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CHARLES DAVID GRAY, GARY §
LENAHAM, EARL BROWN, MIOKE §
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MICHAEL A. CASTELLANO, JOHN P. §
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TITLE, DAVID RICE, JAMES WILLIAM §
RASH, DAVID MATA, IAM FINANCIAL §
SERVICES, INC., DAVID HERZOG, AND §
SCOTT SCHROEDER, ELIZABETH §
“LIZ” GRAY AND DAVID A. GRAY §

Third-Party Defendants

**THE HCF RECEIVER’S OBJECTION TO RV’S PROPOSED SETTLEMENT
WITH RICHARD H. “DICK” GRAY AND CATHERINE GRAY**

TO THE HONORABLE GISELA D. TRIANA-DOYAL,

1. Catherine and Richard Gray's executable assets are insufficient to satisfy the claims of all the investors. The proposed settlement would deliver essentially all of their assets to Retirement Value LLC ("RV"), leaving the investors of Hill Country Funding LLC (Texas) and Hill Country Funding LLC (Nevada) (collectively "HCF") without any meaningful recovery from the two founding and only members of HCF.
2. Because approval of the settlement would inequitably advance the interests of RV investors at the expense and to the significant detriment of HCF investors, Mr. Donald R. Taylor ("HCF Receiver"), in his capacity as receiver for HCF objects to the settlement proposed between RV and Richard and Catherine Gray.

FACTS

3. This is a tragic story of an extensive fraudulent scheme. As they had done through numerous other entities and under various aliases, Defendants Richard and Catherine Gray, along with a multitude of co-conspirators, defrauded RV and HCF investors alike, through the sale of unregistered securities, i.e. fractionalized interests in life settlements. Their misconduct (and that of their fellow tortfeasors) rendered both HCF and RV insolvent and liable to defrauded investors for the amounts invested.
4. HCF and RV are just the last two entities through which the Defendants perpetrated this fraud. As the State so aptly put it:

The [Defendants] have established a definite *modus operandi*: reap lucrative profits from fraudulent schemes involving the sale of securities until regulators either intervene or shut down the underlying brokerage. Once the brokerage is unable to continue its operations, Defendants Richard Gray and Rogers return to selling illegal securities on behalf of a new or different firm.

Pl.'s 3d Am. Pet. ¶ 25.

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5. On May 5, 2010, the State of Texas filed its original petition in this case, asserting claims against Defendants RV, Dick Gray, and Bruce Collins and requesting the appointment of a temporary receiver for RV.
6. Mr. Eduardo S. Espinosa (“RV Receiver”) was appointed receiver of RV on May 28, 2010 and then took possession of all of its assets and property, including its offices at 707 N. Walnut Avenue in New Braunfels, Texas.
7. Soon thereafter the RV Receiver discovered that, in addition to RV, Richard Gray, Catherine Gray, and Wendy Rogers also operated HCF, which shared offices and personnel with RV. Thus when the RV Receiver took possession of RV’s assets, it simultaneously took possession and control of HCF’s books, records, bank accounts, and assets.
8. On June 24, 2010, the State amended its original petition to add HCF and Wendy Rogers as parties. However, no receiver was then appointed to manage HCF or its assets.
9. On January 28, 2011, the RV Receiver filed suit against, *inter alia*, Richard and Catherine Gray.
10. On February 24, 2011 the RV Receiver, certain Intervenors, and Richard and Catherine Gray entered into a Mediated Settlement Agreement, the precursor to the governing Compromise and Settlement Agreement which was executed in August of this year but has not been approved by this Court.
11. On information and belief, the settlement agreement will consume the majority if not all of Richard and Catherine Gray’s assets that would be subject to execution.
12. Collectively, HCF’s 81 participants invested at least \$5.5 million in HCF. Richard Gray received income from the HCF investments funds in the form of commissions, wages and/or salary, and other transfers.

13. Richard Gray took *at least* \$113,000 just for himself and between himself, his children, his wife, and other unidentified beneficiaries, he distributed as much as \$500,000 of investor funds.

14. The HCF Receiver has brought claims against Richard Gray to recover the aforementioned fraudulent transfers. Additionally, the HCF Receiver has charged Richard and Catherine Gray with breaches of fiduciary duties. In virtue of their tortious conduct, HCF faces at least \$5.5 million in liability.

ARGUMENT AND AUTHORITIES

15. The Court should not approve this settlement because it exclusively benefits one class of defrauded investors at the expense of another. *See U.S. v. Real Property Located at 13328 and 13324 State Highway 75 North, Blaine County, Idaho*, 89 F.3d 551, 553 (9th Cir. 1996) (“[T]he equities demand that all of the victims of the fraud be treated equally. . . . [T]his is a case where ‘equality is equity.’”); *Ruddle v. Moore*, 411 F.2d 718, 719 (D.C. Cir. 1969) (“To throw the loss upon one, through the mere chance of his being earlier in time, is irrational and arbitrary.”).

16. “[T]he rules of equity govern all matters relating to the appointment, powers, duties, and liabilities of a receiver and to the powers of a court regarding a receiver.” *Huston v. F.D.I.C.*, 800 S.W.2d 845, 849 (Tex. 1990) (citing TEX. CIV. PRAC. & REM. CODE §64.004).

17. “Sitting in equity, the district court is a ‘court of conscience.’” *U.S. v. Durham*, 86 F.3d 70, 73 (5th Cir. 1996); *see also S.E.C. v. Elliot*, 953 F.2d 1560, 1566 (11th Cir. 1992) (“The district court has broad powers and wide discretion to determine relief in an equity receivership. . . . This discretion derives from the inherent powers of an equity court to fashion relief.”).

In multiparty litigation, when a settlement between some but not all of the parties affects others, . . . the court's duty is akin, but not identical to its responsibility in approving settlements of class actions, stockholders' derivative suits, and proposed compromises of claims in bankruptcy. . . . This requires a determination that the

proposal represents a reasonable factual and legal determination based on the facts of record, whether established by evidence, affidavit, or stipulation. If the decree also affects third parties, the court must be satisfied that the effect on them is neither unreasonable nor proscribed.

Terrazas v. Ramirez, 829 S.W.2d 712, 719 (Tex. 1991) (quoting *U.S. v. City of Miami*, 664 F.2d 435, 441 (5th Cir.1981) (en banc)).

18. “[T]he trial court must examine both the substantive and procedural aspects of the settlement: (1) whether the terms of the settlement are fair, adequate, and reasonable; and (2) whether the settlement was the product of honest negotiations or of collusion.” *Gen. Motors Corp. v. Bloyed*, 916 S.W.2d 949, 955 (Tex. 1996). The party defending the settlement bears the burden of demonstrating its fairness and adequacy. *Id.*

19. “[P]otential injustice arises as the distribution of benefits and burdens in a class remedy becomes increasingly unequal. . . . A small minority of the class members may not be asked to bear an unduly disproportional share of the accompanying burdens.” *Mendoza v. Tucson Sch. Dist. No. 1*, 623 F.2d 1338, 1344 (9th Cir. 1980); *see also Ball v. Farm & Home Sav. Ass’n*, 747 S.W.2d 420, 424 (Tex. App.—Fort Worth 1988, writ denied) (recognizing that unduly disproportionate share of the distribution of burdens versus benefits is grounds to reject a proposed settlement).

20. As a practical matter, the HCF Receiver’s ability to collect any funds from Richard or Catherine Gray will be significantly diminished if the RV Receiver succeeds in its attempt to enforce the settlement agreement, which would consume nearly all executable assets and exclusively benefit RV’s investors. *See Receiver’s Second Amended Cross-Claim Against Richard H. “Dick” Gray, Catherine Gray, and Wendy Rogers* ¶¶ 73-75; *see also Receiver’s Motion for Approval of Settlement and Compromise with Richard H. Gray and Catherine.*

21. The HCF Receiver objects to this settlement on the grounds that it unfairly excludes HCF

and in effect would prohibit HCF investors from recovering from HCF's fiduciaries.

PRAYER

22. WHEREFORE PREMISES CONSIDERED, the HCF Receiver respectfully requests that the proposed settlement agreement be modified to provide for a pro rata distribution to HCF. Alternatively, the HCF Receiver requests that the Court issue judgment suspending the distribution of any funds from any settlement between RV and Catherine and Richard Gray and committing said proceeds to the registry of the Court until it can determine an equitable distribution between the receiverships. Finally, the HCF Receiver requests all such other and further relief, whether at law or in equity, to which HCF may show itself justly entitled.

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing document was served on the following attorneys and pro se individuals by delivering a true and correct copy as indicated by the Court's electronic service system, electronic mail and first class mail where indicated on this the 10th day of November, 2011, as follows:

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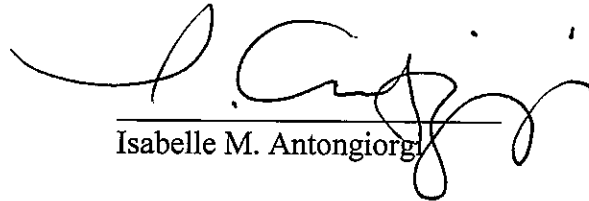
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