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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

SUNWEST MANAGEMENT, INC.,
CANYON CREEK DEVELOPMENT,
INC., CANYON CREEK FINANCIAL,
LLC, AND JOHN M. HARDER,

Defendants,

DARRYL E. FISHER, ET AL.,

Relief Defendants.

Case No. 09-6056-HO

**MEMORANDUM OF POINTS &
AUTHORITIES IN SUPPORT OF
RECEIVER MICHAEL A.
GRASSMUECK'S MOTION FOR
APPROVAL OF SETTLEMENT
WITH GARRETT HEMANN
ROBERTSON, P.C. AND OREGON
STATE BAR PROFESSIONAL
LIABILITY FUND AND FOR ENTRY
OF CLAIMS BAR ORDER**

MEMORANDUM OF POINTS AND AUTHORITIES

The Receiver seeks approval of a settlement and settlement agreement with Garrett Hemann Robertson, P.C. ("GHR") and the Oregon State Bar Professional Liability Fund ("PLF") and, pursuant to the terms of the settlement, seeks entry of a "Final Claims Bar Order" as more fully set forth below and in the proposed order.

I. BACKGROUND

Pursuant to orders entered by this Court March 10, 2009, May 27, 2009, and August 28, 2009 ("Receivership Orders") in *SEC v. Sunwest Management, Inc.*, Case No. 09-6056-HO (the "SEC Action"), Michael A. Grassmueck is the duly appointed and acting receiver for Sunwest Management, Inc., Canyon Creek Development, Inc., Canyon Creek Financial, LLC, Fuse Advertising, Inc., KDA Construction, Inc., and other entities named in the Receivership Orders (the "Receivership Entities"). On October 2, 2009 the Court entered an order approving and establishing a Distribution Plan in the SEC Action. Among other things, the Distribution Plan provides for the treatment of claims. The Court also entered certain orders establishing a claims process. (See SEC Action Docket #941).

The Receiver has asserted claims against GHR on behalf of Sunwest investors and the Receivership Entities. The Receiver has also received assignments of claims, asserted or unasserted, against GHR from Sunwest investors, creditors, and claimants (the "Third Party Claims"), pursuant to the Plan of Distribution approved on October 2, 2009, in the SEC Case; the Receiver's, CRO's and Debtor's Second Amended Joint Plan of Reorganization (May 27, 2010), filed in the Bankruptcy Case; and the Order Re Assignment of All Sunwest Investors' and Claimants' Rights and Claims Against Certain Third Parties to Receiver dated April 7, 2011 (the "Assignment Order").

GHR has also filed certain claims in the Receivership pursuant to the claim process under the Distribution Plan and related orders.

GHR has and continues to assert that there is no merit to the various claims asserted against it, and the Receiver continues to object to claims filed against the Receivership Estate by GHR.

The Receiver, with special mediation counsel, and GHR and PLF engaged in various settlement discussions and mediation sessions, and reached terms on a resolution of the disputes. The terms of the resolution were then put into a written Settlement Agreement. A copy of the proposed Settlement Agreement has been submitted herewith as Exhibit 1. The Settlement calls for PLF to pay the Receiver \$949,000 and for GHR to release any claims it may have against the Receivership Entities. The Settlement Agreement also provides for mutual releases.

The Settlement also calls for the Receiver to seek a Claims Bar Order in the SEC Action. The Claims Bar Order would bar or enjoin enumerated persons from asserting certain claims against GHR. The Claims Bar Order would be binding on the Receiver; the CRO; the Debtor; all Sunwest investors, creditors, and claimants, known and unknown; all parties in any pending federal or state court litigation involving GHR; all parties in any arbitrations involving Sunwest investments; the Receivership Entities; Sunwest Entities; the HFG Parties; all other professionals who provided services to the Receivership Entities, Sunwest Entities, and the HFG Parties; and any other interested parties who may have Sunwest-related claims.

The Claims Bar Order would apply to all claims against GHR for damages arising from their conduct related to the activities of Sunwest Management, Inc., and its principals, including claims arising from the sale, purchase, or solicitation of Sunwest investments and all claims for contribution or indemnity made by any person or entity arising from the same or related common core of operative facts addressed in the SEC Case or the Barred Claims. These claims include, but are not limited to, claims on guarantees, claims made under Section 10 of the 1934 Act and Rule 10b-5 (including, but not limited to, any claims for malpractice, negligence, breach of fiduciary duty, unsuitability, fraud, misrepresentation, or

negligence), violation of the 1933 Act, violations of any other applicable securities laws (both federal and state for both primary and secondary liability), breach of contract, misrepresentation, conversion, vicarious/control person liability, professional negligence, breach of fiduciary duty, negligence, compensatory damage claims, punitive damage claims, and all claims related thereto and thereafter, including, but not by way of limitation, any claims for contribution, fraud, deceit, breach of fiduciary duty, suitability, churning, compensatory damages, punitive damages, attorney fees and costs, and vicarious liability for such claims, and any other claims arising from the sale, purchase, or solicitation of Sunwest investments, or the common core of operative facts addressed in the Sunwest Proceedings. The Claims Bar Order would not include Wallace Gutzler, Thomas Wettlaufer and any other person while employed directly by any Sunwest Entity.

II. RELIEF REQUESTED

The Receiver asks the Court to enter a Settlement Order that will approve the Settlement and the form of Settlement Agreement and enter a Claims Bar Order. Specifically, the Receiver respectfully requests that the Court:

- (1) Find and conclude that adequate notice of this Settlement Approval Motion and due process was afforded to all interested parties including investors of the Receivership Entities;
- (2) Find and conclude that the Settlement and the Settlement Agreement are fair, reasonable, and adequate;
- (3) Approve the Settlement and the Settlement Agreement and authorize the Receiver to perform the Settlement;
- (4) Order that, except as otherwise provided in the Settlement Agreement or as otherwise provided in the proposed Settlement Approval Order, claims by third parties against GHR are barred;
- (5) Retain jurisdiction over the matter; and,

(6) Determine that the Settlement Order is a final decision under Rule 54(b) of the Federal Rules of Civil Procedure.

III. EVIDENCE RELIED UPON

The Motion relies on the following evidence in support:

1. The form of Settlement Agreement, which is attached hereto as Exhibit 1 and the supporting exhibits thereto;
2. The Declaration of Michael A. Grassmueck in support of the Motion; and,
3. The records and files in the SEC Action.

IV. SUPPORT FOR THE MOTION

The Receiver believes that the Settlement and Settlement Agreement are in the best interests of the investors and creditors of the Receivership Entities. The factors that led to this conclusion by the Receiver include: (1) The time and risks associated with pursuing claims against GHR and collecting a judgment (such as appeals) are significant; (2) the additional cost to the Receivership Estate of pursuing claims against GHR would be substantial; and (3) compromising the GHR claims against the Receivership Estate and obtaining a releases of claims reduces the exposure of the Receivership Estate.

In sum, the Receiver has balanced the risks of recovery and costs and concluded that the Settlement is in the best interests of the investors and creditors.

V. ARGUMENT

A. The Settlements Should Be Approved Because They Are In The Best Interests Of Investors and Creditors.

In considering whether to approve a settlement or compromise in an equity receivership, a court generally should look for guidance in FRCP 16, Federal Rule of Bankruptcy Procedure 9019, and Bankruptcy Code § 105.

Courts recognize that equity receivers are to administer an estate as nearly as possible in accordance with the practice for the administration of estates in

bankruptcy. See *C.F.T.C. v. Topworth International*, 205 F.3d 1107 (9th Cir. 2000); *In re Mumford, Inc.* 97 F.3d 449, 452, 455 (11th Cir. 1996). Court approval of a proposed compromise negotiated by a bankruptcy trustee "is an exercise of discretion that should not be overturned except in cases of abuse leading to a result that is neither in the best interests of the estate nor fair and equitable for the creditors." *In re MGS Marketing*, 111 BR 264, 266-267 (9th Cir. BAP 1990).

The Ninth Circuit has articulated four factors for courts to consider in approving a compromise of litigation brought by a bankruptcy trustee:

1. Probability of success in litigation;
2. The difficulties, if any, to be encountered in the matter of collection;
3. The complexity of the litigation and the expense, inconvenience, and delay necessarily attending; and
4. The paramount interest of creditors and a proper deference to their reasonable views.

In re Woodson, 839 Fed. 2d 610, 620 (9th Cir. 1988).

The Settlement here satisfies those factors, and is fair and equitable to the creditors and investors of the Receivership Entities.

First, GHR continues to deny and dispute the Receiver's claims against it, and to assert the validity of claims GHR filed in the Receivership. The Receiver has objected to the claims filed by GHR in the Receivership, and continues to assert the validity of the Receivership's claims against GHR. Neither side can be certain of a particular outcome.

Second, absent the Settlement, difficulties are likely to be encountered in collecting judgments that might be obtained by the Receiver on claims against GHR. Collection of a judgment against GHR is problematic and could involve an extended process yielding uncertain results. For example, the collection of a substantial judgment could be delayed or even defeated by appeals. The settlement provides a significant actual recovery. The value to the Receivership estate in the

certainty of having funds paid as provided in the Settlement Agreement rather than after years of litigation is a positive factor which supports the settlement.

Third, had the claims not been settled, the cost to prosecute claims against GHR and address the GHR claims in the Receivership would be substantial. The matters at issue cover a significant period of time and multiple entities and transactions. The litigation would consume significant judicial resources and the resources of the parties.

Fourth, the paramount interest of investors and creditors is best served by the Settlement, which provides a significant recovery and reduces the expense and exposure of the Receivership Estate on claims.

B. A Federal Court Has Authority to Approve The Settlement And Bar Third-Party Claims.

Federal courts have a strong interest in facilitating settlement before trial. FRCP 16. "Since it obviously eases crowded court dockets and results in savings to the litigants and the judicial system, settlement should be facilitated at as early a stage of the litigation as possible." Fed. R. Civ. P. 16(c), Advisory Committee Notes. Further, a District Court supervising an equity receivership has "extremely broad" inherent equity power "to fashion effective relief." *S.E.C. v. Hardy*, 803 F. 2d 1034, 1037 (9th Cir. 1986); *S.E.C. v. Wenke*, 622 F. 2d 1363, 1369 (9th Cir. 1980). This equity power is at least as broad as the power of a bankruptcy court to enter an appropriate bar order. *Munford*, 97 F. 3d at 455 (relying on Section 105(a) of the Bankruptcy Code and Rule 16 to affirm bankruptcy court's entry of a bar order); *Fleet National Bank v. H&D Entertainment, Inc.*, 926 F. Supp. 226, 240-42 & n. 56 (D. Mass. 1996) ("What is permitted under the Bankruptcy Code, generally is, therefore, a fortiori, permissible under the receivership law.").

As noted above, one significant obstacle to settlement has been GHR's concerns that it may later be faced with third-party claims for indemnity,

contribution, or other relief based upon the same facts and conduct that support the Receiver's claims and Third Party Claims. Unless a global settlement which resolves all potential claims against GHR can be reached, GHR may not be able to reduce its financial exposure by entering into a particular individual settlement and, therefore, may have little incentive to do so. While such financial exposure theoretically can be terminated by a full settlement between all potential plaintiffs and a defendant, as a practical matter a comprehensive settlement directly with all potential third-party claimants may be impossible to orchestrate. *See Nelson v. Bennett*, 662 F. Supp. 1324, 1328-29 (E.D. Cal. 1987). And absent protection from subsequent claims, parties willing to settle cannot safely do so and a settlement can be held hostage to future unknown claims.

To overcome the obstacle to settlements posed by potential contribution, indemnity, and third party claims, a Federal Court can enter a "bar order," which is "a final discharge of all obligations of the settling defendants and bars any further litigation of claims made by non-settling defendants against settling defendants." *Franklin v. Kaypro Corp.*, 884 F.2d 1222, 1225 (9th Cir. 1989); *see, e.g., In re Munford, Inc.*, 97 F. 3d at 455 (affirming bar order that enjoined non-settling defendant from asserting against a settling defendant any claims for contribution or indemnification arising out of the adversary proceeding, or from plaintiff's state law claims for breach of fiduciary duty, negligence, mismanagement, corporate waste, and fraudulent conveyance); *Nelson*, 662 F. Supp. at 1334-1336 (bar rule is important tool in promoting settlements and fairness).

A bar order is appropriate on the facts of this case.

A draft of a Proposed Order Approving the Settlement and the Settlement Agreement, including the Claims Bar Order, has been submitted separately for the Court's consideration.

VI. CONCLUSION

The Receiver respectfully requests that the Court enter an Order Approving the Settlement and Settlement Agreement and impose a Claims Bar Order.

Dated: August 18, 2011

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

By /s/ Francis N. Scollan
FRANCIS N. SCOLLAN
Attorneys for Michael A. Grassmueck,
Court Appointed Receiver

EXHIBIT 1

(SETTLEMENT AGREEMENT)

SETTLEMENT AGREEMENT

This settlement agreement (this "Agreement") is made as of April 7, 2011, by and between Michael A. Grassmueck (the "Receiver"), in his capacity as Receiver for the Receivership Entities, and Garrett Hemann Robertson, P.C. ("GHR") and the Oregon State Bar Professional Liability Fund ("PLF").

RECITALS

A. "Debtor," "Receivership Entities," "HFG Parties," and "Sunwest Entity" have the meaning set forth in the Receiver's, CRO's, and Debtor's Second Amended Joint Plan of Reorganization (May 27, 2010), docket number 1272, filed on May 27, 2010, in the bankruptcy case entitled *In re Stayton SW Assisted Living, L.L.C.*, Case No. 09-cv-6082-HO (the "Bankruptcy Case"), pending before the Honorable Michael J. Hogan in the United States District Court for the District of Oregon (the "Court").

B. "Sunwest Proceedings" refers to the Bankruptcy Case and *SEC v. Sunwest Management, Inc.*, Case No. 09-cv-6056-HO (collectively the "Receivership Case").

C. The Receiver has asserted claims against GHR on behalf of Sunwest investors and the Receivership Entities. The Receiver has also received assignments of claims, asserted or unasserted, against GHR from Sunwest investors, creditors, and claimants (the "Third Party Claims"), pursuant to the Plan of Distribution approved on October 2, 2009, in the SEC Case; the Receiver's, CRO's and Debtor's Second Amended Joint Plan of Reorganization (May 27, 2010), filed in the Bankruptcy Case; and the Order re Assignment of All Sunwest Investors' and Claimants' Rights and Claims Against certain Third Parties to Receiver dated April 7, 2011. (the "Assignment Order") (These claims are referred to collectively as the "GHR Claims".) This Agreement shall only be effective once all Sunwest investors, creditors, and claimants (as described in the Assignment Order and motion) are deemed to have assigned their rights to the Receiver, and no collateral or appellate challenge to that order is pending, and the deadline for filing such challenges has passed.

D. The PLF has agreed to pay the Receiver \$949,000 and GHR has agreed to release any claims it may have against the Receivership Entities in full satisfaction of the GHR Claims once this Agreement is approved and the Claims Bar Order referred to herein is final and nonappealable, but in no event sooner than July 1, 2011.

E. Based on their investigation, counsel representing individual claimants involved in the Collateral Proceedings, as well as the Receiver and his counsel, have concluded that the terms of this Agreement are fair, reasonable, and adequate as to all Sunwest investors, creditors, and claimants, and in their best interests. The Receiver has agreed to the terms of this Agreement after considering: (1) the benefits that the Sunwest investors, creditors, and claimants will receive from the settlement of the GHR Claims; (2) the attendant risks of litigation; (3) the difficulties, expense, and delays inherent in such litigation; (4) the belief that the Agreement is fair, reasonable, and adequate, and in the best interests of the Sunwest investors, creditors, and claimants; and (5) the desirability of permitting the Agreement to be consummated as set forth herein.

F. The purpose of this Agreement is to settle all claims against GHR involving the common core of operative facts addressed in the SEC Case and including any claims that any entities affiliated with or related to the Sunwest Entities, Receivership Entities and HFG Parties may have against GHR or the PLF, including Third Party Claims. Where the claims asserted against GHR involve allegations of wrongdoing by GHR, GHR deny that there is any merit to such claims. This Agreement will not be deemed to constitute an admission of

liability or of the validity of any claim, or of the truth of any allegation. In exchange for the mutual promises set forth herein, the parties hereby settle the GHR Claims on the terms set forth below.

AGREEMENT

1. Agreement Subject to Court Approval. This Agreement is subject to and contingent upon approval by the Court and shall not be effective until entry of the order approving this Agreement and approving a claims bar substantially in the form provided for in paragraph 2 hereof.. The Receiver shall use best efforts to obtain Court approval as soon as possible, and shall file a motion to approve this Agreement no later than August 18, 2011. This Agreement is also subject to the condition that no lawsuit arising out of the common core of operative facts addressed in the SEC case is pending against GHR as of July 1, 2011.

2. Final Claims Bar Order. The Receiver, on behalf of himself, the CRO, the Sunwest Entities, the Receivership Entities, the HFG Parties, any entities related or affiliated to the Sunwest Entities or Receivership Entities (hereinafter collectively referred to as the "Releasing Parties"), and all investors, creditors, and claimants of the Sunwest Entities and Receivership Entities, will seek entry of an Order confirming that he is the assignee of the investors' Sunwest-related claims settled hereby (Assignment Order") and a final claims bar order in the SEC Case (the "Claims Bar Order"). The Claims Bar Order sought shall prohibit any person from asserting claims arising from the common core of operative facts addressed in the SEC Case at any time in the future in any forum against GHR or any of its past or present members, employees, agents, predecessors or successors in interest ("Barred Claims"). The Receiver will provide the best notice practicable of the Assignment Order and the proceedings to approve and implement this Agreement (the "Notice"). The Notice will be given to the following persons or entities: (a) any person who has submitted proof of a claim against Sunwest in the Receivership proceedings; (b) all persons identified in Exhibit A to this Agreement as non-settling Sunwest investors; (c) all of the parties who have appeared in Sunwest Proceedings, through the electronic mail notice list; (d) all of the insurers referenced in this Agreement; (e) any person against whom the Receiver has filed a claim in the Sunwest Proceedings; (f) all parties represented by any attorney who signs this Agreement; and, (g) to the extent not included above, to any person or entity who was an investor of a Sunwest Entity or the HFG Parties, individually or collectively, as of March 3, 2009

a. Claims Bar Order Applies to All People Who Had Notice of the Order. Specifically, the Claims Bar Order will be binding on the Receiver; the CRO; the Debtor; all Sunwest investors, creditors, and claimants, known and unknown; all parties in any pending federal or state court litigation involving GHR; all parties in any arbitrations involving Sunwest investments; the Receivership Entities; Sunwest Entities; the HFG Parties; all other professionals who provided services to the Receivership Entities, Sunwest Entities, and the HFG Parties; and any other interested parties who may have Sunwest-related claims.

b. Scope of Claims Bar. The Claims Bar Order shall apply to all claims against GHR for damages arising from their conduct related to the activities of Sunwest Management, Inc., and its principals, including claims arising from the sale, purchase, or solicitation of Sunwest investments and all claims for contribution or indemnity made by any person or entity arising from the same or related common core of operative facts addressed in the SEC Case or the Barred Claims. These claims include, but are not limited to, claims on guarantees, claims made under Section 10 of the 1934 Act and Rule 10b-5 (including, but not limited to, any claims for malpractice, negligence, breach of fiduciary duty, unsuitability, fraud, misrepresentation, or negligence), violation of the 1933 Act, violations of any other applicable securities laws (both federal and state for both primary and secondary liability), breach of contract, misrepresentation, conversion, vicarious/control person liability, professional

negligence, breach of fiduciary duty, negligence, compensatory damage claims, punitive damage claims, and all claims related thereto and thereafter, including, but not by way of limitation, any claims for contribution, fraud, deceit, breach of fiduciary duty, suitability, churning, compensatory damages, punitive damages, attorney fees and costs, and vicarious liability for such claims, and any other claims arising from the sale, purchase, or solicitation of Sunwest investments, or the common core of operative facts addressed in the Sunwest Proceedings.

c. Express Beneficiaries. This Claims Bar Order shall inure to the benefit of GHR and its past, present and future owners, directors, officers, control persons, employees, agents, successors, assigns, attorneys, insurers, agents, heirs, and estates, except Wallace Gutzler, Thomas Wettlaufer and any other person while employed directly by any Sunwest Entity.

3. Releases.

a. Receiver's Release of GHR and PLF. Upon GHR's performance under this Agreement, the CRO and the Receiver, on their own behalf in their capacities as CRO and Receiver, and on behalf of the Debtor, Receivership Entities, Sunwest Entities, and Sunwest investors and claimants, and any and all of their agents, advisors, employees, successors, personal representatives, and assigns (if any), and each of them (collectively, the "Sunwest Releasing Parties"), hereby release, acquit, and forever discharge GHR and the PLF, and each of their past and present partners, owners, directors, officers, control persons, employees, registered representatives, agents, successors, assigns (if any), attorneys, insurers, agents, heirs, and estates, and each of them from any and all claims, liabilities, demands, actions, suits, causes of action of every kind and nature, demands for damage, expenses, attorney fees, and compensation of every kind and nature whatsoever, that the Sunwest Releasing Parties had, currently have, or may have in the future, whether arising in contract or tort, including without limitation any relating to fraud, including without limitation fraud in the inducement, whether known or unknown, contingent or matured, foreseen or unforeseen, asserted or unasserted, including, but not limited to, all claims for compensatory, general, special, consequential, incidental, and punitive damages, attorney fees, and equitable relief, except as set forth in this Agreement; provided, however, nothing in this release shall release any person for claims based on conduct as an employee of any Sunwest Entity

b. GHR's Release of Receiver, CRO, Debtor, Receivership Entities, and Sunwest Entities. Upon the Receiver's performance under this Agreement, GHR, on behalf of itself and any and all of its principals, partners, agents, advisors, employees, successors, and assigns (if any), and each of them (collectively, the "GHR Releasing Parties"), hereby release, acquit, and forever discharge the Receiver, CRO, Debtor, Receivership Entities, Sunwest Entities, and Sunwest investors and claimants, any and all of their agents, advisors, employees, successors, personal representatives, and assigns (if any), and each of them, from any and all claims, liabilities, demands, actions, suits, causes of action of every kind and nature, demands for damage, expenses, attorney fees, and compensation of every kind and nature whatsoever, that GHR Releasing Parties had, currently have, or may have in the future, whether arising in contract or tort, including without limitation any relating to fraud, including without limitation fraud in the inducement, whether known or unknown, contingent or matured, foreseen or unforeseen, asserted or unasserted, including, but not limited to, all claims for compensatory, general, special, consequential, incidental, and punitive damages, attorney fees, and equitable relief, except as set forth in this Agreement and including any claims filed in the Receivership.

c. To the extent permitted by law, all Parties who have released Claims under this Agreement are deemed to have expressly waived, released, and forever discharged any and all defenses, provisions, rights and benefits that may be available under:

(1) Section 1542 of the California Civil Code, which provides:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

and/or

(2) Any statute, law, or the common law of any jurisdiction which is similar, comparable or equivalent to Section 1542 of the California Civil Code.

d. Nothing in the above releases and covenants will be construed to release Claims that the Receiver and the Sunwest investors, creditors, and claimants may have arising from or relating to any other person or entity not expressly named or referred to herein.

e. Except as provided in the following sentence, the GHR Releasing Parties agree not to initiate a claim for contribution or indemnification against any person or entity arising out of, or related to, the Released Claims. In the event any person or entity asserts a claim for contribution against any GHR Releasing Party, then such GHR Releasing Party shall be entitled to pursue counter-claims against that person or entity under any legal theory that may be available to it, including contribution and indemnity. As a condition of any settlement with any other person or entity, the Receiver, Investor Claimants and Sunwest shall require that such settling person or entity release, or promise not to pursue, all claims for contribution and indemnification.

4. Payment of Insurance Settlement Proceeds. Upon approval of this Agreement and after the Claims Bar Order has become effective, and provided no other claims have been filed that have not been dismissed with prejudice, the PLF shall pay to the Receiver \$949,000, provided, however, in no event shall such payment be due prior to July 1,.

5. Attorney Fees and Costs. Each party shall bear its own attorney fees and costs in connection with this Agreement.

6. Complete Agreement. This Agreement and the attached exhibits set forth all (and is intended by the parties to be an integration of all) of the representations, promises, agreements, and understandings between the parties hereto with respect to settlement of the claims between them, and there are no representations, promises, agreements, or understandings, oral or written, express or implied, between the parties other than as set forth in this Agreement.

7. Good Faith and Cooperation. The parties intend to consummate this Agreement and agree to cooperate reasonably to the extent necessary to effectuate and implement all terms and conditions of this Agreement.

8. Exclusive Jurisdiction. The parties agree that the Court shall have exclusive jurisdiction over and shall be the exclusive venue for any action to interpret or enforce this Agreement.

9. Governing Law and Interpretation. This Agreement will be construed and interpreted in accordance with the laws of the State of Oregon. This Agreement is the product of negotiations between the parties. Each party to this Agreement is represented and advised by counsel, or had the opportunity to be represented and advised by counsel, in regard to the negotiation, drafting, and execution hereof. As such, the language of this Agreement shall be construed as a whole, according to its fair meaning, and not strictly for or against any of the parties.

10. Capacity. Each party represents that this Agreement is freely, voluntarily, and validly executed. Each party is relying solely upon his or her own judgment and the judgment of each party's own counsel in making this Agreement and has not been influenced by any representations or statements made by any other person. Each party has the legal capacity and authority to enter into this Agreement.

11. Counterparts. This Agreement may be executed in one or more counterparts and shall be deemed to have been executed and delivered when transmitted by email or fax to the other party. All executed counterparts and each of them shall be deemed to be one and the same instrument. The parties agree that a printed reproduction from an electronic record of this Agreement shall be equivalent to, and may be substituted for, the original of this Agreement.

RECEIVER FOR THE RECEIVERSHIP
ENTITIES

GARRETT HEMANN ROBERTSON, P.C.

Michael A. Grassmueck

By: _____
Its: _____

OREGON STATE BAR PROFESSIONAL
LIABILITY FUND

By: _____
Title: _____

APPROVED AS TO FORM:

Michael J. Esler, Esler Stephens & Buckley,
LLP
Attorneys for Certain Claimants

Dunn Carney Allen Higgins & Tongue, LLP
Attorneys for GHR

John Spencer Stewart, Stewart Sokol & Gray
Attorneys for Receiver

EXHIBIT A

None known.