

**IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CIVIL DIVISION**

STATE OF FLORIDA
OFFICE OF FINANCIAL REGULATION,

Plaintiff,

v.

CASE NO.: 50-2021-CA-008718-XXXX-MB

NATIONAL SENIOR INSURANCE, INC.
D/B/A SEEMAN HOLTZ,
MARSHAL SEEMAN,
CENTURION INSURANCE SERVICES
GROUP, LLC, BRIAN J. SCHWARTZ,
EMERALD ASSETS 2018, LLC,
INTEGRITY ASSETS 2016, LLC,
INTERGRITY ASSETS, LLC,
PARA LONGEVITY 2014-5, LLC,
PARA LONGEVITY 2015-3, LLC,
PARA LONGEVITY 2015-5, LLC,
PARA LONGEVITY 2016-3, LLC,
PARA LONGEVITY 2016-5, LLC,
PARA LONGEVITY 2018-3, LLC,
PARA LONGEVITY 2018-5, LLC,
PARA LONGEVITY 2019-3, LLC,
PARA LONGEVITY 2019-5, LLC,
PARA LONGEVITY 2019-6, LLC,
PARA LONGEVITY VI, LLC,
SH GLOBAL, LLC N/K/A PARA
LONGEVITY V, LLC, ALTRAI GLOBAL,
LLC A/K/A ALTRAI HOLDINGS, LLC,
VALENTINO GLOBAL HOLDINGS, LLC,
AMERITONIAN ENTERPRISES, LLC,
SEEMAN-HOLTZ CONSULTING CORP.,
CENTURION ISG Holdings, LLC,
CENTURION ISG Holdings II, LLC,
CENTURION ISG (Europe) Limited,
CENTURION ISG SERVICES, LLC,
CENTURION ISG FINANCE GROUP, LLC,
CENTURION FUNDING SPV I LLC,
CENTURION FUNDING SPV II LLC,
GRACE HOLDINGS FINANCIAL, LLC,
PRIME SHORT TERM CREDIT INC.,

Defendants.

THE ESTATE OF ERIC CHARLES HOLTZ,
SEEMAN HOLTZ PROPERTY AND CASUALTY, LLC
F/K/A SEEMAN HOLTZ PROPERTY AND CASUALTY,
INC., SHPC HOLDINGS I, LLC,

Relief Defendants.

**RECEIVER’S MOTION FOR (I) ORDER RELIEVING RECEIVER FROM TAX
OBLIGATIONS, (II) DECLARATION OF CONSTRUCTIVE TRUST OVER
RECEIVERSHIP ASSETS, AND (III) DECLARATION OF SATISFACTION OF
31 U.S.C. § 3713(b)**

Daniel J. Stermer, as Court-appointed Receiver (the “**Receiver**” and formerly the “**Corporate Monitor**”) for the property, assets, and business of the thirty-three (33) corporate entities¹(the “**Consenting Corporate Defendants**”) pursuant to the *Agreed Order Granting Plaintiff’s Consent Motion for Appointment of Corporate Monitor and Related Injunctive Relief*, dated September 14, 2021, and the *Agreed Order Granting Corporate Monitor, Daniel J. Stermer’s Unopposed Motion to Expand Corporate Monitorship Estate*, dated January 6, 2022 (together, the “**Monitorship Order**”), respectfully moves for entry of an (i) order from this Court relieving him from any obligation to pay pre-Receivership debts and tax obligations of the Receivership Defendants, and (ii) a declaration of constructive trust over the assets of the Receivership Estate, and (iii) a declaration that the Receiver has met the demands of 31 U.S.C.

¹ The Consenting Corporate Defendants include: NATIONAL SENIOR INSURANCE, INC. D/B/A SEEMAN HOLTZ, CENTURION INSURANCE SERVICES GROUP, LLC, EMERALD ASSETS 2018, LLC, INTEGRITY ASSETS 2016, LLC, INTERGRITY ASSETS, LLC, PARA LONGEVITY 2014-5, LLC, PARA LONGEVITY 2015-3, LLC, PARA LONGEVITY 2015-5, LLC, PARA LONGEVITY 2016-3, LLC, PARA LONGEVITY 2016-5, LLC, PARA LONGEVITY 2018-3, LLC, PARA LONGEVITY 2018-5, LLC, PARA LONGEVITY 2019-3, LLC, PARA LONGEVITY 2019-5, LLC, PARA LONGEVITY 2019-6, LLC, PARA LONGEVITY VI, LLC, SH GLOBAL, LLC N/K/A PARA LONGEVITY V, LLC, VALENTINO GLOBAL HOLDINGS, LLC, AMERITONIAN ENTERPRISES, LLC, SEEMAN-HOLTZ CONSULTING CORP., CENTURION ISG Holdings, LLC, CENTURION ISG Holdings II, LLC, CENTURION ISG (Europe) Limited, CENTURION ISG SERVICES, LLC, CENTURION ISG FINANCE GROUP, LLC, CENTURION FUNDING SPV I LLC, CENTURION FUNDING SPV II LLC, PARA GLOBAL 2019, LLC, ALLOY ASSETS, LLC, SEEMAN HOLTZ WEALTH MANAGEMENT, INC. AGENCY ACQUISITION FUNDING, LLC, AMERICA’S FAVORITE INSURANCE SERVICES LLC and GRACE HOLDINGS FINANCIAL, LLC.

§3713(b) and is not subject to personal liability for the payment of taxes, penalties or interest thereon for the Receivership Defendants or on funds recovered by the Receiver (the “Motion”). In support of this Motion, the Receiver submits:

A. Background.

1. On July 12, 2021, the State of Florida Office of Financial Regulation (the “**OFR**”) filed a *Complaint for Temporary and Permanent Injunction, Appointment of Receiver, Restitution, Civil Penalties, and Other Statutory and Equitable Relief* (the “**Complaint**”) against the Consenting Corporate Defendants, certain individuals and other entities, and Relief Defendants (the “**OFR Action**”). The Complaint seeks entry of a judgment to restrain acts and practices of the Defendants, including the Consenting Corporate Defendants, from violations of various provisions of Chapter 517, Florida Statutes, including sections 517.301, 517.12 and 517.07, and “halt the securities fraud scheme and common enterprise operated and controlled by Defendant Marshal Seeman (“**Seeman**”) and Seeman’s deceased business partner, Eric Charles Holtz (“**Holtz**”).” The Complaint also seeks entry of a judgment against the Consenting Corporate Defendants in the form of the appointment of a receiver, restitution, an award of civil penalties, and disgorgement of ill-gotten gains and unjust enrichment.

2. The Complaint alleges that Seeman and Holtz were assisted in the scheme and enterprise (the “**SH Enterprise**”) by Defendant, Brian J. Schwartz (“**Schwartz**”), who allegedly acted as the SH Enterprise’s untitled chief financial officer. The Complaint further alleges that as part of the SH Enterprise, Seeman, Holtz and Schwartz created and operated a myriad of corporate entities, certain of which are named as Defendants or Relief Defendants in the Complaint and certain of which are no longer active corporate entities; that the SH Enterprise raised more than \$400 Million in capital since 2011, through the sale of unregistered securities in the form of purportedly secured promissory notes which were purportedly secured by viaticated life settlement

policies and other insurance-related assets; that investors were misled regarding the SH Enterprise's profitability, the existence of sufficient life settlements and other assets securing their investments and the perfection of security interests in those assets; and that the SH Enterprise operated as a Ponzi-like scheme in which new investor monies were commingled within the common enterprise and used to repay prior investors in the ongoing scheme thereby providing the appearance of profitability.²

3. On September 10, 2021, the OFR filed a *Consent Motion for Appointment of Corporate Monitor*, seeking the appointment of the Corporate Monitor for the property, assets, and businesses of the initial Consenting Corporate Defendants, as well as a temporary injunction against the Consenting Corporate Defendants and two natural-person Defendants, Marshal Seeman and Brian J. Schwartz (the “**Consenting Individual Defendants**”).

4. On September 14, 2021, the Court entered an *Agreed Order Granting Plaintiff's Consent Motion for Appointment of Corporate Monitor and Related Injunctive Relief* (the “**September 14, 2021 Order**”), thereby approving and appointing, *inter alia*, Daniel J. Stermer as the Corporate Monitor for the Consenting Corporate Defendants and their affiliates, subsidiaries, successors, and assigns, until further Order of the Court. On January 6, 2022, the Court entered an agreed order expanding the scope of the corporate monitorship to include five (5) additional corporate entities as Consenting Corporate Defendants (the “**January 6, 2022 Order**”).

5. On June 17, 2022, the Corporate Monitor filed his *Unopposed Motion to Approve Proposed Noticing and Claims Process* and on June 27, 2022, the Court entered its *Agreed Order*

² The Corporate Monitor is aware that the Individual Defendants dispute the allegations. Further, the Consenting Corporate Defendants, while they consented to the entry of the Order, did not admit the allegations in the Complaint. *See Order at ¶ 62* (“Nothing in this Order shall be construed as an admission by the Consenting Defendants, including but not limited to the Consenting Individual Defendants, to any of the allegations in the Complaint, nor shall in any way preclude the Consenting Defendants from contesting Plaintiff's claims and allegations or raising any defenses and affirmative defenses to the same.”)

Approving the Noticing and Claims Administration Process (“**Claims Order**”) and on June 29, 2022, the Court entered its *Amended Agreed Order Approving the Noticing and Claims Administration Process* (collectively, the “**Claims Noticing and Process Motion and Orders**”).

6. Pursuant to the Claims Noticing and Process Motion and Orders, the Court approved the Corporate Monitor’s proposed claims process including, but not limited to: (1) Legal Notice of Claims Administration Process; (2) Notice of Bar Date/Last Day to File Proof of Claims; (3) Proof of Claim Form Information and Instructions; and (4) set the Claims Bar Date as August 31, 2022 (the “**Claims Bar Date**”) (the “**Claims Package**”)³.

7. Pursuant to the Claims Noticing and Process Motion and Orders, the Corporate Monitor was required to: (i) mail, within 15 days of entry of the Order, via U.S. postal service, to all known Noteholders and potential creditors of the Corporate Monitorship Estate (1) a copy of the Order entered; (2) the Legal Notice; and (3) the Bar Date Notice; and (4) the Proof of Claim Form; and (ii) publish at least twice in publications of nation-wide circulation as well as posting the Legal Notice, Proof of Claim form and Bar Date Notice on the internet website for the Corporate Monitorship Estate, www.nationalseniormonitorship.com.

8. On July 11, 2022, the Corporate Monitor filed a Notice of Compliance with Claims Noticing and Process Motion and Orders as required by the Claims Order.

9. Among the Notice recipients, the Corporate Monitor sent the Claims Package to: the Internal Revenue Service (“**IRS**”), State of Florida Department of Revenue (“**FDOR**”), the Florida Department of Financial Services, the Florida Department of Business and Professional

³ Pursuant to the preliminary approval of the class settlement (the “Class Settlement”) by the federal District Court judge in the class action captioned *Millstein, et al. v. Marshal Seeman, et al.*, 21-CV-61179-RAR (S.D. Fla. 2021), the deadline to file proofs of claim with the Corporate Monitor was extended through October 31, 2022 (the “Claims Bar Date”). The original bar date for the filing of claims, as reflected in the Claim Order, was August 31, 2022. Following the extension of the Claims Bar Date to October 31, 2022, the Claims Package was promptly served, by electronic transmission and/or first class, U.S. Mail, upon all class members.

Regulation, the Florida Commissioner of Insurance Regulation, the U.S. Attorney General the Office of the U.S. Attorney for the Southern District of Florida in West Palm Beach, Florida, the Special Assistant U.S. Attorney, IRS District Counsel, in Plantation, Florida, the Palm Beach County Tax Collector, the Palm Beach County Attorney’s Office, the Delaware Division of Revenue, the Georgia Department of Revenue, the Ohio Department of Taxation, the Attorneys General of Delaware, Florida, Georgia, and Ohio, respectively (collectively, the “**Taxing Authorities**”).

10. The Claims Order provided a bar date of August 31, 2022 (“**Claims Bar Date**”), for All Known Noteholders and potential creditors of the Corporate Monitorship Entities and/or Grace Holdings Financial, LLC who desire to be eligible to share in the assets of the Corporate Monitorship Estate to submit a claim.

11. As of the filing of this Motion, there were 1,669 claims (collectively, the “**Claims**”) filed. None of the Taxing Authorities, including the IRS and FDOR, filed a Proof of Claim prior to the Claims Bar Date and none have done so since.

12. Below is a summary of the Claims filed as of the date of this Motion:

Total # of Claims	1,669
Total # of Individualized Claimants	1,148
Total Amount of Claims	\$376,607,597
Total Amount of Noteholder-related Claims	\$335,670,669
Total Amount of Trade/non-individual Noteholder Creditor Claims	\$40,936,928

13. On March 23, 2023, the Corporate Monitor filed a *Joint Motion to Appoint Receiver* (the “**Receiver Motion**”), which was filed jointly with the Plaintiff/OFR, seeking the entry of an order appointing the Corporate Monitor as receiver for the Consenting Corporate Defendants. The Receiver Motion was filed as it was the belief of the Corporate Monitor, with the consent of the OFR, that converting this monitorship into a receivership was necessary and appropriate to

facilitate the wind up of the Consenting Corporate Defendants' affairs, including the liquidation of assets, disposition and prosecution of claims, and to facilitate litigation against third-parties, which will benefit the investors, noteholders and creditors.

14. On May 10, 2023, the Court conducted a hearing to consider the Receiver Motion, and, on May 12, 2023, the Court entered the *Order Appointing Receiver* (the “**Receivership Order**”), which appointed the Corporate Monitor as the Receiver of the Consenting Corporate Defendants.

15. On November 14, 2023, the Receiver filed the Receiver's *Unopposed Motion to Expand Receivership Estate to Include Grace Holdings Financial, LLC* and on November 28, 2023, the Court entered the *Agreed Order Granting Receiver's Unopposed Motion to Expand Receivership Estate to Include Grace Holdings*, which added Defendant Grace Holdings Financial LLC as a Receivership Defendant (the Consenting Corporate Defendants, with Grace Holdings, are hereinafter referred to as the “**Receivership Defendants**”).

16. Among the Corporate Monitor's duties under the Monitorship Order and Receiver's duties under the Receivership Order is to collect and preserve documents and information about the Consenting Corporate Defendants/Receivership Defendants and investigate the operations of the businesses subject of the monitorship/receivership.

17. The Corporate Monitor and now Receiver and his court-approved professionals, as part of their duties and responsibilities under the September 14, 2021 Order and the Receivership Order, have, and continue to make good faith efforts to analyze and continue to analyze the books and records of the Receivership Defendants which were and are incomplete, inaccurate, and not usable.

18. Further, the Corporate Monitor and now Receiver has filed a total of nine interim reports reporting his findings (7 as Corporate Monitor: October 14, 2021, January 12, 2022, April 12, 2022, July 1, 2022, October 3, 2022 January 3, 2023, and April 3, 2023 and 2 as Receiver: June 23, 2023 and October 20, 2023), the status of the operations of the Consenting Corporate Defendants, and the financial affairs of the monitorship estate of the Consenting Corporate Defendants (the “**Corporate Monitorship Estate**”). The Corporate Monitor has also prepared, distributed, and posted updates to Noteholders and other parties in interest (October 6, 2021, October 22, 2021, December 22, 2021, January 25, 2022, February 28, 2022, July 17, 2022, August 2, 2022, August 15, 2022, August 26, 2022, August 31, 2022, and November 18, 2022 and May 15, 2023 and October 17, 2023).

19. The Corporate Monitorship Estate under the Receiver’s control is hereinafter referred to as the “**Receivership Estate**” and includes the business entities of the Receivership Defendants.

B. Tax Matters

20. Given the dismal, incomplete, and inaccurate state of the books and records available to the Receiver, the Receiver seeks to clarify the tax filing obligations of the Receivership Defendants and unasserted liabilities to the Taxing Authorities, prior to seeking Court approval to issue any distribution of the assets of the Receivership Estate to its creditors, and to obtain Court-approved relief therefrom for all Receivership obligations to the Taxing Authorities.

C. Short Statement of Relief Requested

21. By this Motion, the Receiver seeks (i) an order from this Court relieving him from any obligation to pay pre-Receivership debts and all tax obligations of the Receivership Defendants, and (ii) a declaration of constructive trust over the Receivership assets, and (iii) a declaration that the Receiver has met the demands of 31 U.S.C. §3713(b) and is not subject to

personal liability for the payment of taxes, penalties or interest thereon for the Receivership Defendants or on funds recovered by the Receiver.

I. MEMORANDUM

Pursuant to Treasury Regulation 1.6012-3(a)(1) and (b)(4), it is arguable that the tax returns for one or more of the Receivership Defendants due since the entry of the Monitorship Order and/or the Receivership Order are the responsibility of the Receiver. However, given the relief sought by the Claims Noticing and Process Motion and Orders and the decisions by the Taxing Authorities not to submit claims, the Receiver submits that he should not be burdened with the responsibility of preparing tax returns nor should the Receivership Estate be burdened with the cost of such preparing and/or filing tax returns, amendments of prior years' tax returns, or for the payment of any assessments, penalties, liabilities or obligations of the Receivership Defendants arising therefrom.

Furthermore, to the extent fees, fines, assessments, penalties, claims, or other obligations of or against the Receivership Defendants may arise for any pre-Receivership or Receivership periods, such obligations should not be the responsibility of the Receiver and this Court should release the Receiver from any such obligations or liabilities, including but not limited to claims for indemnification from any Receivership Defendant, Individual Defendant, Relief Defendant or any affiliate, manager, member, officer, director, owner or agent thereof.

Accordingly, the Receiver should be relieved of the responsibilities and obligations regarding administrative obligations of the Receivership Defendants, including, but not limited to, any responsibility for filing income tax returns and the payment of any resulting tax liabilities, administrative filings, licenses, registrations, fees, fines, or otherwise. The Receiver requests the Court confirm that the Receivership Defendants and their affiliates, owners, agents or managers,

shall have no right, claim or cause of action against the Receiver or those acting on his behalf that in any way relates to or arises from this Receivership, and all such claims, if any, are released.

A. The Receiver Seeks Clarification of His Obligations and Relief Therefrom.

The Monitorship Order states, in pertinent part:

13. The Corporate Monitor shall have the following general powers to perform the following duties in good faith, with reasonable diligence, and with reasonable discretion:

V. To file tax returns for the Consenting Corporate Defendants, unless a filing by another natural person on behalf of the Consenting Corporate Defendants is expressly authorized in writing by the Corporate Monitor or upon further Order of this Court. The Consenting Individual Defendants are permitted to voluntarily, and without expectation of fees, costs or expense reimbursements, submit to the Corporate Monitor proposed tax returns, for tax years prior to the issuance of this Order, for the Consenting Corporate Defendants; however, all fees, costs, and expense reimbursements for tax preparation work by natural persons or corporate entities engaged or employed by the Corporate monitor are subject to approval of this Court;⁴

As the Court is aware, two of the Individual Defendants, Eric Holtz and Brian Schwartz, sadly committed suicide prior to and during the pendency of this case, respectively.

The Receiver has exercised ordinary business care and prudence and his professional business judgment in his efforts to determine the Receivership Defendants' tax filing obligations and now seeks clarification from this Court regarding the pre-Receivership tax obligations incurred by the Receivership Defendants.⁵ Accordingly, the Receiver believes and submits that the Taxing Authorities are in the best position to identify and claim the tax obligations owed by the Receivership Defendants. However, as noted above, none of the Taxing Authorities submitted

⁴ Upon his appointment as Corporate Monitor, the Corporate Monitor was in contact with Individual Defendant Marshal Seeman and his Counsel who agreed, both orally and in writing, to prepare of any and all outstanding tax returns that may be necessary for the Consenting Corporate Defendants and to pay for the cost of such preparation and filing of same. Regrettably, the outstanding Consenting Corporate Defendants tax returns were not prepared and/or filed as agreed to by Mr. Seeman.

⁵ The Monitorship Order requires, in part, that the Corporate Monitor/Receiver: "Further, prior Court approval is not required for payments of applicable federal, state or local taxes." Monitorship Order at 28, ¶ 55.

claims by the Claims Bar Date and have not otherwise sought intervention nor made demand to the Receiver.

If there are extensive pre-Receivership obligations and/or debts owing by the Receivership Defendants to the Taxing Authorities, that information will color the Receiver's anticipated requests for confirmation from this Court as to the appropriate determination of the use and/or distribution of Receivership Estate's assets. Absent confirmation from the Court that the Receiver is exonerated from any liability to the Taxing Authorities, the Receiver's ability to perform his duties to the Court, as set forth in the Monitorship Order and the Receivership Order, are severely and significantly impaired.

This request is not made in a vacuum. In one receivership case, the receiver had paid out all assets of the receivership estate and thereafter, the IRS obtained a judgment entitling the government to a priority claim against the receivership estate. *In re Receivership Estate of Indian Motorcycle Manufacturing, Inc. (In re IMMI)*, 2006 W.L. 2471767 (D. Colo. 2006). The receiver was then forced to bring actions against every distributee seeking to recover a portion of funds previously distributed. 2006 W.L. 2471767 at *1-2. While that case can be distinguished from the instant case, the distributees in the *IMMI* case included pre-receivership unsecured creditors paid by the Receiver. Ultimately, the distributees were required to return a percentage of their distributions in order to fund payment of the tax claim. *Id.* at *8.

The Receiver wishes to avoid the unpleasant outcome of the *IMMI* case. Therefore, thinking ahead and out of an abundance of caution, given the potential risk of a future claim against the Receivership Estate for taxes, penalties or interest owing thereon, the Receiver seeks clarification from this Court as to his obligations and duties to the Receivership Estate.

Further, the Receiver requests that the Court enter an order relieving him and the Receivership Estate from any claims the Taxing Authorities may seek to make in the future for any assessments for pre-Receivership and Receivership taxes, penalties, interest, or other obligations due from the Receivership Defendants and barring them from making any future tax claim affecting the Receivership Estate or distributees of the Receivership Estate, *i.e.*, the victims of the scheme who invested and creditors of the Receivership Estate.

Finally, for the avoidance of doubt, in the event any tax or penalty is assessed and asserted, the Receiver reserves the right to seek Court guidance and authority to address the reasonableness and collectability of such assessment against the Receivership Estate, and to raise the defense of constructive trust, or otherwise, until such time that the Receiver is divested of all powers delegated to the Receiver under the Monitorship Order and the Receivership Order.

B. Receivership Assets Recovered by the Receiver Should be Declared as Held in Constructive Trust for Victims.

The Receiver seeks an order declaring that he holds the assets of the Receivership Estate, recovered during the Receivership, in a constructive trust for the victims of the SH Enterprise. Imposition of a constructive trust over the assets of the Receivership Estate will effectuate the return of funds to the rightful owners, the investors who relied upon the misrepresentations and deceit of the Receivership Defendants and their co-conspirators.

Under the doctrine of constructive trust, if liens are placed on the Receivership Defendants' assets, those liens would not attach to property that was wrongfully obtained from the SH Enterprise, as the OFR alleges in this case. *See, e.g., FTC v. Ameridebt*, 373 F. Supp. 2d 558, 565, citing *FTC v. Crittenden*, 823 F.Supp. 699, 703 (C.D. Cal. 1993), *aff'd*, 1994 WL 59803 (9th Cir. 1994).

State law determines the nature of a person's interest in property. *Butner v. U.S.*, 440 U.S. 48 (1979). Under Florida law, the constructive trust came into existence when the investors were defrauded. *In re: General Coffee Corp.*, 64 B.R. 702, 705 (S.D. Fla. 1986). In *General Coffee*, the District Court for the Southern District of Florida stated that under Florida law, "a constructive trust is created when the fraud occurs and not when a court decrees it. It is at this moment that the beneficiary's rights vest under the trust." *Id.* at 707. The Eleventh Circuit affirmed the Southern District's ruling in *General Coffee*, stating that, "if presented with this issue, the Florida Supreme Court would reaffirm the majority approach that a constructive trust arises when the facts giving rise to the fraud occur." *In re: General Coffee*, 828 F.2d 699, 702 (11th Cir. 1987). Following the majority rule adopted by the Southern District in *General Coffee* in this case, a constructive trust arose in favor of the investors at the time they were defrauded by the Receivership Defendants/Individual Defendants.

Here, the assets recovered by the Receiver should be deemed held in constructive trust for the benefit of the investors and creditors. That is, the assets recovered by the Receiver are traceable as generated by and through the operation of the SH Enterprise. In *Small Business Administration v. Echevarria*, 864 F. Supp. 1254 (S.D. Fla. 1994), the court stated that "A constructive may be imposed only where the res is specific, identifiable property or can be clearly traced in assets of the defendant which are claimed by the party seeking relief, and may not be imposed on a defendant's general assets." *Id.* at 1265 (citing *Finkelstein v. Southeast Bank, N.A.*, 490 So. 2d 976, 983 (Fla. 4th DCA 1986) and *Landers v. Sherwin*, 261 So. 2d 542, *cert. denied, sub nom.*, 265 So. 2d 49 (Fla. 1972)). In a case discussing the imposition of a constructive trust on money, the Florida's Fourth District Court of Appeal noted:

Where money is the asset upon which it is proposed that a constructive trust be imposed, it is necessary that a specific amount be identified and located, either by tracing it to a specific

and existing account, or where the funds have been converted into another type of asset such as by the purchase of some item of property, by tracing and identifying the transaction in which the conversion occurred and thus tracing the money into the item of property.

Arduin v. McGeorge, 595 So. 2d 203, 204 (Fla. 4th DCA 1992).

C. Recovery Status/Recovery Actions

The funds recovered (or to be recovered)⁶ by the Receiver are traceable to the underlying SH Enterprise and are maintained by the Receiver for the benefit of the investor victims. Accordingly, declaring that these assets held in a constructive trust will avoid dilution of the Receivership Estate, prioritize the claims of the investors, claims which are unlikely to be satisfied in full based on the scope of the investors' losses, and permit the Receiver to remit the res of the Receivership Estate⁷ to the victims of the SH Enterprise and creditors of the Receivership Estate.

As set forth in the Reports, SHPC paid the sum of \$2,250,000.00 (the “**Initial Settlement Payment**”) to the Corporate Monitor pursuant to a Court-approved settlement (the “**SHPC Settlement**”) between the Corporate Monitor, SHPC, and Hamilton HM 11 Bermuda, HSCM F1 Master Fund Ltd., a Bermuda corporation, and HS Select I, LLC, a Georgia limited liability company (the collectively, “**Secured Lender**”).

Additional terms of the SHPC Settlement require SHPC to pay to the Corporate Monitor within ten (10) calendar days following SHPC's receipt of net cash from any sale or disposition of SHPC, SHPC's assets, or a portion thereof, an additional amount of money according to the below table:⁸

⁶ The Receiver continues to seek further recoveries against third-party co-conspirators and other related parties.

⁷ Note, after payment of administrative expenses of the Receivership, it remains unlikely that there will be sufficient funds in the Receivership Estate to fully refund to the investors or satisfy any judgment the OFR may obtain in this case.

⁸ By way of example, should SHPC receive US \$150,000,000.00, the estate would receive an additional US \$514,005.75.

Net cash proceeds received by senior lenders from sale or disposition of SHPC assets	Additional Monies Owed to Corporate Monitor, prorated with 0% owed at beginning of range and 100% owed at top of range.
\$0 – \$135,000,000.00	\$0
\$135,000,001.00 – \$200,572,000.00	\$2,246,959.00
\$200,572,001.00-300,000,000.00	\$10,000,000.00

To date, no additional funds have been received from SHPC pursuant to the SHPC Settlement.

On August 3, 2023, the Receiver filed *Receiver, Daniel J. Stermer’s Motion to Approve Settlement Agreement and Mutual General Release With American Express Company, American Express National Bank, and American Express Travel Related Services Company* (the “**Amex Settlement Motion**”), seeking the approval of a *Settlement Agreement and Mutual General Release* entered into between (i) the Receiver and (ii) American Express Company, American Express National Bank, and American Express Travel Related Services Company (collectively, “**American Express**”), with respect to monied paid to American Express from one or more of the Receivership Defendants during the four-year period prior to Mr. Stermer’s appointment as Corporate Monitor. As set forth in the Settlement Agreement, the Receiver resolved his disputes with American Express for the sum of \$920,000.00 (the “**Amex Settlement Monies**”), in full and complete satisfaction of any and all claims that the Receiver has against American Express.

On August 23, 2023, the Court conducted a hearing to consider the Amex Settlement Motion, and, on August 25, 2023, entered an *Order Granting Receiver, Daniel J. Stermer’s Motion to Approve Settlement Agreement and Mutual General Release With American Express Company, American Express National Bank, and American Express Travel Related Services Company* (the “**Settlement Order**”), which granted the Amex Settlement Motion and approved the settlement

with Amex. The Amex Settlement Monies have been paid by American Express to the Receiver, in accordance with the Settlement Order.

On September 5, 2023, the Court entered an *Order Granting the Receiver's Motion for Orders Establishing Procedures and Scheduling Order Governing Recovery Actions to be Commenced by the Receiver* (the "**Procedures Order**"). Pursuant to the terms of the Procedures Order, certain guidelines were approved for the efficient administration of Actions to recover fraudulent transfers and other alleged improper payments made by one or more of the Consenting Corporate Defendants (the "**Recovery Actions**"). The recoveries are intended to be utilized, *inter alia*, to fund distributions to creditors in this case.

In connection with the Receiver's efforts to marshal the assets of the Receivership Defendants and pursue claims against individuals and entities that owe the Receivership Defendants money or received fraudulent or otherwise improper transfers from the Receivership Defendants, the Receiver has issued seventeen demand letters (the "**Demand Letters**") to various individuals seeking the recovery of in excess of \$10,000,000 in fraudulent transfers. The Receiver and his counsel have received responses to some of the Demand Letters and have been in discussions with representative(s) for some of those served with Demand Letters to resolve the disputes with those who received Demand Letters.

As the Receiver did not receive any response to certain Demand Letters, the Receiver prepared, filed, and commenced recovery actions against five (5) individuals and those matters are currently pending before the Court which will be governed by the Procedures Order. The Receiver anticipates the filing of additional Recovery Actions.

D. The Receiver Has Met the Demands of 31 U.S.C. § 3713(b).

31 U.S.C. § 3713(b) states: “A representative of a person or an estate (except a trustee acting under title 11) paying any part of a debt of the person or estate before paying a claim of the Government is liable to the extent of the payment for unpaid claims of the Government.” *Id.* For the foregoing reasons, the Receiver, therefore, requests an order declaring that the Receiver has met the demands of 31 U.S.C. §3713(b) and is not subject to personal liability for the amounts of the Receivership Estate and/or funds recovered for the benefit of the investors/victims.

E. Service of this Motion

The Receiver will serve this Motion and any order hereon on the Taxing Authorities (defined above) by First Class, U.S. Mail and Certified Mail, and upon any other party as previously or hereafter directed by the Court.

II. CONCLUSION

WHEREFORE, the Receiver prays that the Court enter an order providing as follows:

1. Relieving the Receiver from any obligation to prepare and file tax returns or tax filings for any Receivership Defendant and from any claim or assessment for pre-Receivership and Receivership taxes, penalties, interest or otherwise, as to the Receivership Defendants;
2. Declaring that the assets recovered by the Receiver are held in a constructive trust for the benefit of the investors;
3. Declaring that the Receiver has met the demands of 31 U.S.C. §3713(b) and is not subject to personal liability for the payment of taxes, penalties, or interest thereon of the Receivership Defendants or on funds recovered by the Receiver, through litigation or through negotiated payments from third parties to settle potential disputes, or otherwise;
4. Granting such further relief as is just and proper.

DATED: December 28, 2023

Respectfully submitted,

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By: /s/ *Brian G. Rich*

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 28, 2023, the foregoing was filed using the Florida Court's E-Filing Portal, which served a copy of the foregoing electronically upon all parties on the attached Electronic Service Parties List.

I FURTHER CERTIFY that on December 28, 2023, a true and correct copy of the foregoing was served by first class, U.S. Mail, and Certified Mail upon all taxing authorities identified on the attached Service List.

By: /s/ Brian G. Rich, Esq.
Brian G. Rich, Esq.

ELECTRONIC SERVICE PARTIES LIST

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