

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

SECURITIES AND EXCHANGE	§	
COMMISSION,	§	
	§	
Plaintiff,	§	Civil Action No. 4:11-CV-00655
	§	
vs.	§	
	§	
	§	
JAMES G. TEMME,	§	
STEWARSHIP FUNDS, LP	§	
	§	
Defendants.	§	

**REPLY IN SUPPORT OF INVESTORS’ OBJECTIONS TO REPORT AND
RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE AND REQUEST
FOR HEARING**
(Docket No. 290, 255, 295, 314)

Nonparties to this action and claimants against the Estate, Bruce Berg, Stuart Cartner, Kevin Doyle, Walter Haydock, Edward Leh, Kevin Murphy, Philip Schantz, DAIS Partners, LP, Singer Bros., LLC, Skeleton Lake, LLC, and Wildcat Lake Partners (collectively, the “Investors”) reply to Receiver’s Response to Objections to Report and Recommendation of United Magistrate Judge [Dkt. No. 314] as follows:

1. In his Response the Receiver states that, “the Receiver has determined in his professional judgment that the Settlement [with Halo Companies, Inc.] represents the best outcome for the Estate. [Dkt. No. 314 at ¶ 1.] Yet, at least seventy-seven (77) claimants with claims against the Estate in excess of \$20 million disagree. [See Dkt. Nos. 253, 255 and 269.] According to the Receiver, the total amount of the claims filed is approximately \$37 million. [Dkt. No. 306 at ¶ 53.] Thus, contrary to the Receiver’s misleading representations in his

Response, the claimants asserting the majority of the claims against the Estate in value object to the settlement.

2. The Receiver represents in his Response that as of August 2012, the Association consisted of 40 members. [Dkt. No. 314 at ¶ 6.] However, this is too misleading because the Association has identified 65 claimants with claims in the aggregate amount of \$14,371,860. [Dkt. No. 253-1.]

3. As set forth more fully in the Investors' Response in Opposition to Motion to Approve Settlement [Dkt. No. 255], in the Investors' Sur-Reply to Motion to Approve Settlement [Dkt. No. 275], and in the Investors' Objection to Magistrate's November 4, 2013 Report and Recommendation [Dkt. No. 295] (each of which are incorporated herein by reference), the proposed settlement is clearly not in the best interest of the Estate and is extremely prejudicial to the Investors.

4. Although the amount of the proposed settlement (\$250,000) is laughable in light of the evidence showing that Temme simply gave Halo Companies, Inc. ("Halo"), approximately \$1.2 million with no consideration received by Temme, that settlement term is not even close to being the most offensive term of the proposed settlement agreement.

5. Somehow the Receiver has determined, in his professional judgment, that none of the Stewardship Creditors, which include the Investors, should have the right to sue Halo for any claims, including, but not limited to, claims that are unique only to the Investors and which the Estate has no standing to assert. How does that benefit the Estate? It does not.

6. As set forth in the Investors' Response to the Motion to Approve Settlement [Dkt. No. 255], the Investors have asserted claims against Halo, et al., in the approximate amount of

\$5 million. Halo's defense costs in that action are being paid by its insurer, North River Insurance Company, Policy No. 5560071453.

7. The Receiver is correct to point out in his Response to Objections [Dkt. No. 314] that the trial court in the Investors' lawsuit against Halo granted two no evidence motions for summary judgment filed by the Halo defendants. However, what the Receiver failed to tell this Court is that on January 17, 2014 – ten days before the Receiver filed his Response – the Investors filed a Motion for New Trial/Reconsideration of the trial court's rulings on the no evidence motions for summary judgment.

8. Because the Investors strongly believe that the trial court erred when it granted the no evidence motions, the Investors are confident that the trial court will grant the Motion for New Trial/Reconsideration. The Investors have provided the trial court with well more than a scintilla of evidence in support of their claims against the Halo defendants. If for some reason the trial court does not grant that motion, the Investors are extremely confident that the court of appeals will reverse the trial court's granting of the no evidence motions.

9. The Investors have incurred hundreds of thousands of dollars in fees and costs in connection with their lawsuit against the Halo defendants. When the Investors ultimately prevail against the Halo defendants, their claims against the Estate will be substantially reduced. That will clearly be more of a benefit to the Estate than Halo's proposed settlement payment of \$250,000.

10. The Investors respectfully request that this Court sustain the Investors' Objection to the Magistrate's Report and Recommendation and to enter an Order Denying the Receiver's Motion to Approve Settlement with Halo Companies, Inc., in its entirety, or, at a minimum, striking term 4(c) from the Proposed Order [Dkt. No. 244-2].

11. Alternatively, the Investors respectfully request that a hearing be set on the Investors Objections to Magistrate's Report and Recommendations [Dkt. No. 295].

DATED: February 5, 2014

Respectfully submitted,

/s/ David W. Lunn
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CERTIFICATE OF CONFERENCE

The undersigned certifies that on February 5, 2014, he has complied with the meet and confer requirement in Local Rule CV-7(h), and the motion is **unopposed**.

/s/ David W. Lunn
David W. Lunn

CERTIFICATE OF SERVICE

The undersigned certifies that all counsel of record who are deemed to have consented to electronic service are being served per Local Rule 5.1(d) with a copy of the foregoing via the Court's CM/ECF system on this 5th day of February, 2014.

/s/ David W. Lunn
David W. Lunn