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2018 FEB 2 AM 10:42
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U.S. DISTRICT COURT

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Receiver*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

<p>SECURITIES AND EXCHANGE COMMISSION,</p> <p>Plaintiff,</p> <p>vs.</p> <p>MANAGEMENT SOLUTIONS, INC., a Texas Corporation; WENDELL A. JACOBSON; ALLEN R. JACOBSON,</p> <p>Defendants.</p>	<p>ORDER GRANTING STIPULATED MOTION TO APPROVE SETTLEMENT</p> <p>Civil Action No. 2:11-cv-01165</p> <p>Judge Bruce S. Jenkins</p>
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The Stipulated Motion to Approve Settlement Agreement (CM/ECF No. 3377) (the “Motion”) came before the Court on February 1, 2018, at 10:00a.m. Cory A. Talbot and Doyle S. Byers appeared on behalf of the Receiver,¹ who was present. Matthew C. Barneck appeared on behalf of Black Cliffs, and Black Cliffs’ manager, Matthew A. Nielson, was also present. The Court has considered the Motion, the Statement in Support of Stipulated Motion to Approve Settlement Agreement (CM/ECF No. 3383), the Notice regarding Stipulated Motion to Approve

¹ The defined terms in this Order are taken from the Motion.

Settlement Agreement (CM/ECF No. 3389), and the arguments of counsel. Having considered these matters, and good cause appearing, it is ORDERED as follows:

1. The Motion is GRANTED, and the Court approves the Settlement Agreement with the modifications discussed on the record at the hearing. A copy of the approved Settlement Agreement is attached as Exhibit 1.
2. Pursuant to the terms of the approved Settlement Agreement:
 - a. As soon as practicable, Black Cliffs will dismiss the Amended Claim with prejudice.
 - b. As soon as practicable, the Receiver will convey the receivership entity Gateway Properties, LLC's membership interest in Ash to Black Cliffs or its assigns.
 - c. As soon as practicable, the Receiver will execute a quitclaim deed in favor of Black Cliffs or its assigns for the real property described in Paragraph 3.b of the Settlement Agreement.
 - d. As soon as practicable, the Receiver will pay Black Cliffs \$475,000 in cash.
 - e. The Receiver will pay Black Cliffs up to \$725,000 as set out in Paragraph 3.d of the Settlement Agreement.²
 - f. In no event shall the Receiver pay Black Cliffs in cash more than a total of \$1,200,000.

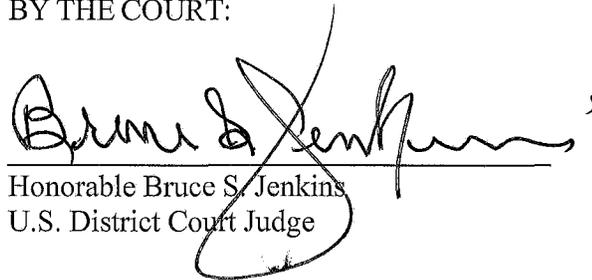
² The Parties provided examples of how this payment would be made in both the Motion and the Settlement Agreement, and those examples will guide the Parties in addressing any questions regarding the payment.

g. The Judgment regarding Black Cliffs Investments, LLC (CM/ECF No. 3217), entered February 7, 2017, is satisfied under federal law and pursuant to Utah Rule of Civil Procedure 58B(b).

3. The Parties will take any other steps necessary to fulfill their obligations under the approved Settlement Agreement.

DATED this 2nd day of February, 2018

BY THE COURT:



Honorable Bruce S. Jenkins
U.S. District Court Judge

APPROVED AS TO FORM:

RICHARDS BRANDT MILLER NELSON

/s/ Matthew C. Barneck
(Signed by filing attorney with permission
of Matthew C. Barneck)
Matthew C. Barneck
Steven H. Bergman
Attorneys for Black Cliffs Investments, LLC

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EXHIBIT “1”

SETTLEMENT AGREEMENT

This Settlement Agreement is made by and between Gil A. Miller (the "Receiver"), in his capacity as Receiver for Management Solutions, Inc., related entities, and the estates of Wendell A. Jacobson and Allen R. Jacobson and not in any individual capacity, pursuant to that certain Order Appointing Receiver, Freezing Assets and Other Relief dated December 15, 2011 (CM/ECF No. 4), as modified by subsequent orders, and entered in *Securities and Exchange Commission v. Management Solutions, Inc., et. al.*, Case No. 2:11-cv-01165, pending in the United States District Court for the District of Utah (the "MSI Action"), on the one hand, and Black Cliffs Investments, LLC ("Black Cliffs"), on the other hand. This Settlement Agreement is subject to, and shall be binding and enforceable only upon approval of the Court in the MSI Action.

RECITALS

1. Matthew A. and Jill R. Nielson (the "Nielsons") and Black Cliffs filed a Complaint in Intervention (CM/ECF No. 993) in the MSI Action on March 14, 2013. Then, joined by MJ5 Investments, LLC ("MJ5"), the Nielsons and Black Cliffs filed an Amended Complaint in Intervention (CM/ECF No. 1484) on December 12, 2013. The Nielsons, MJ5, and Black Cliffs subsequently filed a Second Amended Complaint in Intervention (CM/ECF No. 2494) on May 4, 2015 (the "Providence Estates Matter").
2. The Nielsons and MJ5 later moved to withdraw their claims in intervention regarding the Providence Estates Matter, and the Court granted that motion. (CM/ECF Nos. 3085 & 3144.)
3. On May 19, 2016, the Court entered an Order finding that Black Cliffs held a valid 49.5% membership interest in Janison Investments, LLC ("Janison"), which owned 99% of SA Townhomes, Ltd., which in turn owned the Providence Estates Property. (CM/ECF No. 3072.)
4. Following an evidentiary hearing regarding the Providence Estates Matter, the Court entered Judgment (CM/ECF No. 3217) on February 7, 2017 (the "Judgment") finding that \$3,126,684 in proceeds were owing to Black Cliffs based on its ownership interest in Janison, but that these amounts were offset in their entirety by Black Cliffs' obligation (the "Offset") to the Receivership entity Thunder Bay Mortgage, Inc. ("Thunder Bay") consisting of a principal balance of \$1,550,000 and interest of \$1,916,753 through the date of Judgment.
5. Because the Offset exceeds the amount owed to Black Cliffs from the Providence Estates sale, nothing was payable to Black Cliffs. The Judgment entered February 7, 2017, found that "Black Cliffs' Net Distribution is entirely offset, and Black Cliffs shall recover nothing with respect to its claims in intervention in this matter." Interest continues to accrue on Black Cliffs' obligation to Thunder Bay at the federal post-judgment interest rate. Black Cliffs filed an appeal of the Court's rulings relating to the validity of the Offset, but the Tenth Circuit ruled the appeal was premature because the District Court had not yet entered a final, appealable judgment on Black Cliffs' claims in intervention.

6. Black Cliffs has planned to appeal the Court's Judgment regarding the validity of the Offset at such time as the Court enters a final, appealable judgment. The Receiver has weighed the risks, delays, and expenses associated with such an appeal and has received input from the board of the MSI Investor Group (the "Board"). Primarily due to the costs and delays associated with such an appeal and other litigation with Black Cliffs, and with the support and encouragement of the Board, the Receiver has determined to enter into this Settlement Agreement.

7. As part of the Court-approved claims process (the "Claims Process") in the MSI Action, MJ5 and Black Cliffs timely filed a Proof of Claim on September 2, 2014, which was assigned Claim No. 0458. The Receiver denied that claim.

8. MJ5 and Black Cliffs then prepared an Amended Claim (the "Amended Claim"), which was submitted to the Receiver on February 17, 2017, and filed with the Court on February 27, 2017 (CM/ECF No. 3244). The Receiver objected to the Amended Claim. (See CM/ECF No. 3266.) The Amended Claim is currently pending before the Court in the MSI Action.

9. The Receiver and Black Cliffs (collectively, the "Parties") have reached an agreement for settlement of the disputes between them.

AGREEMENT

For good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

1. Within ten business days of the execution of this Settlement Agreement, the Parties will file a stipulated motion with the Court in the MSI Action requesting the approval of the terms of this Settlement Agreement.

2. As soon as practicable upon Court approval of this Settlement Agreement, Black Cliffs will dismiss the Amended Claim with prejudice. The Parties have not allocated any portion of the settlement payments described below to the Amended Claim.

3. In consideration of the potential costs and delays associated with a likely appeal by Black Cliffs of the Court's Judgment regarding the validity of the Offset and with litigating the Amended Claim, the Receiver will pay Black Cliffs the sum of \$1,200,000 in the same manner as provided for Class 5 claimants in the Claims Process,¹ except as described below, and transfer the Receivership interest in Ash Mini Storage, LLC as follows:

- a. As soon as practicable upon Court approval of this Settlement Agreement, the Receiver will convey the Receivership entity Gateway Properties, LLC's membership interest in Ash Mini Storage, LLC to Black Cliffs or its assigns. The Parties agree that the transfers in Paragraphs 3.a and 3.b will together constitute a payment valued at \$250,000.

¹ The parties only reference the Claims Process to explain the mechanism and timing of payments made pursuant to this Settlement Agreement. Payments made under this Settlement Agreement are not, and are not intended to be, payments made pursuant to the Claims Process.

- b. As soon as practicable upon Court approval of this Settlement Agreement, the Receiver will execute a quitclaim deed in favor of Black Cliffs or its assigns for the real property the Parties understood to be owned by Ash Mini Storage, LLC in the Township of Shallotte, Brunswick County, North Carolina more particularly described as follows:

BOUNDED on the South by R. B. Hudson, on the South and East by Elbert Jackson, and on the North by the Calabash No. 5 Schoolhouse Road, as follows:

BEGINNING at a point where the eastern edge of the Ash-Little River Highway is intersected by the southern edge of the road leading from what was formerly known as McLamb's store to No. 5 Schoolhouse, and running thence with the eastern edge of said Ash-Little River Highway in a southern direction 147 yards to a stake in the center of a ditch; thence with said ditch in an easterly direction 125 yards to stake; thence continuing with said ditch in a northeast direction about 60 yard to the Old Calabash Road; thence with Old Calabash Road on a northerly direction 135 yards to the said No. 5 Schoolhouse Road; runs thence with said road in a westerly direction 35 yards to the beginning, containing 2 1/2 acres more or less. This being the same lands described in deed from L. S. McLamb et ux, Alice McLamb to Roy McLamb, dated July 13, 1956 and duly recorded in the Office of the Register of Deeds of Brunswick County in Book 136 at Page 640. For further reference also see Deed Book 64, Page 227. And being all of Tract No. 1 of the property described in Deed Book 284 at Page 933 of the Brunswick County Registry.

Together with the right of ingress and egress over the old Calabash Road from 1305 to the property herein described,; which said old road has been in existence for more than 30 years and open to the public for said period of time.

- c. As soon as practicable upon Court approval of this Settlement Agreement, the Receiver will pay Black Cliffs \$475,000 in cash.
- d. As to the remaining \$725,000 provided for in this paragraph 3, following Court approval of this Settlement Agreement, at the time of each and every distribution to Class 5 Claimants (as defined in the Court-approved plan of distribution in the MSI Action), the Receiver will pay Black Cliffs an additional amount such that it will have received a percentage of \$1,450,000 equal to the percentage of approved claim amounts received by Class 5 Claimants, either 100% or such other lesser percentage as may result.
 - i. For example, if, following Court approval of this Settlement Agreement, the Receiver makes a distribution to Class 5 Claimants such that they will have received 100% of their approved claim amounts, the Receiver would, at that time, pay Black Cliffs \$725,000 such that it will have received 100% of \$1,450,000, the total amount of the settlement payments contemplated in this Agreement.

ii. As a further example, if, following Court approval of this Settlement Agreement, the Receivership estate is required to pay taxes before making any further distribution such that the Class 5 Claimants will only receive a total of 97% of their approved claim amounts, the Receiver would pay Black Cliffs \$681,500, to equal a total payment of \$1,406,500 to Black Cliffs, or 97% of \$1,450,000, and such payment would be made at the same time as the Class 5 Claimants are brought to 97% of their approved claim amounts.

e. The Parties acknowledge that, depending on the outcome of certain other events, this Paragraph 3 may not result in the full consideration of \$1,450,000 being paid to Black Cliffs, and that in no event shall the Receiver pay Black Cliffs in cash more than a total of \$1,200,000.

4. Black Cliffs will not challenge the Judgment regarding its claims in intervention in any way, including, but not limited to, by seeking reconsideration or appealing the Judgment. Upon Court approval of this Settlement Agreement, the Judgment will be considered satisfied according to applicable law.

5. The Receiver hereby releases and waives any and all claims, demands, actions, causes of action, damages, costs, expenses, and other rights of any nature whatsoever, whether known or unknown, presently existing or arising in the future, against Black Cliffs and its agents, members, managers, attorneys or associates, and affiliates including MJ5, including without limitation, (i) those arising out of or in any way relating to the MSI Action or any of the facts alleged in the pleadings therein, and any other complaint or claim and (ii) any right to make any claim for payment in the MSI Action, whether as an investor, creditor, lender or otherwise.

6. Black Cliffs and its members, managers, and affiliates, including MJ5, hereby release and waive any and all claims, demands, actions, causes of action, damages, costs, expenses, and other rights of any nature whatsoever, whether known or unknown, presently existing or arising in the future, against the Receiver and his agents, attorneys or associates, including without limitation, (i) Black Cliffs' Second Amended Complaint in Intervention (CM/ECF No. 2494), (ii) the Amended Claim, (iii) those arising out of or in any way relating to the MSI Action or any of the facts alleged in the pleadings therein, and any other complaint or claim, and (iv) any right to make any claim for payment in the MSI Action, whether as an investor, creditor, lender or otherwise.

7. The Parties acknowledge that, regarding the remaining balance of the Providence Estates sale proceeds, the Court ordered that the Receiver could not "disburse relevant assets" until the Parties' disputes were finally resolved. (CM/ECF No. 3216.) The Parties agree that, upon Court approval of this Settlement Agreement, the Parties' disputes will have been finally resolved such that the Receiver may disburse the assets currently being held pursuant to the Court's order.

8. By entering into this Settlement Agreement, neither Party admits or acknowledges any liability whatsoever for any of the claims made and specifically denies any liability alleged by the other Party.

9. The Parties acknowledge that each was advised and/or had the opportunity to be advised and represented by independent legal counsel of their own choice throughout the negotiations preceding the execution of this Settlement Agreement and that each has executed this Settlement Agreement after being so advised.

10. The Parties represent and warrant that they, and each of them are fully authorized to enter into the terms and satisfy the conditions of this Settlement Agreement, and, subject to Court approval in the MSI Action, to execute and bind themselves to this Settlement Agreement.

11. This Settlement Agreement and the releases herein shall be binding upon, extend to, and inure to the benefit of the heirs, successors, and assigns of the parties hereto, to the officers, directors, employees, members, managers, partners, agents and representatives of the parties hereto, and to all persons or entities claiming by, through or under any of the parties hereto.

12. This Settlement Agreement may be executed in counterparts, without the requirement that all parties sign each counterpart. Each of said counterparts shall be an original, but all counterparts together shall constitute one and the same instrument.

13. This Settlement Agreement constitutes the entire agreement between the Parties. All prior and contemporaneous agreements are merged herein, including, but not limited to, the Settlement Agreement previously executed by the Parties on January 12, 2018.

14. The Court in the MSI Action shall have sole and exclusive jurisdiction over all claims and disputes arising under or relating to this Settlement Agreement.

15. The Parties will bear their own fees and expenses (including attorneys' fees) that were incurred in connection with their disputes and this Settlement Agreement.

DATED as of this 4th day of February, 2018.

BLACK CLIFFS INVESTMENTS, LLC


Matthew A. Nielson, Manager

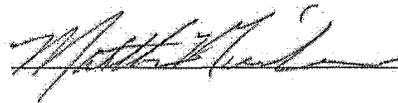
GIL A. MILLER, RECEIVER


Gil A. Miller

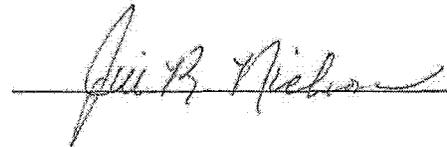
MJ5 INVESTMENTS, LLC


Matthew A. Nielson, Manager

MATTHEW A. NIELSON



JILL R. NIELSON



Approved as to form:

RICHARDS BRANDT MILLER NELSON


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Doyle S. Byers
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