

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civ. No. 08-5348-ADM/JSM

UNITED STATES OF AMERICA,)
)
Plaintiff,)
v.)
)
1. THOMAS JOSEPH PETTERS dba)
PETTERS COMPANY INC., PCI and)
PETTERS GROUP WORLDWIDE, LLC;)
2. DEANNA COLEMAN aka DEANNA)
MUNSON;)
3. ROBERT WHITE;)
4. JAMES WEHMHOFF;)
5. LARRY REYNOLDS dba NATIONWIDE)
INTERNATIONAL RESOURCES aka NIR;)
6. MICHAEL CATAIN dba ENCHANTED)
FAMILY BUYING COMPANY;)
7. FRANK E. VENNES JR. dba METRO GEM)
FINANCE, METRO GEM INC.,)
GRACE OFFERINGS OF FLORIDA LLC,)
METRO PROPERTY FINANCING, LLC,)
38 E. ROBINSON, LLC, 55 E. PINE, LLC,)
ORLANDO RENTAL POOL, LLC,)
100 PINE STREET PROPERTY, LLC,)
ORANGE STREET TOWER, LLC,)
CORNERSTONE RENTAL POOL, LLC,)
2 SOUTH ORANGE AVENUE, LLC,)
HOPE COMMONS, LLC and)
METRO GOLD, INC.,)
)
Defendants.)

**MEMORANDUM OF LAW IN SUPPORT OF MOTION TO
APPROVE SETTLEMENT AND FOR THE ENTRY OF AN
ORDER BARRING CERTAIN CLAIMS**

Douglas A. Kelley, in his capacity as the court-appointed receiver in the above-captioned case (the “Receiver”), respectfully submits this Memorandum of Law in support of his Motion to Approve Settlement and for the Entry of an Order Barring Certain Claims (the “Motion”) in *Kelley v. JPMorgan Chase & Co. et al.*, currently pending in the United States District Court for the District of Minnesota, Case No. 10-cv-0499 SRN-HB (the “Receivership Action”). Capitalized terms not otherwise defined herein shall have the meaning given to such terms in the Settlement Agreement (“Receiver Settlement Agreement”), a true and correct copy of which is attached as Exhibit A to the Declaration of Kevin M. Magnuson (the “Magnuson Declaration”) filed in connection with the Motion, unless the context requires otherwise.

I. BACKGROUND

1. The Receiver’s Motion is made in connection with a settlement entered into by and among Douglas A. Kelley, as Receiver, and JPMorgan Chase & Co., JPMorgan Chase Bank, N.A., One Equity Partners LLC, Jaques A. Nasser, Lee M. Gardner, Charles F. Auster, James W. Koven, Rick A. Lazio, J Michael Pocock, William L. Flaherty, and IRA H. Parker in the Receivership Action (collectively, the “JPMC Defendants”). This settlement was reached in conjunction with a separate settlement agreement of adversary proceedings in bankruptcy court entered into by and among (a) Douglas A. Kelley, as the Chapter 11 Trustee (the “Petters Trustee”) of the debtors in the jointly-administered bankruptcy cases captioned as *In re Petters Company Inc., et al.*, currently pending before the United States Bankruptcy Court, District of Minnesota, Bky. Case No. 08-45257, (b)

John R. Stoebner, as the Chapter 7 Trustee (the “Polaroid Trustee”) of the debtors in the jointly-administered bankruptcy cases captioned as *In re Polaroid Corporation, et al.*, currently pending before the United States Bankruptcy Court, District of Minnesota, Bky. Case No. 08-46617; (c) Randall L. Seaver, as the Chapter 7 Trustee (the “Petters Capital Trustee”) of the debtor in the bankruptcy case captioned as *In re Petters Capital, LLC*, currently pending before the United States Bankruptcy Court, District of Minnesota, Bky. Case No. 09-43847, and the JPMC Defendants (collectively, the “Joint Adversary Proceedings”). The settlements resolve disputes between the Receiver and Trustees and the JPMC Defendants.

2. On October 2, 2008, the United States, in support of a criminal investigation, sought an asset freeze and receivership under the Anti-Fraud Injunction Act, 18 U.S.C. § 1345, for the benefit of victims of Petters’ massive fraud. On October 6, 2008, the District Court issued an Order for Entry of Preliminary Injunction, Order Appointing Receiver and Other Equitable Relief [Dkt. No. 12], as subsequently amended on December 8, 2008 [Dkt. No. 127] (the “Receivership Order” and the “Receivership Proceeding”), appointing Kelley as Receiver for, among others, Petters and any affiliates, subsidiaries, divisions, successors, or assigns owned 100% or controlled by him, including, but not limited to, Petters Company, Inc. (“PCI”), Petters Group Worldwide, LLC (“PGW”), PBE Corporation, f/k/a Polaroid Corporation (“PBE Corporation”), and Petters Capital, LLC (“Petters Capital”). The Receivership Order vests the Receiver with the full power of an equity Receiver and requires the Receiver to “[t]ake exclusive immediate custody, control,

and possession of all property, assets, and estates belonging to or in the possession, custody, or under the control of Defendants, wherever situated.” The Receiver’s authority over the Receivership Estate includes the power to “sue for, collect, receive, take into possession, hold, liquidate or sell and manage all assets” of the Receivership Estate.

3. Pursuant to the authority granted to him under the Receivership Order, the Receiver filed petitions in the United States Bankruptcy Court for the District of Minnesota (the “Bankruptcy Court”) commencing cases under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) of PCI (the “PCI Bankruptcy Case”) and PGW (the “PGW Bankruptcy Case”) on October 11, 2008. The Receiver filed bankruptcy petitions for eight additional companies between October 15 and 19, 2008, which bankruptcy cases are jointly administered as *In re Petters Company, Inc., et al.*, Bky. Case No. 08-45257, and will be referred to collectively as the “Petters Debtors,” the “Petters Bankruptcy Cases” and the “Petters Bankruptcy Estates.”

4. On December 18, 2008, the Receiver authorized PBE Corporation, f/k/a Polaroid Corporation, PBE Consumer Electronics, LLC, f/k/a Polaroid Consumer Electronics, LLC, and eight affiliated entities to file voluntary petitions commencing Chapter 11 bankruptcy cases in the Bankruptcy Court (collectively, the “Polaroid Bankruptcy Cases”). The Polaroid Bankruptcy Cases are jointly administered as *In re Polaroid Corporation, et al.*, Bky. Case No. 08-46617. On August 31, 2009, the Polaroid Bankruptcy Cases were converted to cases under Chapter 7 of the Bankruptcy Code and on September 1, 2009, the Polaroid Trustee was duly qualified and appointed as the

Chapter 7 Trustee for all the debtors in the Polaroid Bankruptcy Cases (the “Polaroid Debtors”) and their respective bankruptcy estates (the “Polaroid Bankruptcy Estates”).

5. On June 12, 2009, the Receiver filed a voluntary petition in the Bankruptcy Court commencing the Chapter 7 bankruptcy case of Petters Capital, LLC, Bky. Case No. 09-43847, (the “Petters Capital Bankruptcy Case”). The Petters Capital Trustee was duly qualified and appointed as the Chapter 7 Trustee for the debtor in the Petters Capital Bankruptcy Case (the “Petters Capital Debtor”) and its bankruptcy estate (the “Petters Capital Bankruptcy Estate”).

6. Hereafter, the term “Trustees” shall refer collectively to the Petters Trustee, the Polaroid Trustee, and the Petters Capital Trustee, the term “Debtors” shall refer collectively to the Petters Debtors, the Polaroid Debtors, and the Petters Capital Debtor, the term “Bankruptcy Cases” shall refer collectively to the Petters Bankruptcy Cases, the Polaroid Bankruptcy Cases, and the Petters Capital Bankruptcy Case, and the term “Bankruptcy Estates” shall refer collectively to the Petters Bankruptcy Estates, the Polaroid Bankruptcy Estates, and the Petters Capital Bankruptcy Estate. The Receiver commenced the Bankruptcy Claims to preserve claims, causes of action and assets for the benefit of creditors of the Bankruptcy Estates.

7. Kelley, as Receiver and Chapter 11 Trustee, the Polaroid Trustee, and the United States are parties to that certain Coordination Agreement (the “Coordination Agreement”) jointly approved by this Court [Dkt. No. 1466] and the Bankruptcy Court in the Petters Bankruptcy Cases [Dkt. No. 453] on September 14, 2010. The Coordination

Agreement equitably and efficiently allocated the competing interests of the Receiver, the Trustee, the Polaroid Trustee, and the United States in common assets and causes of action among the various estates and removed the risk of forfeiture of substantially all of the assets of the Bankruptcy Estates as well as the assets of the Polaroid and Petters Capital bankruptcy estates. Absent entry into the Coordination Agreement, as a result of Petters' conviction, the United States likely would have sought to forfeit all proceeds of the criminal acts conducted as part of Petters' Ponzi scheme.

8. Consistent with the framework and in the spirit of the Coordination Agreement, the parties historically have cooperated in the pursuit of various claims and sought to resolve competing claims to common assets. In this case, that specifically includes their cooperation to resolve their claims against the JPMC Defendants, with the purpose to maximize the recovery of assets for their respective estates, victims, creditors and claimants. The settlements will minimize the unnecessary cost that would be incurred if the Receiver and the Trustees were to litigate separately their respective interests in such assets and causes of action. Instead of competition for such assets, cooperation and coordination will maximize the recovery of assets distribution to creditors and victims while minimizing the risks, costs and expenses of the Parties.

9. On April 15, 2016, the Bankruptcy Court confirmed the Second Amended Chapter 11 Plan of Liquidation (the "PCI Plan") in the Petters Bankruptcy Cases. The effective date of the PCI Plan was April 22, 2016. *See* Notice, Dkt. No. 3346, in the Petters Cases. The term "PCI Liquidating Trust" refers to the Trust created under the PCI Plan.

Douglas A. Kelley is the “PCI Liquidating Trustee” of the PCI Liquidating Trust.

II. SETTLEMENT AGREEMENT

A. Claims and Litigation Related to this Settlement Agreement

10. In April 2005, through a series of wholly owned entities, Thomas J. Petters (“Petters”) purchased Polaroid Corporation. Petters Consumer Brands, LLC, (“PCB”), a subsidiary of PGW, on April 25, 2005, had merged with Polaroid Holding Company (“PHC”), which owned 100% of Polaroid Corporation. To complete the transaction, PCB was to purchase all the outstanding shares of PHC, which was a public company. One Equity Partners, LLC, together with several individuals affiliated with One Equity Partners, owned a majority of PHC’s shares prior to the acquisition. One Equity Partners was wholly owned by JP Morgan Chase & Co.

11. Petters funded the acquisition primarily by borrowing funds from third-parties and by using money obtained from the operation of his Ponzi scheme. Following completion of the acquisition, entities affiliated with JPMC entered into long-term loan agreements and revolving credit facilities with the Petters owned Polaroid entities. Portions of the new loans were used to repay selected sources of financing for the Petters’ acquisition.

12. In 2006, JPMC issued of line a credit to PGW. Petters signed a personal guaranty and collateral agreements to secure the line of credit. This relationship continued until JPMC learned of the September 24, 2008 raid of Petters’ offices by federal agents and declared PGW’s credit line in default. At that time, the balance of Petters’ investment

accounts were approximately \$25 million. On or about September 30, 2008, JPMC seized and began to liquidate the assets held in Petters' personal investment accounts. JPMC claimed that the investment accounts were collateral for the PGW credit line and other obligations. The Receiver filed The Receivership Action in part to recover the amount of all assets that were held in the investment accounts immediately prior to September 30, 2008.

13. On December 10, 2010, the Receiver commenced the Receivership Action. The complaint asserted transfers and payments related to the Polaroid acquisition and funds taken from Petters' personal investment accounts were fraudulent transfers under the Minnesota Uniform Fraudulent Transfer Act. It further alleged that the personal guaranty and collateral pledges Petters entered into to secure the credit line were avoidable as they arose in connection with the fraudulent Ponzi scheme. The Receiver Action is stayed by agreement of the parties pending resolution of the Trustees' adversary proceedings against the JPMC Defendants regarding the Polaroid acquisition and credit facilities.

14. The PCI, Polaroid and Petters Capital Trustees filed the Joint Adversary Proceedings against the JPMC Defendants arising from the Polaroid acquisition and the credit facilities, Adversary Proceeding Nos. 10-04443, 10-04444, and 10-04445, titled, *Douglas A. Kelley, in his Capacity as the PCI Liquidating Trustee for the PCI Liquidating Trust, John R. Stoebner, Trustee for Polaroid Corporation, et. al., and Randall L. Seaver, Trustee for Petters Capital, LLC v. JPMorgan Chase & Co., JP Morgan Chase Bank, N.A., J.P. Morgan Securities LLC, One Equity Partners, LLC, Jacques A. Nasser, Lee M.*

Gardner, Charles F. Auster, James W. Koven, Rick A. Lazio, J Michael Pocock, William L. Flaherty, Ira H. Parker, and John and Jane Does 1-30.

15. The Petters Trustee, on behalf of PGW, also commenced Adversary Proceeding No. 10-04446 against JP Morgan Chase Bank, N.A., one of the JPMC Defendants. This adversary proceeding asserted a preference claim in the amount of \$300,000.00. It is not one of the Joint Adversary Proceedings.

16. JPMC Defendants have denied the Receiver's allegations (as well as the Trustees' allegations) and asserted various defenses to the claims.

B. Mediation and the Settlement Agreement

17. The Receiver, the Bankruptcy Trustees and the JPMC Defendants ultimately determined that engaging in a process of mediation of their respective claims and defenses before additional and substantial resources were dedicated to litigation would, if successful, avoid the uncertainty, further expenses and distraction associated with protracted litigation. They therefore voluntarily participated in confidential mediation with Robert A. Meyer on May 17, 2017 and continuing into October 2017. After extensive negotiations, the mediator presented a proposal of global settlement which was accepted by all parties. The settlement includes two separate settlements: the Receiver Settlement Agreement and the Trustees Settlement Agreement. Under the Receiver Settlement Agreement, the JPMC Defendants agreed to pay \$2,500,000.00 in settlement of the Receiver claims. Under the Trustees Settlement Agreement, the JPMC Defendants agree to pay \$30,725,000.00 to settle the Trustees' Joint Adversary Proceedings and the PGW adversary proceeding.

18. The Receiver Settlement Agreement is conditional upon entry of orders approving the Trustees Settlement Agreement by the following Bankruptcy Courts (Exhibits C-E):

a. The Bankruptcy Court for the District of Minnesota in the following cases:

(i) *In re Polaroid Corporation, et al.*, Bky. Case No. 08-46617;

(ii) *In re Petters Company, Inc., et al.*, Bky. Case No. 08-45257; and

(iii) *In re Petters Capital, LLC*, Bky. Case No. 09-43847;

b. The United States Bankruptcy Court for the Northern District of Illinois in the jointly administered cases captioned *In re Lancelot Investors Fund, L.P., et al.*, Bky. Case No. 08-28225; and

c. The United States Bankruptcy Court for the Southern District of Florida in the jointly administered cases captioned *In re Palm Beach Finance Partners, L.P., et al.*, Bky. Case No. 09-36379.

19. Other terms of the Receiver Settlement Agreement include the following:

a. The Receiver and JPMC Defendants are mutually releasing claims against each other. In addition, the Receiver has secured, for the benefit of the JPMC Defendants, a Mutual Release from the United States of America executed by the United States Attorney's Office, District of Minnesota ("USAO Release"). A copy of the USAO Release is Exhibit B to the Magnuson Declaration. Such release was a material inducement for the JPMC Defendants to enter into the Receiver Settlement Agreement.

b. The Receiver Settlement Agreement and the Trustees Settlement Agreement and the proposed orders approving both include a bar order barring duplicate and derivative claims. The bar order is an essential and necessary part of the Receiver Settlement Agreement and the Trustees Settlement Agreement. The agreement by the Receiver and the Bankruptcy Trustees and the PCI Committee members to obtain a bar order was negotiated at arms' length between the parties and in good faith. The proposed order will bar claims that belong to the Receiver, the Bankruptcy Trustees, and the PCI Committee members and give the JPMC Defendants assurance that they will not be subject to future suits, claims and causes of action of any claims being settled under the Receiver Settlement. The bar order is a material term to the Receiver Settlement Agreement and the Trustees Settlement Agreement, and failure to obtain the bar order renders both settlements null and void.

c. The Receiver, at Defendants' counsel's request, will submit a declaration in the litigation *Tradex Global Master Fund SPC Ltd., et al. v. Lancelot Investment Management LLC, et al.*, Case No. 10-CH-13264 (Ill. Cir. Ct., Cook Cty.), in the form of Exhibit H to the Receiver Settlement Agreement, setting forth the basis upon which the Receiver possesses all causes of action that previously belonged to Thomas J. Petters.

d. Under the Receiver Settlement Agreement, the Receiver will file a stipulation of dismissal of the Receiver Action, which will seek dismissal with prejudice and without costs to any of the parties, upon the Court's final order approving the settlement.

III. ARGUMENT

“Settlement agreements are generally encouraged and favored by the courts ... [i]n the absence of mistake or fraud, a settlement agreement will not be lightly set aside.” *Justine Realty Co. v. American Nat’l Can Co.*, 976 F.2d 385, 391 (8th Cir. 1992). “The general principle that the law favors settlement agreements has been recognized for over 100 years.” *Liddell by Liddell v. Bd. of Educ of City of St. Louis*, 126 F.3d 1049, 1056 n.9 (8th Cir. 1997) (citing *Williams v. First Nat’l Bank*, 216 U.S. 582, 595, 30 S. Ct. 441, 445, 54 L. Ed. 625 (1910) (compromises of disputed claims are favored by the courts) (citing *Hennessy v. Bacon*, 137 U.S. 78, 11 S. Ct. 17, 34 L. Ed. 605 (1890))). “The law strongly favors settlements. Courts should hospitably receive them ... [a]s a practical matter, a remedy that everyone agrees to is a lot more likely to succeed than one to which the defendants must be dragged kicking and screaming.” *Liddell*, 126 F.3d at 1056 (quoting *Little Rock Sch. Dist. v. Pulaski County Special Sch. Dist. No. 1*, 921 F.2d 1371, 1383 (8th Cir. 1990)).

As this Court is aware, a number of legal issues raised in the bankruptcy and receiver cases are complex and remain unsettled. This has been especially true in the litigation involving JPMC. Resolution of these legal issues, as well as the fact-intensive inquiry that may be necessary to determine whether the JPMC Defendants acted in good faith, will require additional extensive discovery, dispositive motions and potential evidentiary hearings. Additionally, the Receiver and the Bankruptcy Trustees have certain claims based upon the same operative facts and seek in part overlapping recoveries from the JPMC

Defendants. Thus, the parties stipulated to a stay of the Receivership Action while the Trustees and the JPMC Defendants litigated in the Trustees Adversary Proceedings some of the large claims common to both cases.

The Receiver and the JPMC Defendants reached a settlement of the claims unique to the Receivership Action involving Petters' personal investment accounts. The Receiver's entry into the settlement is based on the assessment of the strengths and weaknesses of his claims and the JPMC Defendants' defenses, the prospect that the expenditure of additional receivership funds would yield a materially superior recovery, and his belief that the global settlement reached through arm's length negotiation is fair and equitable. The Receiver also believes that the benefits of the global resolution contemplated by the settlement will provide certainty and finality with respect to matters that have been the subject of protracted litigation. The JPMC Defendants have asserted numerous defenses to the Receiver's claims, and have asserted claims and defenses in response to pleadings of the Receiver in District Court and of the Bankruptcy Trustees in Bankruptcy Court. These two settlements seek to minimize, to the extent practicable, the burdens on this Court, the receivership, the Bankruptcy Estates, the Bankruptcy Court, and the Parties posed by further litigation with the JPMC Defendants across multiple proceedings.

The Agreement provides immediate and concrete benefits to victims of the Ponzi scheme. As a result of this settlement, the JPMC Defendants will pay a Settlement Payment of \$2,500,000.00 in resolution of the Receiver Action that is separate and independent from

the settlement payment to the Bankruptcy Estates in resolution of the Bankruptcy Adversary Proceedings under the Trustees Settlement Agreement.

In connection with these settlements, the Receiver is providing certain releases to the JPMC Defendants and the JPMC Defendants are providing certain releases to the Receiver, the Bankruptcy Trustees, and their respective estates. Given the global nature of the settlement, and consistent with prior settlements entered into by the Receiver, the Receiver, along with the Bankruptcy Trustees, are providing finality to the JPMC Defendants. Such finality is material to the resolution these claims. As a result, the settlement will curtail the expense of protracted litigation to the Receivership and Bankruptcy Estates and the Bankruptcy Court and minimize, to the extent practicable, the burdens on this Court and on the Bankruptcy Court.

The Bar Order is also an essential and necessary component of the Receiver Settlement Agreement and the Trustees Settlement Agreement. Without it, there is no settlement. The proposed order will bar claims that belong to the Receiver and give the JPMC Defendants assurance that they will not be subject to future suits, claims and causes of action of any claims being settled under Receiver Settlement Agreement and the Trustees Settlement Agreement. The proposed Bar Order in this case is limited to duplicate and derivative claims. It was negotiated at arms' length between the parties and in good faith, as part of the formal mediation.

Specifically, the Receiver Settlement Agreement in Paragraph 7 provides as follows:

7. Permanent Injunction. The Final Order reflecting approval by the District Court in the Receivership Proceeding shall include a provision (such provision referred to herein as the “Bar Order”) providing that any and all Petters Creditors, anyone acting on behalf of or in concert or participation with any of the Petters Creditors, or anyone whose Claim in any way arises from or is related to the Receivership Individuals & Entities, the Receivership Estates, Thomas J. Petters, and/or Petters’ Ponzi scheme is barred and permanently enjoined from asserting or prosecuting any Claim that belongs or belonged to the Receiver, whether or not already asserted by the Receiver, or is derivative of such a Claim, whether denominated in tort, unjust enrichment, or otherwise, and including but not limited to Claims for fraudulent transfer, against any of the Entity Defendant Released Parties and Individual Defendant Released Parties (the “Barred Claims”). Barred Claims subject to the Bar Order does not include Claims against any of the Entity Defendant Released Parties and Individual Defendant Released Parties by parties other than the Receiver Releasing Parties except to the extent such Claims (a) are within the scope of the Barred Claims, (b) were asserted by the Receiver in the Receiver Action, or (c) are derivative of any such Claims. This Agreement is contingent upon entry of a Final Order in the District Court with a Bar Order in materially the form set forth in Exhibit F and entry of a Final Order in the Bankruptcy Court with a similar bar order, as required in the JPMC Trustees Agreement, in materially the form set forth in Exhibit C. For the avoidance of doubt, nothing in this Agreement shall obligate any of the Receiver Releasing Parties to indemnify the Entity Defendant Released Parties and Individual Defendant Released Parties in the event any third party asserts a claim against the Entity Defendant Released Parties or Individual Defendant Released Parties, whether or not such claim violates the Bar Order.

Paragraph 6 of the proposed order sets forth the terms of the Bar Order and provides as follows:

a. Any and all Petters Creditors, anyone acting on behalf of or in concert or participation with any of the Petters Creditors, or anyone whose Claim in any way arises from or is related to the Receivership Individuals & Entities, the Receivership Estates, Thomas J. Petters, and/or Petters’ Ponzi scheme is barred and permanently enjoined from asserting or prosecuting any Claim that belongs or belonged to the Receiver, whether or not already asserted by the Receiver, or is derivative of such a Claim, whether denominated in tort, unjust enrichment, or otherwise, and including but not limited to Claims for

fraudulent transfer, against any of the Entity Defendant Released Parties and Individual Defendant Released Parties (the “Barred Claims”).

b. Barred Claims subject to the Bar Order do not include Claims against any of the Entity Defendant Released Parties and Individual Defendant Released Parties by parties other than the Receiver Releasing Parties except to the extent such Claims (a) are within the scope of the Barred Claims, (b) were asserted by the Receiver in the Receiver Action, or (c) are derivative of any such Claims.

Bar Orders play an integral role in the facilitating settlements. *In re U.S. Oil & Gas Litig.*, 967 F.2d 489, 494 (11th Cir. 1992). Class action and securities settlements often incorporate settlement bar orders such as the one requested in this case. *See In re U.S. Oil & Gas Litig.*, 967 F.2d at 494; *In re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 160 (4th Cir. 1991); *Eichenholtz v. Brennan*, 52 F.3d 478 (3d Cir. 1995); *In re IBP, Inc. Sec. Litig.*, 328 F. Supp. 2d 1056, 1066-67 (D.S.D. 2004). This Court has recognized the importance that bar orders can play in achieving settlements and has approved similar orders. *See Order Approving Settlement Agreement and Barring Certain Claims*, June 12, 2012, [Dkt. No. 2291] (approving the Fredrikson and Byron, P.A. Settlement with the Receiver; *Order Approving Multiple Settlement Agreements* April 4, 2012, [Dkt. No. 2214] (approving the Receiver’s settlement agreement with several former officers, directors, employees and consultants of various receiver entities).

With a bar order, settling parties will obtain some finality because they will be assured that they will not be subject to suit, action or other proceeding, including any action seeking contribution and/or indemnity, that arises from or relates to the Claims being settled through the Receiver Settlement. The proposed order will bar non-direct and

derivative claims, thus minimizing the prospect of duplicative recovery and provide finality as the JPMC Defendants will have some assurance they will not be subject to future suits, claims, and causes of action that are interrelated or derivative to the underlying Claims asserted by the Trustee and the Receiver that are being resolved through the Settlement Agreement.

Because the Bar Order in the Receiver Settlement Agreement addresses claims duplicative and derivative of Claims asserted and settled by the Receiver, it is appropriate for inclusion in this Court's order.

CONCLUSION

The Receiver Settlement Agreement was the result of an arms' length mediated negotiation process. Following multi-day negotiations, the Parties accepted the Mediator's proposal. Without a settlement, the Receiver would be required to incur substantial attorney fees and expert witness fees. The Receiver Settlement Agreement is reasonable and in the best interest of the Receiver Estates and its victims. The Receiver respectfully requests approval of the Receiver Settlement Agreement and entry of a Bar Order.

Respectfully submitted,

KELLEY, WOLTER & SCOTT, P.A.

Dated: April 25, 2018

/s/Kevin M. Magnuson

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