribute these assets for the benefit of the Receiver Estate because the SEC's claims against Kowalewski have not been decided yet and relief has not been sought or obtained against Kowalewski's wife. The administration of the Kowalewskis' assets also is complicated by the fact that the Receiver's analysis shows that Kowalewski did not pay any income taxes for income earned in 2010. Although the Receiver continues to work on issues related to the Kowalewskis' tax liability, the Receiver cannot make distributions from these assets to investors and other creditors until the tax issues are resolved because the Internal Revenue Service may have priority claim over any taxes owed by Kowalewski. This is true even if the Kowalewskis agree, or are ordered, to turn over all of these assets to the Receiver.

92. There are also a number of issues pertaining to SJK that must be addressed prior to the Receiver liquidating and distributing all of its assets, including federal and state tax liability, compliance with the Employee Retirement Income Security Act, and other employee benefits issues. For example, SJK owes substantial payroll taxes for the fourth quarter of 2010 and the first quarter of 2011.

Because SJK is a single member limited liability company, Kowalewski is personally liable for certain portions of these unpaid taxes. The Receiver plans to use the assets of SJK and, if necessary, Kowalewski, to pay the “trust fund” portion of the payroll taxes as soon as reasonably possible.

93. Once all of the above-described issues and related concerns are resolved sufficiently for the Receiver to move forward with the next phase of claims administration and distribution, the Receiver will file a supplemental plan for claims administration and distribution of proceeds. Until such a plan is approved, the Receiver intends to continue to keep the assets and liabilities of Kowalewski, SJK, and the Special Opportunities Fund separate from each other and separate from those of the other SJK Funds. The Receiver’s proposed disposition of these assets and liabilities will be part of the Receiver’s supplemental plan.

This 1<sup>st</sup> day of July, 2011.

/s/ J. David Dantzler, Jr.

J. David Dantzler, Jr.

Georgia Bar No. 205125

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*Attorneys for S. Gregory Hays, Receiver*

**CERTIFICATE OF COMPLIANCE OF LOCAL RULE 7.1D**

I hereby certify that the foregoing has been prepared in a Times New Roman 14 point font, one of the font and point selections approved by the Court in Local Rule 5.1B.

*/s/ J. David Dantzler, Jr.*

\_\_\_\_\_  
J. David Dantzler, Jr.

Georgia Bar No. 205125

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **RECEIVER'S INVESTOR DISTRIBUTION PLAN** was electronically filed with the Clerk of Court using the CM/ECF system, which automatically serves notification of such filing to all counsel of record.

A copy of this filing also has been provided by electronic mail to all investors in the SJK Funds and the Special Opportunities Fund.

This 1<sup>st</sup> day of July, 2011.

*/s/ J. David Dantzler, Jr.*

J. David Dantzler, Jr.

Georgia Bar No. 205125

# EXHIBIT A

## THIRD-PARTY FUND REDEMPTIONS

**SJK Absolute Return Fund, LTD**

Fund Manager	Fund Name	Redemption Date
Carlson Capital, LP	Black Diamond Arbitrage LTD	6/30/2011
Carlson Capital, LP	Black Diamond Relative Value LTD	6/30/2011
Carlson Capital, LP	Double Black Diamond, LTD	6/30/2011
Madison Street Partners LLC	Madison Street Portfolio	6/30/2011
SJK Investment Management LLC	SJK Long/Short Equity Fund, LTD	N/A
SJK Investment Management LLC	SJK Special Opportunities Fund, LP	N/A

**SJK Absolute Return Fund, LLC**

Fund Manager	Fund Name	Redemption Date
Carlson Capital, LP	Black Diamond Arbitrage Partners, LP	6/30/2011
Carlson Capital, LP	Black Diamond Relative Value LP	6/30/2011
Carlson Capital, LP	Double Black Diamond, LP - Series C	6/30/2011
Carlson Capital, LP	Double Black Diamond, LP - Series D	9/30/2011
Madison Street Partners LLC	Madison Street Fund LP	6/30/2011
SJK Investment Management LLC	SJK Long/Short Equity Fund, LLC	N/A
SJK Investment Management LLC	SJK Special Opportunities Fund, LP	N/A

**SJK Long/Short Equity Fund LTD**

Fund Manager	Fund Name	Redemption Date
Alphabet Management LLC	Alphabet Partners Ltd	6/30/2011
Artis Captial Management LP	Artis Partners 2X Ltd	12/31/2011
Ascend Capital LLC	Ascend Partners Fund II, Ltd	6/30/2011
SG Capital Management LLC	Cedar Street Offshore Fund Ltd	6/30/2011
Glazer Capital	Glazer Enhanced Offshore Fund Ltd	6/30/2011
Manalapan Oracle Advisers LLC	Manalapan Oracle Eagle Offshore Fund, Ltd	6/30/2011
Rivanna Capital LLC	Rivanna Offshore Partners Ltd	6/30/2011
Bryn Mawr Captial Management Inc.	Rosemont Offshore Fund, Ltd	6/30/2011
SES Offshore LTD	SES Offshore Ltd	6/30/2011

**SJK Long/Short Equity Fund LLC**

Fund Manager	Fund Name	Redemption Date
Alphabet Management LLC	Alphabet Partners LP	6/30/2011
Artis Captial Management LP	Artis Partners 2X LP	12/31/2011
Ascend Capital LLC	Ascend Partners Fund II LP	6/30/2011
Bryn Mawr Captial Management Inc.	Bryn Mawr Capital, LP	6/30/2011
SG Capital Management LLC	Cedar Street Fund LP	6/30/2011
Glazer Capital	Glazer Enhanced Fund, LP	6/30/2011
Manalapan Oracle Advisers LLC	Manalapan Oracle Eagle Fund LP	6/30/2011
Rivanna Capital LLC	Rivanna Partners LP	6/30/2011
SES Partners LP	SES Partners LP	6/30/2011



# EXHIBIT B

**TROUTMAN  
SANDERS**

# Memorandum

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**VIA E-MAIL**

**To:** Community Foundation for Northeast Georgia  
Fieldale Farms Corporation  
Holy Family Hospital of Bethlehem Foundation  
Resort Hotels Insurance Company  
Savannah Country Day School (c/o Wade Herring, Esq.)  
Montford Associates  
St. Josephs/Candler Health Systems, Inc. and GeeChee Reinsurance Company, LLC  
(c/o Robert Brennan, Esq. and Leonard Panzitta, Esq.)  
Hickory Springs Retirement Plan  
Sea Island Resort and Pension Benefit Guaranty Corporation  
Shelter Bay Fund, LP  
Georgia Ports Authority  
Stanley and Traci Kowalewski (c/o Tom Todd and William Hill)

**From:** David Dantzer

**Date:** May 5, 2011

**Re:** Investor Update - *SEC v. Stanley J. Kowalewski and SJK Investment Management LLC*

Since our last Investor Update several weeks ago (see my memorandum dated April 6, 2011), there have been several important developments that will affect how the receivership moves forward. We continue to believe that we are on track with the basic timeline we projected in conjunction with the First Interim Report. However, as we learn more about SJK and the hedge funds, the process is far more complicated than we had envisioned.

### ***Underlying Litigation***

Early on, we believed that a settlement of the SEC's claims would be achieved; however, it now appears that Mr. Kowalewski intends to contest the claims. While he has every right to assert defenses, prolonged litigation will also add to the issues in the receivership and increase the expenses incurred, especially related to discovery. The deposition testimony of Traci Kowalewski and two SJK employees were taken during the week of April 18th. Three more SJK employees will be deposed next week, and Stan Kowalewski's deposition is scheduled for May 17, 2011.

As indicated in the last update, Mr. Kowalewski has made an advancement and indemnity demand to the two offshore SJK Funds. The Funds' Cayman Islands' counsel is advising the Funds regarding issues of Cayman Islands' law. Because some of the issues are governed by Delaware law, the Funds also have been required to retain independent counsel in

the United States to advise them regarding this issue. These expenses will be charged to the offshore SJK Funds, not the receivership.

Traci Kowalewski is asserting an ownership interest in various assets, including the houses titled in her and Mr. Kowalewski's names, the "Kowalewski interests" in the hedge funds, and various items of personal property. As a result, the recovery and disposition of these assets likely will require further litigation.

### *SS&C/Investor Statements*

SS&C has completed the net asset valuation *as of December 31, 2010* for the SJK Absolute Return Fund, Ltd. (Offshore); SJK Long/Short Equity Fund, Ltd. (Onshore); SJK Absolute Return Fund, LLC (Onshore); and SJK Long/Short Equity Fund, LLC (Onshore). Investors who owned units in those funds should be receiving statements in the very near future. Importantly, neither Hickory Springs Retirement Plan nor Shelter Bay Fund, LP are included as investors as of that date (which means that their respective investments and ownership interests are not accounted for in the December 31<sup>st</sup> statements).

The only outstanding item in connection with the December 31 statements is the valuation of the SJK Special Opportunities Fund ("SOF"), which is the Receiver's responsibility. As of November 30, 2010, SJK reported that the SOF had cumulative net assets valued in excess of \$24 million. As a result of our investigation, the Receiver has determined that this valuation was greatly inflated and that the purported assets had relatively little value. Given the overall circumstances of this case (and our knowledge of facts that occurred after December 31, 2010), the Receiver has valued the assets of SOF at \$4,655,447.19 as of December 31, 2010. Again, this does not include the monies received from Hickory Springs and Shelter Bay as of January 1, 2011 or other subsequent transfers of money into or out of SOF (or any reserve for the cost of the receivership). The asset valuation is as follows:

SOF Cash at FSB 12/31/10	1,636,173.87
Cash transferred to KSTSO	224,773.32
KSTSO Retainer	25,000.00
Pawley's Island Property (\$2.9 less 4.5% commission)	2,769,500.00
SOF Asset Value 12/31/10	<u>4,655,447.19</u>

While there were other assets of the SOF as of December 31, 2010, the Receiver's investigation shows that there is little likelihood of potential recovery on these assets. For example, the SOF paid \$1.15 million for a 50% ownership interest in CDLD Holdings, LLC, an entity whose only asset is a partially developed subdivision called McNairy Pointe. As of November 30, 2010, SJK valued the SOF's 50% interest in CDLD Holdings at \$6.29 million, despite the fact that the McNairy Pointe property had been appraised at \$3.1 million and served as security on an outstanding note to SunTrust that had a balance of almost \$4 million at the time. CDLD Holdings recently entered into an agreement to sell McNairy Pointe for \$3.25

million. We do not expect the Receiver Estate to obtain any recovery from this sale. The Receiver will file a Notice of Sale with the Court in the next week. The other assets of the SOF are described in the Receiver's First Interim Report, which was filed on March 3, 2011.

As a result of the significant adjustment in the net asset value of the SOF, investors in the two Absolute Return Funds will see a material decrease in the net asset values (and individual account values) as of December 31, 2010. Based on information recently received from SS&C, the decrease in net asset values in these funds is solely the result of this adjustment of the asset values of the SOF.

### *Plan of Distribution*

As with other aspects of this case, the distribution issues are not as straightforward as we had envisioned. As more fully explained below, we have begun the redemption process with third-party hedge funds and expect that the SJK funds will begin to receive cash proceeds in July and August. However, there will be holdbacks, and there is one fund that cannot be redeemed right now, and two others that remain subject to fees for early redemption.

Even as we work through the various redemption issues, we continue to believe that the funds will be in a position to make distributions by late summer. As previously indicated, however, this can be accomplished only after we have resolved issues related to Hickory Springs' and Shelter Bay's respective ownership interests in the SJK Funds. Our hope is that this can be done by consent. We will send the Receiver's recommended solution to the affected investors – *i.e.*, Hickory Springs and the other investors in the offshore funds with respect to its interest; and Shelter Bay and the other investors in the SJK Absolute Return Fund, LLC (Onshore). If we cannot reach agreement on these issues, we will need to address them with Judge Batten for a decision before any distribution can be made (though we continue to consider whether we can deal with the "offshore" and "onshore" groups separately if one group reaches agreement and one does not).

Assuming that the ownership issues will be resolved by the time that we are in a position to make distributions, we will seek approval of a plan of distribution. The initial plan will likely be interim in nature. Because the underlying litigation is ongoing and because there are significant tax issues and other creditor claims that must be resolved before a distribution of receivership assets can be made, the plan process likely will be conducted in several phases, with the first phase focused on distributions from the third-party fund redemptions. The Receiver will retain any distribution made in connection with the Kowalewskis' purported interest in certain SJK Funds pending resolution of the underlying litigation.

It is important to emphasize that the final plan of distribution will need to address the claims of the other creditors of Stan Kowalewski, SJK, and the SOF. Accordingly, we will be sending claim forms to those creditors in the next few weeks.

Because the Georgia Ports Authority ("GPA") was not an investor in any of the hedge funds and its monies were managed separately, we plan to turn over those accounts in the near

future. We are working through the various issues with counsel for GPA and expect to file a motion seeking approval of the turnover in the next week or two.

### ***Third-Party Fund Redemptions***

We have provided a written redemption notice to the majority of the third-party funds effective June 30, 2011. As a result, the SJK Funds should begin receiving money for distribution to investors beginning in late July, which means that the majority of the money invested with third-party funds should be available for distribution in August 2011 (assuming the issues discussed in the section above have been resolved). However, there are several issues that will affect when subsequent distributions will be made.

### **Holdbacks**

Most of the third-party funds have “audit holdbacks” of between 5% and 10%. Therefore, the third-party funds will retain a portion of the SJK account balances until after the 2011 audits of those funds are completed in 2012. In addition to these holdbacks, the SJK Funds will also hold back a portion of each investor’s account until the time of final distribution to cover audit and other professional fees for the SJK Fund and other fund-specific expenses. (To be clear, these are not holdbacks for receivership fees and expenses.) Our best current estimate is that each investor should receive a substantial portion of its 12/31/10 account balance in or about August 2011. However, the two offshore SJK Funds – the SJK Absolute Return Fund, Ltd. and the SJK Long/Short Equity Fund, Ltd. – will also be required to hold back in excess of \$1 million until the resolution of Mr. Kowalewski’s demand for advancement of attorneys’ fees and indemnity is resolved, which will further reduce those distributions. To the extent that the amounts retained by the third-party funds and the SJK Funds are not used, they will be distributed in 2012.

### **Lock-ups**

Several of the SJK Funds’ investments with third-party funds are subject to lock-up provisions. “Hard lock-ups” prohibit redemption for a certain period of time after an investment. “Soft lock-ups” impose certain fees for redemptions made prior to the expiration of a certain period of time after an investment. Most of the lock-up periods have expired and are not an issue; however, the following lock-up provisions remain applicable:

- *SJK Long Short/Short Equity Fund LLC’s Investment in Artis Partners 2X, L.P. and Artis Partners 2X, Ltd.*

SJK Absolute Return Fund, Ltd. invested \$1,000,000 in Artis Partners 2X, L.P. on October 30, 2009. On July 1, 2010 the entire investment was transferred to SJK Long/Short Equity Fund, LLC. As of December 31, 2010, the Net Asset Value of this investment was \$1,113,011.

SJK Absolute Return Funds Ltd invested \$1,700,000 in Artis Partners 2X Ltd on October 30, 2009. On July 1, 2010 the entire investment was transferred to SJK Long/Short Equity Fund Ltd. As of December 31, 2010, the Net Asset Value of this investment was \$1,909,662.

These investments in the Artis Partners funds are subject to identical soft lock-up provisions, which impose the following fees upon any withdrawals made prior to three years from the date of the investment: (a) 6% for any withdrawals made prior to the first anniversary; (b) 4% for any withdrawal made on or after the first anniversary and prior to the second anniversary; (c) 2% for any withdrawal made on or after the second anniversary and prior to the third anniversary.

Thus, any withdrawals made by the Long/Short Equity Fund, LLC prior to November 1, 2011 are subject to a 4% fee, and any withdrawals made between November 1, 2011 and October 31, 2012 are subject to a 2% fee. Withdrawals made on or after November 1, 2012 are not subject to the lock-up.

Artis Partners has quarterly liquidity upon 60 days prior notice. Pursuant to an agreement with Artis Capital Management, L.P, our notice period for a June 30, 2011 withdrawal has been reduced to 30 days, meaning we need to provide notice by the end of this month for any withdrawal on June 30, 2011.

The Receiver's current plan is to wait until the quarter ending December 31, 2011 to redeem the investments in these two Artis Partners funds. Waiting until December 31, 2011 would reduce the early redemption fee from 4% to 2%, and would keep these investments on track with others for final redemption upon the completion of the fund's 2011 audit. Waiting until the quarter-ending December 31, 2012 would eliminate the fee, but the final redemptions would first occur sometime in 2013, upon the completion of the fund's 2012 audit.

While we do not intend to put this issue to a "vote" among investors, we are well aware that this is the investors' money. Accordingly, if you have a strong reaction to the Receiver's anticipated course of conduct with respect to these investments, please let us know.

- *SJK Absolute Return Fund LLC's Investment in Double Black Diamond LP – Series D*

On December 1, 2010, the SJK Absolute Return Fund LLC made a \$500,000 investment in Carlson Capital's Double Black Diamond LP fund. This investment is subject to a one-year hard lock-up. The Receiver intends to redeem this investment effective December 31, 2011.

### ***Receivership Fees and Expenses***

Within the next week or two, we expect to file our first application for approval of professional fees and expenses. We are doing our best to allocate our time keeping between "core functions," which are subject to the fee cap, and "extraordinary functions," which are not. Given the amount of work required, the amounts will be substantial.

As this case has developed, it is apparent that some of the issues (*e.g.*, Kowalewski's income taxes) are substantially more complicated than we or the SEC anticipated. Even the "core receivership" activities have been more complicated than expected, including fund management and redemption issues. It also is now evident that the underlying litigation will go forward, requiring substantial discovery and electronic evidence management activities. We also may be required to commence litigation to resolve asset ownership issues, so that assets can be recovered for the SOF.

We are realizing that it is very difficult to allocate our activities precisely. For example, the Kowalewski tax issues and potential asset recoveries permeate many aspects of this receivership. While we will continue to allocate between "core" and "extraordinary" activities, it is important to us that we clearly communicate with investors about fees and expenses. The bottom line is that regardless of how our time is allocated, this receivership is going to be more expensive than any of us anticipated because it is not as simple and straightforward as it appeared in January.

Though we have been involved in many receivership cases with the SEC, we have never worked under a structure that includes a fee cap component. In our proposal to the SEC, we indicated that we would inform investors, the SEC, and the Court if we encountered issues that raised concern about fees and expenses. We have raised this issue with the SEC and will inform the Court when we file the fee application. If you have questions or would like to discuss this further (now or at any time in the future), please do not hesitate to contact me.

cc: S. Gregory Hays, Receiver  
Known Attorneys for Investors  
J. Alex Rue, SEC  
Paul T. Kim, SEC  
Michael J. Cates, SEC

# EXHIBIT C



**TROUTMAN  
SANDERS**

# Memorandum

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**VIA E-MAIL**

**To:** St. Josephs/Candler Health Systems, Inc. and GeeChee Reinsurance Company, LLC  
Hickory Springs Retirement Plan  
Sea Island Resort and Pension Benefit Guaranty Corporation

**From:** David Dantzler

**Date:** May 11, 2011

**Re:** *SEC v. Stanley J. Kowalewski and SJK Investment Management LLC*  
Proposal regarding investment of Hickory Springs Retirement Plan

This memorandum outlines the Receiver's proposed treatment of the \$7 million investment of Hickory Springs Retirement Plan, which was intended to be invested in the SJK Absolute Return Fund Ltd (the "Offshore ARF"), effective January 1, 2011. As addressed below, \$6.2 million of Hickory Springs' money was transferred to the accounts of the SJK Long/Short Equity Fund Ltd (the "Offshore LSEF") and subsequently invested with third-party fund managers. The remaining \$800,000 was transferred to an account held by SJK Special Opportunities Fund (the "SOF"). For the reasons described below, the Receiver proposes to treat Hickory Springs as a direct investor in the Offshore LSEF and the SOF, rather than as an investor in the Offshore ARF. It is important to emphasize that if we can reach agreement on this concept, we will need to work with Cayman Islands counsel to develop the precise transactional structure. We have had discussions about how to effect this, but have not fully developed the precise structure.

### ***Hickory Springs Investment***

On December 27, 2010, Hickory Springs wired \$7 million into a JP Morgan Chase account in the name of the Offshore ARF. Hickory Springs intended the entire \$7 million to be an investment in the Offshore ARF and completed a Subscription Agreement to that effect. Pursuant to the Offshore ARF's Private Placement Memorandum (the "ARF PPM"), Hickory Springs was to be admitted as an investor as of January 1, 2011. Because the SEC filed its enforcement action on January 6, 2011 and all assets under the control of SJK Investment Management, LLC ("SJK") were frozen as of that date, Hickory Springs never received an allocation of Offshore ARF shares in connection with its investment.

On January 3, 2011, \$6.2 million of Hickory Springs' investment was transferred to a JP Morgan Chase account in the name of the Offshore LSEF. Of this amount, it appears that \$6.18 million was invested with third-party fund managers and that the majority of the remaining \$20,000 remained on deposit in the Chase account. The \$6.18 million appears to have been invested by the Offshore LSEF as follows:

- \$2.15 million – Alphabet Management – these funds were frozen in a JP Morgan Chase account prior to being invested in any of Alphabet’s hedge funds and remain frozen
- \$2.775 million – Glazer Enhanced Offshore Fund Ltd.
- \$1.255 million – SES Offshore Ltd

Also on January 3, 2011, \$800,000 of Hickory Springs’ investment was transferred to a First Citizens Bank account in the name of the SOF. These funds appear to have then been transferred to SJK.

### *Offshore ARF Valuation Issues*

Generally, the Receiver intends to propose a plan of distribution (the “Plan”) in which each investor in the Offshore ARF receives a pro rata share of all the available assets of the Offshore ARF, including investments in third-party hedge funds, recoveries from the SOF, etc. Each investor’s pro rata interest – *i.e.*, its ownership percentage – will be determined by the number of Offshore ARF shares that it holds. In order for the Receiver to determine each investor’s interest, it is necessary to first determine whether Hickory Springs should be treated as an investor in the ARF and, if so, the amount of shares to be issued to it.

Pursuant to the terms of the ARF PPM, Hickory Springs’ \$7 million investment in the Offshore ARF would be based on the Offshore ARF’s Net Asset Value (“NAV”) as of 5:00 p.m. on December 31, 2010. The NAV would be calculated by “adding the value of [the Offshore ARF’s] investments, cash, and other assets and subtracting its accrued liabilities.”

Calculation of the Offshore ARF’s NAV as of December 31, 2010 is problematic because of the Offshore ARF’s significant “investment” in the SOF. As you know, the Offshore ARF invested approximately \$13.3 million in the SOF. The majority of this money was subsequently transferred to SJK and, in turn, Kowalewski. Thus, based on the Receiver’s current estimates, it is likely that there will be several million dollars in losses associated with this investment; however, as of November 30, 2010 (the last date prior to the Receiver’s appointment for which SJK prepared a SOF NAV), SJK valued the Offshore ARF’s investment in the SOF as worth almost \$18.7 million.

In order to calculate the Offshore ARF’s NAV as of December 31, 2010, a value must be placed on the Offshore ARF’s investment in the SOF. Because of the large discrepancy between SJK’s valuation of the SOF and the actual value of the SOF, choosing the correct value for purposes of determining the number of shares to issue to Hickory Springs is problematic. If the SOF is assigned its actual NAV as of December 31, 2010, which the Receiver recently calculated at \$4.66 million, Hickory Springs may receive a disproportionately large number of shares compared to other investors in the Offshore ARF; if, however, the NAV assigned by SJK is used, Hickory Springs will receive too few shares due to SJK’s artificial inflation of the SOF’s NAV.

*The Receiver's Proposed Plan*

In order to avoid issues and potential disputes related to calculating the SOF's NAV and the Offshore ARF's NAV for purposes of determining Hickory Springs' ownership interest in the Offshore ARF, the Receiver proposes treating Hickory Springs as a direct investor in the Offshore LSEF (\$7.2 million) and the SOF (\$800,000), the two SJK Funds that received the proceeds of the Hickory Springs Investment. The number of Offshore LSEF shares to be issued to Hickory Springs would be determined in the same manner as described above for the Offshore ARF; however, because the Offshore LSEF did not invest in the SOF, calculating the appropriate NAV for the Offshore LSEF would be straightforward. Hickory Springs' ownership interest in the SOF would be determined by dividing \$800,000 by the total amount invested in the SOF (this amount is not yet fixed due to potential disagreements regarding the nature of certain transfers made by Kowalewski to the SOF).

*Next Steps*

If all investors in Offshore ARF and Offshore LSEF agree with the Receiver's proposal, we believe that there are no issues under Cayman Islands law or U.S. law that would prevent Hickory Springs from being treated as a direct investor in the Offshore LSEF and the SOF. We would include the agreement in the Receiver's Plan and make distributions accordingly.

If the interested parties cannot reach agreement regarding the treatment of Hickory Springs' investment, Court intervention may be required. Moreover, because both the Offshore ARF and the Offshore LSEF are Cayman Islands' entities, there may be jurisdictional barriers to Judge Batten deciding these issues and they may require resolution by a Court in the Cayman Islands. These disputes would not only delay the filing and implementation of the Plan, but would also require the expenditure of additional assets of the Receiver Estate. Therefore, we hope to reach an agreed upon resolution of this issue.

We would like to know as soon as possible whether any investors in the Offshore ARF or Offshore LSEF object to the Receiver's proposed treatment of Hickory Springs' investment.

cc: S. Gregory Hays, Receiver  
J. Alex Rue, SEC  
Paul T. Kim, SEC  
Michael J. Cates, SEC

# EXHIBIT D

**TROUTMAN  
SANDERS**

# Memorandum

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**VIA E-MAIL**

**To:** Brandon Smith and Mishanagqus Mills Smith  
Community Foundation of NE Georgia  
Ernest V. Montford TTEE Montford Associates PS Trust  
Fieldale Farms Corp.  
Holy Family Hospital of Bethlehem Foundation  
Resort Hotels Insurance Co.  
Savannah Country Day School  
Shelter Bay Fund, L.P.  
Stanley and Traci Kowalewski  
Tallulah Falls School

**From:** David Dantzler

**Date:** June 16, 2011

**Re:** *SEC v. Stanley J. Kowalewski and SJK Investment Management LLC*  
Receiver's Planned Treatment of Investment of Shelter Bay Fund, LP

This memorandum outlines the Receiver's planned treatment of the \$600,000 investment of the Shelter Bay Fund, L.P. ("Shelter Bay"), which was intended to be invested in the SJK Absolute Return Fund, LLC (the "Onshore ARF"), effective January 1, 2011. For the reasons set forth below, the Receiver intends to propose for Court approval that Shelter Bay be provided a 2.975% ownership interest in the Onshore ARF and, upon approval by the Court, the Receiver will cause the Onshore ARF to issue a corresponding number of ownership units to Shelter Bay. Shelter Bay has agreed to this treatment of its investment, subject to its right to seek a greater ownership interest in the Onshore ARF or a different treatment of its investment in the event that any other investor objects to the plan filed by the Receiver.

### ***Shelter Bay Investment***

On December 27, 2010, Shelter Bay wired \$600,000 to a JP Morgan Chase account in the name of the Onshore ARF. Shelter Bay intended the \$600,000 to be an investment in the Onshore ARF and completed a Subscription Agreement to that effect. Pursuant to the Onshore ARF's Private Placement Memorandum (the "ARF PPM"), Shelter Bay was to be admitted as an investor as of January 1, 2011. Because the SEC filed its enforcement action on January 6, 2011 and all assets under the control of SJK Investment Management, LLC ("SJK") were frozen as of that date, Shelter Bay never received an allocation of membership interests ("Interests") in the Onshore ARF in connection with its investment.

***Onshore ARF Valuation Issues***

Pursuant to the terms of the ARF PPM, Shelter Bay's investment in the Onshore ARF would be based on the Onshore ARF's Net Asset Value ("NAV") as of 5:00 p.m. on December 31, 2010. The NAV would be calculated by "adding the value of [the Onshore ARF's] investments, cash, and other assets and subtracting its accrued liabilities."

Prior to the appointment of the Receiver, SJK did not calculate a December 31, 2010 NAV for the Onshore ARF. Calculating the December 31, 2010 NAV for purposes of determining the appropriate number of interests to be issued to Shelter Bay was a difficult task because of the Onshore ARF's "investment" in the SJK Special Opportunity Fund, L.P. (the "SOF") – *i.e.*, the value of the SOF as of December 31, 2010 needed to be determined prior to determining the December 31, 2010 NAV for the Onshore ARF. In a May 5, 2011 memorandum, I informed all investors that the Receiver had determined that the value of the SOF as of December 31, 2010 was \$4,655,447.19. Using this value for the SOF, the Onshore ARF's December 31, 2010 NAV was \$18,759,573.

***Receiver's Planned Treatment of Shelter Bay Investment***

Generally, the Receiver intends to propose a plan of distribution (the "Plan") in which each investor in the Onshore ARF receives a pro rata share of all the available assets of the Onshore ARF, including investments in third-party hedge funds, recoveries from the SOF, etc. Each investor's pro rata interest in the distribution – *i.e.*, its ownership percentage – will be determined by the number of Onshore ARF Interests that it holds.

Based on a December 31, 2010 NAV of \$18,759,573, Shelter Bay would be entitled to a 3.1% ownership interest in Onshore ARF. In light of the overall circumstances of the case, including the fact that the Receiver's December 31, 2010 valuation of the SOF was far lower than SJK's prior, inflated reported valuation of the SOF, Shelter Bay has agreed to accept a 2.975% ownership interest in the NAV. Shelter Bay has reserved its right to seek a greater ownership interest in the Onshore ARF or to propose an alternative treatment for its investment should other investors object to it receiving a 2.975% ownership interest.

The Receiver intends to file his Plan in the next week or so. The Plan will propose that the Court approve the Receiver's proposed treatment of Shelter Bay as a 2.975% owner in the Onshore ARF and that the Court authorize the Receiver to cause the Onshore ARF to issue the appropriate interests to Shelter Bay. The Receiver believes that this treatment is fair and appropriate under the circumstances and that it will not have a material impact on any of the other Onshore ARF investors.

cc: S. Gregory Hays, Receiver  
J. Alex Rue, SEC  
Paul T. Kim, SEC  
Michael J. Cates, SEC

# EXHIBIT E

**Wade, Kelley C.**

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**From:** Bosch, Thomas B.  
**Sent:** Wednesday, June 22, 2011 2:06 PM  
**To:** Bosch, Thomas B.  
**Cc:** Dantzler, David; 'Greg Hays'  
**Subject:** SJK: Kowalewski and Shelter Bay Investments in the ARF LLC

**Importance:** High

All:

I am writing to follow up on David Dantzler's June 16, 2011 memo regarding the Receiver's proposed treatment of Shelter Bay's January 1, 2011 investment in the Onshore ARF. The analysis in the original proposal omitted a \$500,000 "investment" in the Onshore ARF made by Stanley and Traci Kowalewski, effective January 1, 2011. As summarized below, taking into account this investment slightly changes the percentage ownership interest that the Receiver plans to propose for Shelter Bay. The Receiver's proposal for the treatment of the Kowalewskis' investment, also described below, is different from that of Shelter Bay.

**Shelter Bay**

Using the same analytical framework as the June 16, 2011 Shelter Bay proposal, but taking into account the Kowalewskis' \$500,000 investment, Shelter Bay would be entitled to a 3.021% ownership interest in the Onshore ARF based on a December 31, 2010 NAV of \$18,759,573 – not the 3.10% indicated in the original proposal. Therefore, the Receiver plans to propose that Shelter Bay receive a 2.9% ownership interest – not the 2.975% originally proposed. Shelter Bay has agreed to this proposal subject to the same conditions set forth in the original proposal. As with the original proposal, this proposal will not have a material impact on any of the other Onshore ARF investors.

**The Kowalewskis**

The Receiver plans to propose that the Kowalewskis' January 1, 2011 investment in the Onshore ARF be valued differently from Shelter Bay's investment and other investments in other SJK Funds of the same date. Kowalewski, and affiliated individuals and entities, are the only investors who made investments with knowledge of all facts showing that the NAV of the SOF (and, thus, the Onshore ARF) was inflated throughout the relevant time period. Because of this unique circumstance, the Receiver believes that it is inappropriate for Kowalewski to benefit in any way as a result of the Receiver correctly setting the SOF NAV and Onshore ARF NAV as of December 31, 2010. Accordingly, the Receiver will propose using SJK's November 30, 2010 inflated NAV to determine the ownership interest to be allocated to the Kowalewskis for their January 1, 2011 investment. This treatment will result in the Kowalewskis receiving a 2.038% ownership interest for this investment.

It is important to note that by determining the Kowalewskis' ownership interests in any of the SJK Funds, the Receiver is not acknowledging that these investments rightfully belong to the Kowalewskis' or that they are entitled to any distributions in this Receivership; however, the Receiver is constrained at this time to treating the Kowalewskis as investors.

Please call me if you have any questions.

Thank you,

Tom



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600 Peachtree Street, N.E.  
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