Securities and Exchange Commission v. Nadel et al Doc. 898

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v. Case No. 8:09-cv-87-T-26TBM

ARTHUR NADEL,
SCOOP CAPITAL, LLC,
SCOOP MANAGEMENT, INC.

Defendants,

SCOOP REAL ESTATE, L.P.,
VALHALLA INVESTMENT PARTNERS, L.P.,
VALHALLA MANAGEMENT, INC.,
VICTORY IRA FUND, LTD,
VICTORY FUND, LTD,
VIKING IRA FUND, LLC,
VIKING FIND, LLC, AND
VIKING MANAGEMENT,

Relief Defendants.
_______________________________________/

RECEIVER'S MOTION TO APPROVE SETTLEMENT

Burton W. Wiand, as Receiver (the "**Receiver**"), moves the Court for an order approving settlement of claims asserted in a Florida state court case (the "**Florida Case**") against Holland & Knight LLP ("**H&K**") and Scott R. MacLeod ("**MacLeod**") (collectively, "**H&K**") on the basis of the Settlement Agreement attached as **Exhibit A** (the "**Settlement Agreement**"). The filing of the Florida Case, *Scoop Real Estate, L.P. et al. v. Holland & Knight, LLP et al.*, Case No. 2009-CA-014877-NC (Twelfth Judicial Circuit, Sarasota

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County, Florida), was expressly authorized by this Court by Order dated August 12, 2009 (Dkt. 175).

The Settlement Agreement, among other things, fully resolves the Florida Case and contemplates entry of a bar order. The Receiver, in support of this Motion, is simultaneously filing (1) the Affidavit of Burton W. Wiand in Support of Receiver's Motion to Approve Settlement (the "**Receiver's Affidavit**"), which sets forth the facts and conclusions on which this Motion relies, and (2) a Motion to Approve Proposed Notice of Settlement (the "**Notice Motion**"), and proposed Notice. The Receiver respectfully requests that the Court first address the Notice Motion and, if that motion is granted, that it continue a decision on this Motion until after the deadline set forth in the Notice Motion for objections or other responses to the relief requested in this Motion. Further, because the Florida Case is set for trial beginning on October 8, 2012, with multiple deadlines expiring before then, a prompt resolution of this matter is necessary to avoid unnecessary expenses to the Receivership estate.

BACKGROUND

The Securities and Exchange Commission (the "**Commission**" or "**SEC**") instituted this action (the "**SEC Receivership Action**") to "halt [an] ongoing fraud, maintain the status quo, and preserve investor assets..." (Dkt. 1, Compl. ¶ 7). Mr. Wiand was appointed by this Court as the Receiver for Defendants other than Arthur Nadel ("**Nadel**") and for Relief Defendants. (*See* Order Appointing Receiver (Dkt. 8).) Additionally, the Receivership was expanded to include Venice Jet Center, LLC and Tradewind, LLC (Dkt. 17); Laurel Mountain Preserve, LLC, Laurel Preserve, LLC, the Marguerite J. Nadel Revocable Trust

UAD 8/2/07, and the Laurel Mountain Preserve Homeowners Association, Inc. (Dkt. 44); the Guy-Nadel Foundation, Inc. (Dkt. 68); Lime Avenue Enterprises, LLC, and A Victorian Garden Florist, LLC (Dkt. 79); Viking Oil & Gas, LLC (Dkt. 153); Home Front Homes, LLC (Dkt. 172); and Traders Investment Club (Dkt. 454). All of the entities in receivership are collectively referred to as the "**Receivership Entities**," and Receivership Entities Valhalla Investment Partners, L.P.; Viking Fund, LLC; Viking IRA Fund, LLC; Victory Fund, Ltd.; Victory IRA Fund, Ltd.; and Scoop Real Estate, L.P. are collectively referred to as the "**Hedge Funds.**"

Pursuant to paragraph 2 of the Order Appointing Receiver (Dkt. 8), in relevant part the Receiver has the duty and authority to:

> Investigate the manner in which the affairs of the Receivership Entities were conducted and institute such actions and legal proceedings, for the benefit and on behalf of the Receivership Entities and their investors and other creditors as the Receiver deems necessary ... against any transfers of money or other proceeds directly or indirectly traceable from investors in the Receivership Entities; provided such actions may include, but not be limited to, seeking imposition of constructive trusts, disgorgement of profits, recovery and/or avoidance of fraudulent transfers under Florida Statute § 726.101, et. seq. or otherwise, rescission and restitution, the collection of debts, and such orders from this Court as may be necessary to enforce this Order.

Further, the Order Appointing Receiver, at paragraph 6, authorizes the Receiver to "[d]efend, compromise or settle legal actions ... in which the Receivership Entities or the Receiver is a party ... with authorization of this Court..." and, at paragraph 15, enjoins all persons "from in any way disturbing the assets or proceeds of the receivership or from prosecuting any actions or proceedings . . . which affect the property of the Defendants or Relief Defendants."

The Receivers' Investigation Of H&K And MacLeod

The Receivers' investigation has revealed that H&K provided legal services to both the Hedge Funds and to Nadel's various related management entities, beginning October 2, 2002 and continuing through January 16, 2009, when Nadel disappeared and his Ponzi scheme was discovered. At that point, H&K resigned from further representation. H&K's legal representation included, but was not limited to, assistance with the preparation of the various Private Placement Memoranda ("**PPMs**") that were used to sell interests in the Hedge Funds to certain investors, and the representation of both the Hedge Funds as well as the funds' managers, for a period of over six years.

The Florida Case

The Receiver determined that H&K may have been professionally negligent, breached fiduciary duties owed, and/or aided and abetted Nadel's own fraud and breach(es) of fiduciary duty, by acts or omissions relating to their representation of the Hedge Funds and related entities that may have allowed the Ponzi scheme to continue longer than it otherwise might have continued. Based upon those findings, the Receiver concluded that it was appropriate to seek compensation from H&K.

The Receiver sought, and on August 12, 2009 obtained, the Court's express permission to retain the Johnson Pope law firm to represent him on a contingency basis "for the limited purpose of pursuing claims by the entities in Receivership against Holland & Knight, LLP, and its partner, Scott R. MacLeod" (Dkt. 175). The Florida Case, Scoop Real Estate, L.P., et.al v. Holland & Knight LLP, et.al., Case No. 2009-CA-014877-NC (Sarasota County, FL), was promptly filed.

The Receiver's litigation efforts against H&K over the past three years have included extensive discovery and motion practice. The Receiver's counsel has served sixteen sets of interrogatories, twenty requests for production, with multiple parts and subparts, and two sets of requests for admission, many of which have resulted in contested motions to compel and hearings.

In addition, the Receiver's counsel has participated in twenty-six depositions around the country, including expert depositions, some of which have been taken as far away as California. As of the filing of this motion, while discovery is largely concluded, several depositions have yet to be taken and numerous substantive motions remain unresolved. The Receiver has named six different expert witnesses, who authored extensive reports, and H&K named seven experts of their own. Millions of documents have been exchanged among the parties, and numerous non-party documents have been obtained as well, through subpoenas and otherwise. The Receiver's counsel has expended thousands of hours of attorney and paralegal time, and has incurred over $400,000 in costs.

Trial is scheduled to begin on October 8, 2012, with multiple deadlines occurring before that time. For this reason, prompt resolution of the matters underlying this motion is respectfully requested.

H&K has maintained, and continues to maintain, that its conduct was in no way inappropriate, and that it did not fail to comply with its duties and obligations. H&K also maintains that any liability should be apportioned among numerous other parties, thereby reducing any damages attributable to H&K that might be found by a jury. Due to practical

concerns and a desire to eliminate the risks inherent in a lengthy trial, the Receiver has negotiated a proposed resolution with H&K.

<u>The Receivers' Negotiations With H&K</u>

After the extensive discovery outlined above, the Receiver and H&K communicated their various views with respect to potential liability, and on August 8 and 9, 2012, the Receiver and the Receiver's and H&K's counsels engaged in a two-day mediation session ordered by the Florida judge assigned to the Florida Case to consider potential resolution of their dispute. These negotiations focused on potential liability, defenses, and risk to the parties, as well as other issues that had a potential impact upon the valuation of the Receivers' claims.

Although the case did not resolve during that 2-day session, diligent good-faith efforts by the parties, their counsel, and the mediator continued, even as dispositive motion responses were being prepared and filed.

As a result of these negotiations, an agreement has been reached between the Receiver and H&K to be presented through this Motion to the Court, which includes a resolution of all claims against H&K that in any way relate to any matters arising out of Nadel's conduct and the operation of the Receivership Entities, including any of the legal services that H&K rendered. It is the intention of the Receiver and H&K to resolve, through H&K's payment to the Receivership estate of $25,000,000 (the "**Settlement Amount**"), any claims against H&K relating to those matters, including for losses or other damages that might be asserted against H&K.

Settlement Considerations

In deciding to accept $25,000,000 from H&K in resolution of all claims, the Receiver considered a number of significant factors. The Receiver considered the risks associated with litigating the claims. Primary among those risks is the uncertainty inherent in the trial process, and any resulting appeal, not to mention the time consumed through the appellate process. The Receiver recognizes that H&K is financially able to, and has, vigorously defended itself. Consequently, additional litigation is not without significant risks. If litigation is unsuccessful, nothing would be received, instead of the $25,000,000 set forth in the Settlement Agreement.

Further, the Receiver considered the potential value of the claims against H&K. Although he could have sought to hold H&K responsible for all or a significant portion of the Hedge Funds' losses, the Receiver considered H&K's defenses that responsibility for losses to the Hedge Funds should be allocated to numerous parties under a comparative fault theory. The Receiver also considered the Defendants' position that he lacked standing and that the Receiver's computation of damages was excessive. Although the Receiver believes these defenses lack merit, they nevertheless raise risk, and if H&K were to succeed on any one of them, it could greatly limit or preclude any potential recovery. Finally, the Receiver considered the amount of fees earned by H&K for providing legal services to the Hedge Funds amounted to less than $500,000. The Receiver believes the Settlement Amount represents an equitable and good faith compromise of existing claims. In deciding to recommend the resolution reflected in the Settlement Agreement, the Receiver found the following considerations significant:

(1) based on the information reviewed by the Receiver, this settlement constitutes a recovery well in excess of all revenues earned by H&K as a result of its dealings with the Receivership Entities;

(2) litigation of claims against H&K through trial and appeal would in no way guarantee the significant benefit to the Receivership estate and to investors that will occur as a result of the settlement; and

(3) for the purposes of evaluating a fair settlement amount, it is the Receiver's opinion that the amount of this settlement constitutes a fair valuation of any potential liability that H&K might have as a result of its involvement with the Receivership Entities, given the applicable claims, defenses, and the potential for the assessment of comparative fault to others, and general litigation risks.

As detailed in the Settlement Agreement, the Receiver and H&K, subject to the approval of this Court, have agreed to settle for, among other things, payment by H&K to the Receiver of $25,000,000 and a broad release of liability. Also, as part of the Settlement Agreement, the Receiver and H&K agreed to seek entry of a bar order in the form of an injunction precluding any claims against H&K by investors or creditors of the Receivership Entities or by other potential joint tortfeasors, including claims for contribution or indemnity, which relate in any way to the operation of the Receivership Entities or to Nadel's Ponzi scheme (the "**Bar Order**").

From the Settlement Amount, under the terms of the contingency fee agreement previously approved by this Court (Dkt. 175), the Receiver will pay attorney fees of $6,333,333 plus costs in the amount of between $400,000 and $450,000. Counsel for the

Receiver has not yet received all final cost bills, but in good faith estimates that the costs will not exceed $450,000. After deducting for fees and costs attributable to the Receivers' counsel in the Florida Case, the Receiver will collect a net amount of more than $18,200,000.00.

The Bar Order Is Appropriate

Federal Rule of Civil Procedure 16 provides the Court authority to use special procedures, including bar orders, to assist parties in reaching a settlement. *See* Fed.R.Civ.P. 16(c)(9). Relying on Rule 16 and the Bankruptcy Code, the Eleventh Circuit has explicitly authorized the use of bar orders in bankruptcy proceedings. *See In re Munford, Inc.* 97 F.3d 499, 455 (11th Cir. 1996). According to the Eleventh Circuit:

> First, public policy strongly favors pretrial settlement in all types of litigation because such cases, depending on their complexity, can occupy a court's docket for years on end, depleting the resources of parties and the taxpayers while rendering meaningful relief increasingly elusive. Second, litigation costs are particularly burdensome on a bankrupt estate given the financial instability of the estate. Third, bar orders play an integral role in facilitating settlement. This is because defendants buy little peace through settlement unless they are assured that they will be protected against codefendants' efforts to shift their losses through cross-claims for indemnity, contributions, and other causes related to the underlying litigation.

Id. (quotations and citations omitted). All of these settlement considerations are applicable to equity receiverships as well.[1] Entry of a bar order here is within the Court's broad power to administer this Receivership. *See S.E.C. v. Elliott,* 953 F.2d 1560, 1566 (11th Cir. 1992) ("The district court has broad powers and wide discretion to determine relief in an equity

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[1] Although receivership and bankruptcy proceedings have some important distinctions, the similarities of their goals make an analogy here appropriate. *See, e.g., S.E.C. v. Wealth Mgmt. LLC,* 628 F.3d 323, 334 (7th Cir. 2010) (goal in securities-fraud receivership and liquidation bankruptcy is identical: the fair distribution of liquidated assets).

receivership. … This discretion derives from the inherent powers of an equity court to fashion relief. …"); *S.E.C. v. HKW Trading LLC,* 2009 WL 2499146, *2 (M.D. Fla. 2009); *see also S.E.C. v. Hardy,* 803 F.2d 1034, 1040 (9th Cir. 1986); *S.E.C. v. Basic Energy & Affiliated Resources, Inc.*, 273 F.3d 657, 668 (6th Cir. 2001).

Courts have issued bar orders in connection with settlements proposed by equity receivers. For example, in *Commodity Futures Trading Comm'n v. Equity Fin. Group,* 2007 WL 2139399 (D.N.J. 2007), the court approved a settlement between an equity receiver and a firm retained by receivership entities to perform accounting services, and entered a bar order after finding that "the Receiver established th[e] settlement is in the best interest of the Receivership estate, and that federal law and public policy favor the entry of the Bar Order to facilitate settlement of th[e] matter." *Id.* at *2. The court also found that the bar order would not prejudice investors because of the difficulties investors would have to bring claims directly against the settling defendant. *Id.; see also S.E.C. v. Capital Consultants, LLC,* 2002 WL 31470399 (D. Or. 2002) (approving settlement and entering bar order); *Gordon v. Dadante,* 336 Fed. Appx. 540 (6th Dir. 2009) (same); *Harmelin v. Man Fin., Inc.*, 2007 WL 4571021 (E.D. Pa. 2007) (same).

Here, the Receiver has determined that the settlement reflected by the Settlement Agreement is in the best interests of the Receivership and the investors. Specifically, the settlement avoids protracted and expensive litigation, thereby avoiding litigation risk and conserving very substantial Receivership resources, as well as judicial resources. In addition, the Settlement Amount represents an equitable and good-faith resolution. It is also in the Receivership estate's and investor claimants' best interests because it represents a substantial

recovery which will ultimately increase the assets available for distribution to these claimants. Without the Bar Order, the settlement will be jeopardized and prevented, and thus the absence of the Bar Order would interfere with and be prejudicial to the administration of the Receivership. Indeed, under the terms of the Settlement Agreement, the parties have agreed that entry of the Bar Order is a material condition of the Settlement Agreement and that the Settlement Agreement is voidable by H&K in the event that it is not entered as submitted.

The Bar Order is also authorized by and appropriate under the All Writs Act. "An important feature of the All-Writs Act is its grant of authority to enjoin and bind non-parties to an action when needed to preserve the court's ability to reach or enforce its decision in a case over which it has proper jurisdiction." *In re Baldwin-United Corp.,* 770 F.3d 328, 338 (2d Cir. 1985) (citing *United States v. New York Telephone Co.,* 434 U.S. 159, 174 (1977) ("[T]he power conferred by the Act, extends, under appropriate circumstances, to persons who, though not parties to the original action or engaged in wrongdoing, are in a position to frustrate the implementation of a court order or the proper administration of justice, and encompasses even those who have not taken any affirmative action to hinder justice.")).[2] Indeed, this Court has already recognized the propriety of entering similar bar orders in connection with its prior approvals of the Receiver's settlements with Goldman Sachs Execution & Clearing, L.P., and Shoreline Trading Group, LLC (Dkts. 742, 803).

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[2] "The power to bind non-parties distinguishes injunctions issued under the Act from injunctions issued in situations in which the activities of the third parties do not interfere with the very conduct of the proceeding before the court." *Baldwin,* 770 F.2d at 338.

Notice Will Be Provided To Investors And Others

"[T]he requirements of the All-Writs Act are satisfied if the parties whose conduct is enjoined have actual notice of the injunction and an opportunity to seek relief from it in the district court." *Id.* at 340. Similarly, cases located by the Receiver involving equity receivers' requests for bar orders in connection with settlement of claims have included notice to investors of the request for a bar order. *See, e.g., Equity Fin. Group,* 2007 WL 4571021[3]; *Harmelin,* 2007 WL 4571021 (notice of bar order provided to all investors before court approved settlement); *Gordon,* 336 Fed. Appx. at 544 (court entered order providing interested parties with opportunity to "comment" on settlement reached by equity receiver with broker/dealer and request for bar order).

Here, the Receiver intends to provide: (1) actual notice of the settlement with H&K and the requested Bar Order to the investors in the Hedge Funds and to potential tortfeasors the Receiver believes have liability to Receivership Entities – *i.e.,* the individuals and entities who are to be enjoined and barred from asserting claims against H&K relating to Nadel's Ponzi scheme, and (2) publication notice to all other interested parties. A copy of the proposed notice to investors and potential joint tortfeasors is attached to the Notice Motion (the "**Notice**"), and an abbreviated version for publication is contained in the text of the Notice Motion. In brief, the Notice sets forth the terms of the Settlement Agreement and advises the recipients that they may object or otherwise respond to this Motion in writing by October 1, 2012, by (1) filing their objection or response with the Court by that deadline and

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[3] Although there is no discussion of notice to investors in that opinion, the receiver's motion for approval of the settlement in that case explained that such notice had been provided. *See Equity Fin. Group,* Case No. 1:04-cv-01512-RBK-AMD (D.N.D.), Mem. in Support of Mot. Of Equity Receiver to Approve Settlement with Puttman & Teague, LLC, Elaine Teague, and Puttman at 25, 36 (*see* Dkt. 803-2).

(2) simultaneously serving a copy on the Receiver. As such, the Notice will provide investors and known potential joint tortfeasors with actual notice of the proposed Settlement Agreement and the Bar Order and an opportunity to object. Unless the Court directs otherwise, no public hearing will be held concerning this Motion.

Investors Will Not Be Prejudiced By Entry Of The Bar Order

Entry of the Bar Order is also appropriate because investors will not be prejudiced by it as: (1) an attempted federal class action by investors against H&K, styled *Sullivan et al v. Holland & Knight et al.*, Case No. 8:09-cv-00531-T-17AEP (M.D. Fla.), was dismissed on March 31, 2010 by order of District Judge Elizabeth Kovachevich based on preemption under the Federal Securities Litigation Uniform Standards Act;[4] (2) an attempted state (Florida) court case brought by certain investors, *Cloud et al. v. Holland & Knight et al.*, Case No. 09-12397 (Hillsborough County, Florida), has twice been stayed by order of that state court, and an attempted interlocutory appeal of the stay was rejected by the Florida Second District Court of Appeal;[5] (3) any other contemplated actions by investors may be

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4 While the *Sullivan* case is the subject of a pending Motion for Reconsideration filed on April 7, 2010 (Case No. 8:09-cv-00531, Dkt. 65), that Motion has now been pending for more than two years. It appears unlikely that Judge Kovachevich will reinstate that case. Further, of the six named plaintiffs in that case, five filed claims in the Receivership's claims process. The only named plaintiff that did not file a claim had "false profits," so the Receiver sued that investor in a clawback lawsuit and subsequently settled that matter. The claims of the other five named plaintiffs were allowed in whole or in part, and none objected to their respective claim determinations. All of those five claimants received distributions as part of the Receiver's first interim distribution of receivership assets and will participate in future distributions.

5 Each of the ten plaintiffs in the stayed *Cloud* case filed claims in the Receivership's claims process. Nine of those plaintiffs' claims were allowed either in whole or in part and one was denied because the claimant had "false profits" and, consequently, is a defendant in one of the Receiver's clawback cases. Notably, none of those ten claimants objected to their claim determination. Further, each of the plaintiffs with allowed or allowed in part claims received distributions as part of the Receiver's first interim distribution of receivership assets and will participate in future distributions. In addition, although the terms of the Bar Order apply to all pending and additional claims asserted by investors in the Hedge Funds and thus to the *Cloud* case, in an abundance of caution and for clarity, the Bar Order will expressly apply to the claims asserted in the *Cloud*

barred by applicable statutes of limitation; and (4) the claims that investors might assert against H&K, in the absence of the Bar Order, are more limited – and, thus, less valuable – than the Receiver's claims.

As noted above, it is possible that any future claims by investors will be barred by applicable statutes of limitation.

Further, all investors had an opportunity to file claims as part of the claims process, and the claims of investors with a right to receivership assets have already been approved by the Receiver and this Court.[6] Indeed, investors with valid, approved claims have already received a distribution from this Receivership and will participate in future distributions. The net proceeds of this settlement will increase the Receivership estate and, thus the amount available for future distributions.

In addition, in the absence of the Bar Order, investors could embark on a race to the courthouse and attempt to avoid the orderly distribution plan provided for by the Receivership.

Finally, the claims that investors might assert against H&K, in the absence of the Bar Order, are more limited – and, thus, less valuable – than the Receiver's claims. Specifically, no investor, unlike the Hedge Funds, can claim existence of any attorney-client relationship with H&K. Because H&K had no direct relationship with the investors, the investors would likely be limited to asserting claims for violations of securities laws, which are difficult to

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case. The *Cloud* plaintiffs should be enjoined from further pursuing that action, as this Court has previously enjoined other actions whose pursuit has interfered with this Receivership. (Dkt. 190).

[6] By submitting such claims, the investors expressly subjected themselves to the jurisdiction of this Court.

prosecute and have been significantly narrowed. For example, in *Stoneridge Inv. Partners, LLC v. Scientific-Atlanta,* 552 U.S. 148 (2008), the United States Supreme Court confirmed that there is no private right of action for aiding and abetting a violation of Section 10(b) of the Securities Exchange Act of 1934. Accordingly, an investor would have to prove, among other things, that H&K was a primary actor engaged in securities fraud. Indeed, the difficulty with claims by investors is reflected in the results of the *Sullivan* case. In light of these matters, investors are unlikely to be able to obtain a greater recovery from H&K than that obtained by the Receiver and reflected in the Settlement Agreement. This is another reason why the settlement with H&K, including the Bar Order, is in the best interests of the Receivership and, ultimately, of defrauded investors.

Joint Tortfeasors Are Not Entitled To Contribution

Under Florida law, if the Court approves the Settlement Agreement, no joint tortfeasor will be entitled to contribution from H&K in connection with Nadel's scheme. Specifically, under the Uniform Contribution Among Tortfeasor's Act:

> When a release or a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death: (a) It does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide, but it reduces the claim against the others to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is the greater; and, (b) It discharges the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor.

Fla. Stat. § 768.31(5). The Bar Order is also consistent with the provisions of the Private Securities Litigation Reform Act, 15 U.S.C. § 78u-4(f)(7). Here, the terms of the Settlement Agreement do not discharge any potential tortfeasor from liability other than H&K. Further, for the reasons discussed before and in the Receiver's Affidavit, both H&K and the Receiver

entered into the Settlement Agreement in good faith. As such, if approved, the Settlement Agreement will discharge H&K "from all liability for contribution to any other tortfeasor." Accordingly, the Bar Order is consistent with both federal and Florida law.

CONCLUSION

For these reasons, the Receiver respectfully requests that this Court enter an Order granting this Motion and finding and ordering that:

1. The settlement between the Receiver and H&K presented to the Court in this Motion is a fair, equitable, and good faith settlement of all claims the Receiver, the Receivership estate, and the Receivership Entities may have against H&K;

2. The settlement reflected in the Settlement Agreement attached as **Exhibit A** is approved, and the Receiver is authorized to enter into and complete the proposed settlement with H&K in accordance with the requirements of the Settlement Agreement;

3. The Receiver is authorized to pay its counsel, the Johnson Pope law firm, the sum of $6,333,333, plus the costs incurred by counsel, from the funds received under the Settlement Agreement;

4. All individuals or entities who invested money in a Receivership Entity, as well as all persons or entities who may have liability to the Receiver, the Receivership Entities, or such investors arising or resulting from the fraudulent scheme underlying the SEC Receivership Action, together with their respective heirs, trustees, executors, administrators, legal representatives, agents, successors, and assigns, are permanently enjoined and barred from commencing or pursuing a claim, action, or proceeding of any kind and in any forum against H&K that directly or indirectly arises from or relates to the

operations of any of the Receivership Entities or to legal services H&K rendered in connection with the Hedge Funds, the Receivership Entities, Nadel, or his related entities; and

5. Said injunction bars all claims against H&K for contribution, indemnity, or any other cause of action arising from the liability of any person or entity to the Receiver or to any of the Receivership Entities or their investors (including claims in which the injury is the liability to the Receiver or any of the Receivership Entities or their investors or where damages are calculated based on liability to the Receiver or any of the Receivership Entities or their investors), in whatever form and however denominated.

A proposed Order is attached as **Exhibit B**. However, as indicated at the beginning of this Motion, the Receiver respectfully requests that the Court first address the Notice Motion and, if that motion is granted, that it continue a decision on this Motion until after the deadline set forth in the Notice Motion for objections or other responses to the relief requested in this Motion.

LOCAL RULE 3.01(g) CERTIFICATION

Pursuant to Local Rule 3.01(g), counsel for the Receiver has conferred with counsel for the Commission and is authorized to represent to the Court that the Commission has no objection to the relief requested in this Motion.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 28, 2012, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system.

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